

Part 18

Portable Electronics Insurance Act

31A-22-1801 Title.

This part is known as the "Portable Electronics Insurance Act."

Enacted by Chapter 151, 2012 General Session

31A-22-1802 Definitions.

As used in this part:

- (1) "Customer" means a person who purchases portable electronics.
- (2) "Enrolled customer" means a customer who elects coverage under a portable electronics insurance policy issued to a vendor of portable electronics.
- (3) "Location" means a physical location in the state or a website, call center site, or similar location directed to residents of the state.
- (4) "Portable electronics" means:
 - (a) an electronic device that is portable in nature; and
 - (b) an accessory or service related to the use of the portable electronic device.
- (5)
 - (a) "Portable electronics insurance" means insurance providing coverage for the repair or replacement of portable electronics that provides coverage for portable electronics against any one or more of the following:
 - (i) loss;
 - (ii) theft;
 - (iii) inoperability due to mechanical failure;
 - (iv) malfunction;
 - (v) damage; or
 - (vi) other similar cause of loss.
 - (b) "Portable electronics insurance" does not include:
 - (i) a manufacturer's or vendor's warranty;
 - (ii) a service contract;
 - (iii) a policy of insurance covering a vendor's or manufacturer's obligations under a warranty; or
 - (iv) a homeowner's, renter's, private passenger motor vehicle, commercial multi-peril, or similar policy.
- (6) "Portable electronics transaction" means:
 - (a) the sale or lease of portable electronics by a vendor to a customer; or
 - (b) the sale by a vendor to a customer of an accessory or a service related to the use of portable electronics.
- (7) "Service contract" means a contract or agreement for the repair or maintenance of goods or property, for their operational or structural failure due to a defect in materials, workmanship, or normal wear and tear, with or without additional provisions for incidental payment of indemnity under limited circumstances.
- (8) "Supervising entity" mean a business entity that is:
 - (a) a licensed insurer; or
 - (b) an insurance producer that is appointed by an insurer to supervise the administration of a portable electronics insurance program.

- (9) "Vendor" means a person in the business of engaging in portable electronics transactions directly or indirectly.
- (10) "Warranty" means a promise made solely by the manufacturer, importer, seller, or lessor of property or services without consideration, that is not negotiated or separated from the sale of the product and is incidental to the sale of the product, that guarantees indemnity for defective parts, mechanical or electrical breakdown, labor, or other remedial measures, such as repair or replacement of the property or repetition of services.

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31A-22-1803 Licensure required.

- (1) Subject to Subsection 31A-22-1804(2) and Section 31A-23a-103, a vendor is required to hold a portable electronics limited lines license to sell or offer coverage under a portable electronics insurance policy.
- (2) A portable electronics limited lines license issued under this section authorizes an employee or authorized representative of the vendor to sell or offer coverage under a portable electronics insurance policy to a customer at each location at which the vendor who holds the limited lines license engages in portable electronics transactions.
- (3) Notwithstanding any other provision of law, a limited lines license issued under this section authorizes the licensee and the licensee's employees or authorized representatives to engage in those activities that are permitted by this section.
- (4) A supervising entity shall maintain a registry of vendor locations at which the vendor is authorized to sell or offer portable electronics insurance coverage in this state. Upon request by the commissioner and with three business days notice to the supervising entity, the supervising entity shall make the registry open to inspection and examination by the commissioner during regular business hours of the supervising entity.

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31A-22-1804 Application for license and fees.

- (1) To obtain or renew a portable electronics insurance limited lines license under this part, a person shall:
 - (a) file with the department an application for a portable electronics limited lines license on forms and in the manner the commissioner prescribes;
 - (b) subject to Subsection (4), provide the name and other information required by the commissioner for a licensed individual who is designated by the applicant as the person responsible for the vendor's compliance with the requirements of this chapter; and
 - (c) pay a fee established by the department in accordance with Section 31A-3-103, except for an initial or renewal portable electronics limited lines license in no event may the fee exceed \$100 per location in the state at which the vendor engages in portable electronics transactions.
- (2) A vendor engaged in portable electronics insurance transactions before July 1, 2012, shall apply for licensure within 90 days of the application being made available by the department. An applicant commencing operations on or after July 1, 2012, shall obtain a portable electronics limited lines license before offering portable electronics insurance.
- (3) A portable electronics limited lines license under this part has a term of two years and expires two years after issuance, unless renewed.

- (4) If the vendor derives more than 50% of its revenue from the sale of portable electronics insurance, the applicant shall provide the information listed in Subsection (1)(b) for all officers, directors, and shareholders of record having beneficial ownership of 10% or more of any class of securities registered under the federal securities law.

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31A-22-1805 Employees and authorized representatives of a vendor.

- (1) An employee or authorized representative of a vendor may sell or offer portable electronics insurance to a customer and is not subject to licensure as an insurance producer under this title if:
 - (a) the vendor obtains a portable electronics limited lines license that authorizes the vendor's employee or authorized representative to sell or offer portable electronics insurance pursuant to this section;
 - (b) the insurer issuing the portable electronics insurance either directly supervises or appoints a supervising entity to supervise the administration of the portable electronics insurance program, including development of a training program for each employee or authorized representative of the vendor that complies with the following:
 - (i) the training shall be delivered to an employee or authorized representative of a vendor who is directly engaged in the activity of selling or offering portable electronics insurance;
 - (ii) the training may be provided in electronic form if the supervising entity implements a supplemental education program regarding the portable electronics insurance product that is conducted and overseen by a licensed employee of the supervising entity that holds a portable electronics limited lines producer license; and
 - (iii) each employee and authorized representative shall receive basic instruction about the portable electronics insurance offered to customers and the disclosures required under Section 31A-22-1807; and
 - (c) an employee or authorized representative of a vendor of portable electronics may not advertise, represent, or otherwise hold the individual out as an insurance producer of any type.
- (2) Notwithstanding any other provision of law, an employee or authorized representative of a vendor of portable electronics may not be compensated based primarily on the number of customers enrolled for portable electronics insurance coverage, but may receive compensation for activities under the limited lines license that are incidental to the employee's or authorized representative's overall compensation.

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31A-22-1806 Penalties.

Notwithstanding Section 31A-2-308, if a vendor or the vendor's employee or authorized representative violate this part, the commissioner may do any of the following in accordance with Title 63G, Chapter 4, Administrative Procedures Act:

- (1) impose a fine not to exceed:
 - (a)
 - (i) \$2,500 per violation by a licensed individual; or
 - (ii) \$5,000 per violation by an entity; or
 - (b) \$40,000 in the aggregate for the conduct; or

- (2) impose other penalties that the commissioner considers necessary and reasonable to carry out the purpose of this part, including:
 - (a) suspending or revoking the privilege of transacting portable electronics insurance pursuant to this part at a specific location where violations have occurred; and
 - (b) suspending or revoking the ability of individual employees or authorized representatives to act under the vendor's limited lines license.

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31A-22-1807 Requirements for sale of portable electronics insurance -- Policy provides primary coverage.

- (1) At each location where a vendor offers portable electronics insurance to a customer, the vendor shall make available to a prospective customer written materials that:
 - (a) disclose that portable electronics insurance may provide a duplication of coverage already provided by the customer's homeowner's insurance policy, renter's insurance policy, private passenger motor vehicle policy, or other source of coverage;
 - (b) state that the enrollment by the customer in a portable electronics insurance program is not required in order to purchase or lease portable electronics;
 - (c) summarize the material terms of the portable electronics insurance coverage, including:
 - (i) the identity of the insurer;
 - (ii) the identity of the supervising entity;
 - (iii) the amount of any applicable deductible and how it is to be paid;
 - (iv) benefits of the coverage; and
 - (v) key terms and conditions of coverage, such as whether portable electronics may be repaired or replaced with similar make and model reconditioned or non-original manufacturer parts or equipment;
 - (d) summarize the process for filing a claim, including a description of how to return portable electronics and the maximum fee applicable in the event the customer fails to comply with any equipment return requirements; and
 - (e) state the cancellation rights under Subsection (2).
- (2) An enrolled customer may cancel enrollment for coverage under a portable electronics insurance policy at any time, and the person paying the premium shall receive a refund or credit of any applicable unearned premium.
- (3) Portable electronics insurance may be offered on a month to month or other periodic basis as a group or master commercial inland marine policy issued to a vendor of portable electronics for its enrolled customers. Notwithstanding any other provision of law to the contrary, forms for portable electronics insurance shall be filed with the commissioner in accordance with Section 31A-21-201, and rates for portable electronics insurance shall be filed in accordance with Section 31A-19a-203.
- (4) Eligibility and underwriting standards for customers electing to enroll in coverage shall be filed with the department for each portable electronics insurance program.
- (5) A policy of portable electronics insurance shall provide primary coverage in the event of a covered loss under more than one policy.

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31A-22-1808 Termination of or changes to portable electronics insurance.

Notwithstanding any other provision of law:

- (1)
 - (a) An insurer may terminate or otherwise change the terms and conditions of a policy of portable electronics insurance only upon providing the policyholder and enrolled customers with at least 30 days notice.
 - (b) Notwithstanding Subsection (1)(a), an insurer may terminate an enrolled customer's enrollment under a portable electronics insurance policy upon 30 days notice for discovery of fraud or material misrepresentation in obtaining coverage or in the presentation of a claim under the portable electronics insurance policy.
 - (c) Notwithstanding Subsection (1)(a), an insurer may immediately terminate an enrolled customer's enrollment under a portable electronics insurance policy:
 - (i) for nonpayment of premium;
 - (ii) if the enrolled customer ceases to have an active service with the vendor of the portable electronics; or
 - (iii) subject to Subsection (2), if the 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 30 days after exhaustion of the limit.
- (2) If notice is not timely sent under Subsection (1)(c)(iii), enrollment shall continue notwithstanding the aggregate limit of liability until the insurer sends notice of termination to the enrolled customer.
- (3) If an insurer changes the terms and conditions of a portable electronics insurance policy, the insurer shall provide:
 - (a) the vendor policyholder with a revised policy or endorsement; and
 - (b) each enrolled customer with:
 - (i) a revised certificate, endorsement, brochure, or other evidence indicating a change in the terms and conditions has occurred; and
 - (ii) a summary of material changes.
- (4) When a vendor policyholder of a portable electronics insurance policy terminates the portable electronics insurance policy, the vendor policyholder shall mail or deliver written notice to each enrolled customer advising the enrolled customer of the termination of the portable electronics insurance policy and the effective date of termination. The vendor shall mail or deliver the written notice to the enrolled customer at least 30 days before the termination.
- (5)
 - (a) When notice or correspondence with respect to coverage under a policy of portable electronics insurance is required under this section or is otherwise required by law, the notice or correspondence shall be in writing and be mailed or delivered to the vendor at the vendor's mailing address and to its affected enrolled customers' last known mailing addresses on file with the insurer.
 - (b) If mailed, the insurer or vendor, as the case may be, shall maintain proof of mailing in a form authorized or accepted by the United States Postal Service or other commercial mail delivery service.
 - (c) An insurer or vendor policyholder may comply with this Subsection (5) by providing notice or correspondence to a vendor or its affected enrolled customers, as the case may be, by electronic means. If accomplished through electronic means, the insurer or vendor, as the case may be, shall maintain proof that the notice or correspondence was sent. For purposes of this Subsection (5)(c) and Title 46, Chapter 4, Uniform Electronic Transactions Act, the provision of an electronic mail address to an insurer or vendor by an enrolled customer is considered consent to receive notice and correspondence by electronic means as long as a disclosure to the effect is provided to the customer.

- (6) Notice or correspondence required by this section or otherwise required by law may be sent on behalf of an insurer or vendor by the supervising entity appointed by the insurer.

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31A-22-1809 Billing.

- (1) A vendor may bill and collect the premium for portable electronics insurance coverage.
- (2)
- (a) Any charge to an enrolled customer for portable electronics insurance coverage that is not included in the cost associated with the purchase or lease of portable electronics or related services shall be separately itemized on the enrolled customer's bill.
 - (b) If the portable electronics insurance coverage is included with the purchase or lease of portable electronics or related services, the vendor shall clearly and conspicuously disclose to the enrolled customer that the portable electronics insurance coverage is included with the portable electronics or related services.
- (3) A vendor who bills and collects the premium for the portable electronics insurance may not be required to maintain the money in a segregated account if the vendor is authorized by the insurer to hold the money in an alternative manner and remits the money to the supervising entity within 60 days of receipt. Money received by a vendor from an enrolled customer for the sale of portable electronics insurance is considered money held in trust by the vendor in a fiduciary capacity for the benefit of the insurer.
- (4) A vendor may receive compensation for billing and collection services.

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31A-22-1810 Applicability.

This part is not applicable to a loan or lease originated by a federally insured depository institution, or a subsidiary or affiliate of a federally insured depository institution, or originated by any other entity as part of a plan to sell or assign an interest in the loan or lease to a federally insured depository institution, or a subsidiary or affiliate of a federally insured depository institution.

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