

Introduced by

Senators Sorvaag, O'Connell, Unruh

Representatives Beadle, Kasper

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

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

4 **SECTION 1.** A new chapter to title 26.1 of the North Dakota Century Code is created and  
5 enacted as follows:

6 **Definitions.**

7 As used in this chapter:

8 1. "Portable electronics" means electronic devices that are portable in nature and  
9 includes accessories for these devices.

10 2. "Portable electronics insurance" means insurance that may be offered on a  
11 month-to-month or other periodic basis as a group or master commercial inland  
12 marine policy issued to a vendor for the vendor's enrolled customers which provides  
13 coverage for the repair or replacement of portable electronics and which may provide  
14 coverage for portable electronics against any one or more of the following causes of  
15 loss: loss, theft, interoperability due to mechanical failure, malfunction, damage, or  
16 other similar causes of loss.

17 a. The term includes any agreement through which a person in exchange for  
18 consideration paid, agrees to provide for the future repair, replacement, or  
19 provision of portable electronics.

20 b. The term does not include:

21 (1) A service contract or extended warranty providing coverage limited to the  
22 repair, replacement, or maintenance of property for the operational or  
23 structural failure of property due to a defect in materials, workmanship,  
24 accidental damage from handling, power surges, or normal wear and tear.

1                   (2) A policy of insurance covering a seller's or a manufacturer's obligations  
2                                   under a warranty.

3                   (3) A homeowner's, renter's, private passenger automobile, commercial  
4                                   multiperil, or similar policy.

5           3. "Portable electronics transaction" means the sale or lease of portable electronics by a  
6                   vendor to a customer or the sale of a service related to the use of portable electronics  
7                   by a vendor to a customer.

8           4. "Vendor" means a person in the business of engaging in portable electronics  
9                   transactions directly or indirectly.

10           **Insurance license for vendors of portable electronics insurance - Exception.**

11           1. A license as an insurance producer is not required for an employee or authorized  
12                   representative of a vendor. A vendor's employee and authorized representative may  
13                   sell or offer coverage under a policy of portable electronics insurance at each location  
14                   at which the vendor engages in portable electronics transactions if the vendor  
15                   complies with this section.

16           2. The vendor must be licensed under subsection 2 of section 26.1-26-13.3, except:

17           a. The individual designated as the licensed principal insurance producer of the  
18                   vendor does not have to be an employee, officer, or director of the vendor and  
19                   need only hold a license for the property line of insurance; and

20           b. The vendor need only provide the name, residence address, and other  
21                   information required by the commissioner for an employee or officer of the vendor  
22                   who is designated by the applicant as the individual responsible for the vendor's  
23                   compliance with the requirements of this chapter. However, if the vendor derives  
24                   more than fifty percent of the vendor's revenue from the sale of portable  
25                   electronics insurance, the information required in this subdivision must be  
26                   provided for every officer, director, and shareholder of record having beneficial  
27                   ownership of at least ten percent of any class of securities registered under the  
28                   federal securities law.

29           3. The coverage offered by a vendor's employee or authorized represent is limited to  
30                   portable electronics insurance.

- 1       4. The vendor shall file an acknowledgment with the commissioner stating the vendor's  
2       employees and authorized representatives act on the vendor's behalf and that the  
3       vendor is responsible for any representations made by the employees or authorized  
4       representatives relating to portable electronics insurance. The acknowledgment must  
5       state that the commissioner may take any administrative action contemplated in this  
6       title, including revocation or suspension of the license required under subsection 2,  
7       suspending or revoking the privilege of transacting portable electronics insurance at  
8       specific business locations where violations have occurred, and suspending or  
9       revoking the ability of individual employees or authorized representatives to act under  
10      the vendor's license.
- 11      5. The vendor, or an insurer or licensed insurance producer appointed by the insurer to  
12      supervise the administration of the portable electronics insurance program, shall  
13      provide basic training to employees and authorized representatives of a vendor with  
14      respect to portable electronics insurance offered under this section.
- 15      6. At every location at which portable electronics insurance is offered to customers,  
16      brochures or other written materials must be made available to a prospective customer  
17      which:
- 18      a. Disclose that portable electronics insurance may provide a duplication of  
19      coverage already provided by a customer's homeowner's insurance policy,  
20      renter's insurance policy, or other source of coverage.
- 21      b. State that the enrollment by the customer in a portable electronics insurance  
22      program is not required in order to purchase or lease portable electronics or  
23      services.
- 24      c. Summarize the material terms of the insurance coverage, including:
- 25          (1) The identity of the insurer;
- 26          (2) The identity of the supervising entity;
- 27          (3) The amount of any applicable deductible and how the deductible is to be  
28          paid;
- 29          (4) Benefits of the coverage; and

1           (5) Key terms and conditions of coverage, such as whether portable electronics  
2           may be repaired or replaced with similar make and model, reconditioned or  
3           nonoriginal, manufacturer parts or equipment.

4           d. Summarize the process for filing a claim, including a description of how to return  
5           portable electronics and the maximum fee applicable in the event the customer  
6           fails to comply with any equipment return requirements.

7           e. State that an enrolled customer may cancel enrollment for coverage under a  
8           portable electronics insurance policy at any time and the person paying the  
9           premium shall receive a refund of any applicable unearned premium.

10          7. When a vendor bills a customer for portable electronics insurance coverage, any  
11          charge to the enrolled customer for coverage that is not included in the cost  
12          associated with the purchase or lease of portable electronics or related services must  
13          be separately itemized on the enrolled customer's bill. If the portable electronics  
14          insurance coverage is included with the purchase or lease of portable electronics or  
15          related services, however, the vendor shall clearly and conspicuously disclose to the  
16          enrolled customer that the portable electronics insurance coverage is included with the  
17          portable electronics or related services. Vendors billing and collecting such charges  
18          may not be required to maintain such funds in a segregated account provided that the  
19          vendor is authorized by the insurer to hold such funds in an alternative manner and  
20          remits such amounts to the supervising entity within sixty days of receipt. All funds  
21          received by a vendor from an enrolled customer for the sale of portable electronics  
22          insurance must be considered funds held in trust by the vendor in a fiduciary capacity  
23          for the benefit of the insurer. A vendor may receive compensation for billing and  
24          collection services.

25          **Termination and modification of portable electronics insurance.**

26          Notwithstanding any other provision of law:

27          1. An insurer may not terminate or otherwise change the terms and conditions of a policy  
28          of portable electronics insurance unless the insurer provides the policyholder and  
29          enrolled customers with at least thirty days' notice.

30          2. If the insurer changes the terms and conditions of a policy, the insurer shall provide  
31          the policyholder with a revised policy or endorsement and any enrolled customer with

- 1           a revised certificate, endorsement, updated brochure, or other evidence indicating a  
2           change in the terms and conditions has occurred and a summary of material changes.
- 3           3. Notwithstanding subsection 1, an insurer may terminate an enrolled customer's  
4           enrollment under a group or master portable electronics insurance policy upon fifteen  
5           days' notice for discovery of fraud or material misrepresentation in obtaining coverage  
6           or in the presentation of a claim thereunder.
- 7           4. Notwithstanding subsection 1, an insurer may immediately terminate an enrolled  
8           customer's enrollment under a group or master portable electronics insurance policy  
9           without prior notice:
- 10           a. For nonpayment of premium;  
11           b. If the enrolled customer ceases to have an active service with the policyholder; or  
12           c. If an enrolled customer exhausts the aggregate limit of liability, if any, under the  
13           terms of the portable electronics insurance policy and the insurer sends notice of  
14           termination to the enrolled customer within thirty days after exhaustion of the  
15           limit. If notice is not timely sent, however, enrollment must continue  
16           notwithstanding the aggregate limit of liability until the insurer sends notice of  
17           termination to the enrolled customer.
- 18           5. If a group or master portable electronics insurance policy is terminated by the  
19           policyholder, the policyholder shall mail or deliver written notice to each enrolled  
20           customer advising the enrolled customer of the termination of the policy and the  
21           effective date of termination. The written notice must be mailed or delivered to the  
22           enrolled customer at least thirty days before the termination.
- 23           6. If notice or correspondence with respect to a policy of portable electronics insurance is  
24           required pursuant to this section or is otherwise required by law, the correspondence  
25           must be in writing and sent within the notice period, if any, specified within the law  
26           requiring the notice or correspondence. Notwithstanding any other provision of law,  
27           notices and correspondence may be sent either by mail or by electronic means. If the  
28           notice or correspondence is mailed, the notice or correspondence must be sent to the  
29           policyholder at the policyholder's mailing address specified for such purpose and to  
30           each enrolled customer at the customer's last-known mailing address on file with the  
31           insurer. The insurer or policyholder of portable electronics shall maintain proof of

1           mailing in a form authorized or accepted by the United States postal service or other  
2           commercial mail delivery service. If the notice or correspondence is sent by electronic  
3           means, the notice or correspondence must be sent to the policyholder at the  
4           policyholder's electronic mail address specified for such purpose and to each enrolled  
5           customer at the customer's last-known electronic mail address as provided by the  
6           enrolled customer to the insurer or policyholder. For purposes of this subsection, an  
7           enrolled customer's provision of an electronic mail address to the insurer or  
8           policyholder is deemed consent to receive notices and correspondence by electronic  
9           means. The insurer or policyholder shall maintain proof that the notice or  
10          correspondence was sent.

11          7. Notice or correspondence required by this section or otherwise required by law may  
12          be sent on behalf of an insurer or policyholder by a licensed insurance producer  
13          appointed by the insurer to supervise the administration of a portable electronics  
14          insurance program.