

SENATE BILL NO. 2335

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.~~ for an Act to provide for a legislative
3 management study of the sale of portable electronics insurance.

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

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

7 ~~Definitions:~~

8 ~~As used in this chapter:~~

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

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

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

21 ~~b. The term does not include:~~

22 ~~(1) A service contract or extended warranty providing coverage limited to the~~
23 ~~repair, replacement, or maintenance of property for the operational or~~

1 ~~structural failure of property due to a defect in materials, workmanship,~~
2 ~~accidental damage from handling, power surges, or normal wear and tear.~~

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

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

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

10 ~~4. "Vendor" means a person in the business of engaging in portable electronics~~
11 ~~transactions directly or indirectly.~~

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

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

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

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

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

- 1 ~~3. The coverage offered by a vendor's employee or authorized represent is limited to~~
2 ~~portable electronics insurance.~~
- 3 ~~4. The vendor shall file an acknowledgment with the commissioner stating the vendor's~~
4 ~~employees and authorized representatives act on the vendor's behalf and that the~~
5 ~~vendor is responsible for any representations made by the employees or authorized~~
6 ~~representatives relating to portable electronics insurance. The acknowledgment must~~
7 ~~state that the commissioner may take any administrative action contemplated in this~~
8 ~~title, including revocation or suspension of the license required under subsection 2,~~
9 ~~suspending or revoking the privilege of transacting portable electronics insurance at~~
10 ~~specific business locations where violations have occurred, and suspending or~~
11 ~~revoking the ability of individual employees or authorized representatives to act under~~
12 ~~the vendor's license.~~
- 13 ~~5. The vendor, or an insurer or licensed insurance producer appointed by the insurer to~~
14 ~~supervise the administration of the portable electronics insurance program, shall~~
15 ~~provide basic training to employees and authorized representatives of a vendor with~~
16 ~~respect to portable electronics insurance offered under this section.~~
- 17 ~~6. At every location at which portable electronics insurance is offered to customers,~~
18 ~~brochures or other written materials must be made available to a prospective customer~~
19 ~~which:~~
- 20 ~~a. Disclose that portable electronics insurance may provide a duplication of~~
21 ~~coverage already provided by a customer's homeowner's insurance policy,~~
22 ~~renter's insurance policy, or other source of coverage.~~
- 23 ~~b. State that the enrollment by the customer in a portable electronics insurance~~
24 ~~program is not required in order to purchase or lease portable electronics or~~
25 ~~services.~~
- 26 ~~c. Summarize the material terms of the insurance coverage, including:~~
- 27 ~~(1) The identity of the insurer;~~
- 28 ~~(2) The identity of the supervising entity;~~
- 29 ~~(3) The amount of any applicable deductible and how the deductible is to be~~
30 ~~paid;~~
- 31 ~~(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~~

~~a revised certificate, endorsement, updated brochure, or other evidence indicating a change in the terms and conditions has occurred and a summary of material changes.~~

~~3. Notwithstanding subsection 1, an insurer may terminate an enrolled customer's enrollment under a group or master portable electronics insurance policy upon fifteen days' notice for discovery of fraud or material misrepresentation in obtaining coverage or in the presentation of a claim thereunder.~~

~~4. Notwithstanding subsection 1, an insurer may immediately terminate an enrolled customer's enrollment under a group or master portable electronics insurance policy without prior notice:~~

~~a. For nonpayment of premium;~~

~~b. If the enrolled customer ceases to have an active service with the policyholder; or~~

~~c. If an enrolled customer exhausts the aggregate limit of liability, if any, under the terms of the portable electronics insurance policy and the insurer sends notice of termination to the enrolled customer within thirty days after exhaustion of the limit. If notice is not timely sent, however, enrollment must continue notwithstanding the aggregate limit of liability until the insurer sends notice of termination to the enrolled customer.~~

~~5. If a group or master portable electronics insurance policy is terminated by the policyholder, the policyholder shall mail or deliver written notice to each enrolled customer advising the enrolled customer of the termination of the policy and the effective date of termination. The written notice must be mailed or delivered to the enrolled customer at least thirty days before the termination.~~

~~6. If notice or correspondence with respect to a policy of portable electronics insurance is required pursuant to this section or is otherwise required by law, the correspondence must be in writing and sent within the notice period, if any, specified within the law requiring the notice or correspondence. Notwithstanding any other provision of law, notices and correspondence may be sent either by mail or by electronic means. If the notice or correspondence is mailed, the notice or correspondence must be sent to the policyholder at the policyholder's mailing address specified for such purpose and to each enrolled customer at the customer's last known mailing address on file with the 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.~~

SECTION 1. PORTABLE ELECTRONICS INSURANCE - LEGISLATIVE MANAGEMENT

15 **STUDY.** During the 2013-14 interim, the legislative management shall consider studying the
16 feasibility and desirability of regulating the sale of portable electronics insurance. The legislative
17 management shall report its findings and recommendations, together with any legislation
18 required to implement the recommendations, to the sixty-fourth legislative assembly.
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