

Sixty-fourth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1384

Introduced by

Representatives Louser, Beadle, Kasper

Senators Casper, Murphy, Oehlke

1 A BILL for an Act to create and enact chapter 26.1-26.7 of the North Dakota Century Code,
2 relating to portable electronics insurance.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** Chapter 26.1-26.7 of the North Dakota Century Code is created and enacted
5 as follows:

6 **26.1-26.7-01. Definitions.**

7 For purposes of this chapter:

8 1. "Business entity" means a corporation, association, partnership, limited liability
9 company, limited liability partnership, or other legal entity.

10 2. "Customer" means a person that purchases a portable electronic device or services
11 related to the use of a portable electronic device.

12 3. "Enrolled customer" means a customer that elects coverage under a portable
13 electronics insurance policy issued to a vendor of portable electronic devices.

14 4. "Location" means any physical location in this state or any website, call center site, or
15 similar location directed to residents of this state.

16 5. "Person" means an individual or a business entity.

17 6. "Portable electronic device":

18 a. Means personal, self-contained, easily carried by hand, battery-operated
19 electronic communication, viewing, listening, recording, gaming, computing, or
20 global positioning devices, including cellular or satellite phones, personal global
21 positioning satellite units, portable computers, portable audio listening, video
22 viewing or recording devices, digital cameras, video camcorders, portable
23 gaming systems, docking stations, and accessories for any of these devices with
24 a retail value of less than five thousand dollars.

- 1 b. Does not include telecommunications switching equipment, transmission wires,
2 cell site transceiver equipment, or other equipment and systems used by
3 telecommunications companies to provide telecommunications service to
4 consumers.
- 5 7. "Portable electronics insurance" means insurance providing coverage for the repair or
6 replacement of portable electronic devices due to one or more of the following causes
7 of loss: loss, theft, inoperability due to mechanical failure, malfunction, damage, or
8 other similar cause of loss. The term includes any agreement whereby a person, in
9 exchange for consideration paid, agrees to provide for the future repair or replacement
10 of a portable electronic device. The term does not include:
- 11 a. A property service contract as defined under section 9-01-21;
12 b. A policy of insurance covering a seller's or a manufacturer's obligations under a
13 warranty; or
14 c. A homeowner's, renter's, private passenger automobile, commercial multi-peril, or
15 similar policy.
- 16 8. "Portable electronics transaction" means the sale or lease of portable electronic
17 devices by a vendor to a customer or the sale of a service related to the use of a
18 portable electronic device by a vendor to a customer.
- 19 9. "Vendor" means a person in the business of engaging in portable electronics
20 transactions, directly or indirectly.
- 21 **26.1-26.7-02. Licensure of vendors.**
- 22 1. A vendor shall hold a limited lines license under this section to sell or offer coverage
23 under a policy of portable electronics insurance.
- 24 2. A limited lines license issued under this section is limited to authorizing a vendor and
25 the vendor's employees or authorized representatives to sell or offer coverage under a
26 policy of portable electronics insurance to a customer to whom the vendor and the
27 vendor's employees or authorized representatives sells or leases a portable electronic
28 device or services related to the use of a portable electronic device.
- 29 3. A limited lines license issued under this section authorizes a vendor and the vendor's
30 employees or authorized representatives to sell or offer portable electronics insurance

1 coverage at each location at which the vendor engages in portable electronics
2 transactions.

3 4. The vendor shall maintain a registry of locations that are authorized to sell or solicit
4 portable electronics insurance coverage in this state. Upon request by the
5 commissioner, and with five days' notice to the vendor, the vendor shall provide the
6 registry to the commissioner for inspection and examination.

7 5. Notwithstanding any other provision of law, a license issued under this section
8 authorizes the licensee and the licensee's employees or authorized representatives to
9 engage only in those activities that are permitted in this chapter in connection with the
10 business of insurance unless authorized to do so under an existing license issued by
11 the commissioner.

12 **26.1-26.7-03. Requirements for sale of portable electronics insurance.**

13 1. At every location where portable electronics insurance is offered to customers, the
14 vendor shall make available to a prospective customer brochures or other written
15 materials that:

16 a. Disclose portable electronics insurance may provide a duplication of coverage
17 already provided by a customer's homeowner's insurance policy, renter's
18 insurance policy, or other source of coverage;

19 b. State the enrollment by the customer in a portable electronics insurance program
20 is not required in order to purchase or lease a portable electronic device or
21 services;

22 c. Summarize the material terms of the insurance coverage, including:

23 (1) The identity of the insurer;

24 (2) The amount of any applicable deductible and how the deductible is to be
25 paid;

26 (3) Benefits of the coverage; and

27 (4) Key terms and conditions of coverage, such as whether a portable
28 electronic device may be repaired or replaced with similar make and model
29 reconditioned or nonoriginal manufacturer parts or equipment.

- 1 d. Summarize the process for filing a claim, including a description of how to return
2 a portable electronic device and the maximum fee applicable in the event the
3 customer fails to comply with any equipment return requirements.
4 e. State an enrolled customer may cancel enrollment for coverage under a portable
5 electronics insurance policy at any time and the person paying the premium shall
6 receive a refund of any applicable unearned premium.
7 2. The written materials required by this section are not subject to filing or approval
8 requirements with the commissioner
9 3. Portable electronics insurance may be offered on a month-to-month or other periodic
10 basis as a group or master commercial inland marine policy issued to a vendor of
11 portable electronic devices for the vendor's enrolled customers.
12 4. A policy of portable electronics insurance must provide primary coverage in the event
13 of a covered loss under more than one policy.
14 5. Eligibility and underwriting standards for customers electing to enroll in coverage must
15 be established for each portable electronics insurance program.

16 **26.1-26.7-04. Authority of vendors of portable electronic devices.**

- 17 1. An employee and an authorized representative of a vendor may sell or offer portable
18 electronics insurance to customers and are not subject to licensure as an insurance
19 producer under this chapter if:
20 a. The vendor obtains a limited lines license to authorize the vendor's employees or
21 authorized representatives to sell or offer portable electronics insurance under
22 this chapter.
23 b. The vendor files an acknowledgment with the commissioner in a form and
24 manner directed by the commissioner which the vendor's counter sales
25 personnel and authorized representatives act on the vendor's behalf and the
26 vendor is responsible for any representations made by the counter sales
27 personnel or authorized representatives relating to insurance products offered
28 through the vendor. The acknowledgment must state the commissioner may take
29 any administrative action contemplated in this title.
30 c. The insurer issuing the portable electronics insurance either directly supervises
31 or the vendor supervises the development of a training program for employees

1 and authorized representatives of the vendors. The training required by this
2 subdivision must comply with the following:

3 (1) The training must be delivered to employees and authorized representatives
4 of vendors who are directly engaged in the activity of selling or offering
5 portable electronics insurance, and the training materials must be
6 maintained by the vendor and be made available to the commissioner for
7 inspection upon request; and

8 (2) Each employee and authorized representative shall receive basic instruction
9 about the portable electronics insurance offered to customers and the
10 disclosures required under section 26.1-26.7-03; and

11 d. An employee or authorized representative of a vendor of portable electronic
12 devices may not advertise, represent, or otherwise hold out to the public as a
13 nonlimited lines-licensed insurance producer.

14 2. A vendor's employees and authorized representatives may not be paid directly by an
15 insurance company, a commission, or any other compensation for the sale of
16 insurance. However, this section does not prevent a vendor from including the
17 insurance products in an overall employee performance compensation incentive
18 program.

19 3. The vendor of portable electronic devices may bill and collect charges for portable
20 electronic devices insurance coverage. Any charge to the enrolled customer for
21 coverage that is not included in the cost associated with the purchase or lease of a
22 portable electronic device or related service must be separately itemized on the
23 enrolled customer's bill. If the portable electronics insurance coverage is included with
24 the purchase or lease of a portable electronic device or related services, the vendor
25 clearly and conspicuously shall disclose to the enrolled customer ~~the~~any portable
26 electronics insurance coverage ~~is~~ included with the portable electronic device or
27 related service, and the stand-alone cost of the premium for the same or similar
28 insurance must be made on the customer's bill and in any marketing materials made
29 available at the point of sale. A vendor billing and collecting the charges are not
30 required to maintain the funds in a segregated account if the vendor is authorized by
31 the insurer to hold the funds in an alternative manner. All funds received by a vendor

1 from an enrolled customer for the sale of portable electronics insurance must be
2 considered funds held in trust by the vendor in a fiduciary capacity for the benefit of
3 the insurer. A vendor may receive compensation for billing and collection services.

4 **26.1-26.7-05. Termination of portable electronics insurance.**

5 Notwithstanding any other provision of law:

- 6 1. An insurer may terminate or otherwise change the terms and conditions of a policy of
7 portable electronics insurance only upon providing the policyholder and enrolled
8 customers with at least thirty days notice.
- 9 2. If the insurer changes the terms and conditions, the insurer shall provide the vendor
10 policyholder with a revised policy or endorsement and each enrolled customer with a
11 revised certificate, endorsement, updated brochure, or other evidence indicating a
12 change in the terms and conditions has occurred and a summary of material changes.
- 13 3. Notwithstanding subsection 1, an insurer may terminate an enrolled customer's
14 enrollment under a portable electronics insurance policy upon thirty days notice for
15 discovery of fraud or material misrepresentation in obtaining coverage or in the
16 presentation of a claim under the policy.
- 17 4. Notwithstanding subsection 1, an insurer may terminate an enrolled customer's
18 enrollment under a portable electronics insurance policy upon ten days notice for
19 nonpayment of premium;
- 20 5. Notwithstanding subsection 1, an insurer immediately may terminate an enrolled
21 customer's enrollment under a portable electronics insurance policy without prior
22 notice:
 - 23 a. If the enrolled customer ceases to have an active service with the vendor of
24 portable electronic devices; or
 - 25 b. If an enrolled customer exhausts the aggregate limit of liability, if any, under the
26 terms of the portable electronics insurance policy and the insurer sends notice of
27 termination to the enrolled customer within thirty calendar days after exhaustion
28 of the limit. However, if notice is not timely sent, coverage must continue.
29 notwithstanding the aggregate limit of liability until the insurer sends notice of
30 termination to the enrolled customer.

- 1 6. If a portable electronics insurance policy is terminated by a policyholder, the
2 policyholder shall mail or deliver written notice to each enrolled customer advising the
3 enrolled customer of the termination of the policy and the effective date of termination.
4 The written notice must be mailed or delivered to the enrolled customer at least thirty
5 days before the termination.
- 6 7. If notice or correspondence with respect to a policy of portable electronics insurance is
7 required under this section or is otherwise required by law, the notice or
8 correspondence must be in writing and sent within the notice period, if any, specified
9 within the statute or regulation requiring the notice or correspondence.
10 Notwithstanding any other provision of law, notices and correspondence may be sent
11 by mail or by electronic means as set forth in this subsection. If the notice or
12 correspondence is mailed, it must be sent to the vendor of portable electronic devices
13 at the vendor's mailing address specified for this purpose and to the vendor's affected
14 enrolled customers' last known mailing addresses on file with the insurer. The insurer
15 or vendor of portable electronic devices, as the case may be, shall maintain proof of
16 mailing in a form authorized or accepted by the United States postal service or other
17 commercial mail delivery service. If the notice or correspondence is sent by electronic
18 means, the notice or correspondence must be sent to the vendor of portable electronic
19 devices at the vendor's electronic mail address specified for this purpose and to the
20 vendor's affected enrolled customers' last known electronic mail address as provided
21 by each enrolled customer to the insurer or vendor of portable electronic devices, as
22 the case may be. For purposes of this subsection, an enrolled customer's provision of
23 an electronic mail address to the insurer or vendor of portable electronic devices, as
24 the case may be, is deemed consent to receive notices and correspondence by
25 electronic means. The insurer or vendor of portable electronic devices, as the case
26 may be, shall maintain proof the notice or correspondence was sent.
- 27 8. Notice or correspondence required by this section or otherwise required by law may
28 be sent on behalf of an insurer or vendor, as the case may be, by a business entity
29 that is a licensed insurance producer and that is appointed by the insurer issuing the
30 portable electronics insurance policy to assist with the administration of the portable
31 electronics insurance program.

1 **26.1-26.7-06. Application for license and fees.**

2 1. A vendor shall apply for licensure under subsection 2 of section 26.1-26-13.3.

3 2. An applicant shall apply for licensure under the provisions of section 26.1-26-13.3. In
4 lieu of providing the information for all officers, directors, and shareholders owning
5 more than ten percent of the applicant, the requirements for the applicant are limited to
6 requiring the applicant to provide the name, residence address, and other information
7 required by the commissioner for an employee or officer of the vendor that is
8 designated by the applicant as the person responsible for the vendor's compliance
9 with the requirements of this chapter. However, if the vendor derives more than fifty
10 percent of the vendor's revenue from the sale of portable electronics insurance the
11 information required under this subsection must be provided for all officers, directors,
12 and shareholder of record having beneficial ownership of ten percent or more.

13 3. Each vendor of portable portable electronic devices licensed under this chapter shall
14 pay to the commissioner a fee as prescribed by the commissioner.

15 4. Any vendor engaging in portable electronics insurance transactions before the
16 effective date of this Act shall apply for licensure within ninety days of the application
17 being made available by the commissioner. Any applicant commencing operations
18 after the effective date of this Act shall obtain a license before offering portable
19 electronics insurance. The provisions and penalties under this section are in addition
20 to those provided under chapter 26.1-26.