

Representative Todd E. Kiser proposes the following substitute bill:

**PORTABLE ELECTRONICS INSURANCE RELATED
AMENDMENTS**

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd E. Kiser

Senate Sponsor: John L. Valentine

LONG TITLE

General Description:

This bill modifies the Insurance Code to enact the Portable Electronics Insurance Act, address adjusting of portable electronics insurance claims, and make conforming amendments.

Highlighted Provisions:

This bill:

- ▶ modifies definitions;
- ▶ enacts the Portable Electronics Insurance Act, including:
 - defining terms;
 - requiring vendors to hold a limited lines license to sell or offer coverage under a portable electronics insurance policy;
 - providing for application and fees to obtain limited lines license;
 - addressing employees and authorized representatives of vendors;
 - providing for penalties for violation of part;
 - imposing requirements for the sale of portable electronics insurance;
 - making coverage primary coverage;
 - addressing terminating or changing a portable electronics insurance policy; **§→ [and]**

←§

1st Sub. H.B. 61



- 26 • addressing billing; ~~§~~→ and
- 26a • addressing applicability of provisions; ←~~§~~
- 27 ▸ addresses portable electronics claims adjusting and supervision of nonlicensed
- 28 individuals; and
- 29 ▸ makes technical and conforming changes.

30 **Money Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 This bill takes effect on July 1, 2012.

34 **Utah Code Sections Affected:**

35 AMENDS:

- 36 **31A-1-301**, as last amended by Laws of Utah 2011, Chapters 284 and 366
- 37 **31A-23a-106**, as last amended by Laws of Utah 2011, Chapter 284
- 38 **31A-26-102**, as last amended by Laws of Utah 1995, Chapter 20

39 ENACTS:

- 40 **31A-22-1801**, Utah Code Annotated 1953
- 41 **31A-22-1802**, Utah Code Annotated 1953
- 42 **31A-22-1803**, Utah Code Annotated 1953
- 43 **31A-22-1804**, Utah Code Annotated 1953
- 44 **31A-22-1805**, Utah Code Annotated 1953
- 45 **31A-22-1806**, Utah Code Annotated 1953
- 46 **31A-22-1807**, Utah Code Annotated 1953
- 47 **31A-22-1808**, Utah Code Annotated 1953
- 48 **31A-22-1809**, Utah Code Annotated 1953

48a ~~§~~→ **31A-22-1810, Utah Code Annotated 1953** ←~~§~~

49 **31A-26-216**, Utah Code Annotated 1953



51 *Be it enacted by the Legislature of the state of Utah:*

52 Section 1. Section **31A-1-301** is amended to read:

53 **31A-1-301. Definitions.**

54 As used in this title, unless otherwise specified:

- 55 (1) (a) "Accident and health insurance" means insurance to provide protection against
- 56 economic losses resulting from:

1173 (b) an accessory or service related to the use of the portable electronic device.

1174 (5) (a) "Portable electronics insurance" means insurance providing coverage for the
 1175 repair or replacement of portable electronics that provides coverage for portable electronics
 1176 against any one or more of the following:

1177 (i) loss;

1178 (ii) theft;

1179 (iii) inoperability due to mechanical failure;

1180 (iv) malfunction;

1181 (v) damage; or

1182 (vi) other similar cause of loss.

1183 (b) "Portable electronics insurance" does not include:

1183a ~~§~~→ (i) a manufacturer's or vendor's warranty; ←~~§~~

1184 ~~§~~→ ~~[(i)]~~ (ii) ←~~§~~ a service contract ~~§~~→ [governed by Chapter 6a, Service Contracts] ←~~§~~ ;

1185 ~~§~~→ ~~[(ii)]~~ (iii) ←~~§~~ a policy of insurance covering a vendor's or manufacturer's obligations

1185a under a

1186 warranty; or

1187 ~~§~~→ ~~[(iii)]~~ (iv) ←~~§~~ a homeowner's, renter's, private passenger motor vehicle, commercial

1187a multi-peril,

1188 or similar policy.

1189 (6) "Portable electronics transaction" means:

1190 (a) the sale or lease of portable electronics by a vendor to a customer; or

1191 (b) the sale by a vendor to a customer of an accessory or a service related to the use of
 1192 portable electronics.

1192a ~~§~~→ (7) "Service contract" means a contract or agreement for the repair or
 1192b maintenance of goods or property, for their operational or structural failure due to a defect in
 1192c materials, workmanship, or normal wear and tear, with or without additional provisions for
 1192d incidental payment of indemnity under limited circumstances. ←~~§~~

1193 ~~§~~→ ~~[(7)]~~ (8) ←~~§~~ "Supervising entity" mean a business entity that is:

1194 (a) a licensed insurer; or

1195 (b) an insurance producer that is appointed by an insurer to supervise the
 1196 administration of a portable electronics insurance program.

1197 ~~§~~→ ~~[(8)]~~ (9) ←~~§~~ "Vendor" means a person in the business of engaging in portable electronics
 1198 transactions directly or indirectly.

1198a ~~§~~→ (10) "Warranty" means a promise made solely by the manufacturer,

1198b importer, seller, or lessor of property or services without consideration, that is not negotiated
1198c or separated from the sale of the product and is incidental to the sale of the product, that
1198d guarantees indemnity for defective parts, mechanical or electrical breakdown, labor, or other
1198e remedial measures, such as repair or replacement of the property or repetition of services. ←§

1199 Section 4. Section **31A-22-1803** is enacted to read:

1200 **31A-22-1803. Licensure required.**

1201 (1) Subject to Subsection 31A-22-1804(2) and Section 31A-23a-103, a vendor is
1202 required to hold a portable electronics limited lines license to sell or offer coverage under a
1203 portable electronics insurance policy.

1204 (2) A portable electronics limited lines license issued under this section authorizes an
 1205 employee or authorized representative of the vendor to sell or offer coverage under a portable
 1206 electronics insurance policy to a customer at each location at which the vendor who holds the
 1207 limited lines license engages in portable electronics transactions.

1208 (3) Notwithstanding any other provision of law, a limited lines license issued under
 1209 this section authorizes the licensee and the licensee's employees or authorized representatives
 1210 to engage in those activities that are permitted by this section.

1211 (4) A supervising entity shall maintain a registry of vendor locations at which the
 1212 vendor is authorized to sell or offer portable electronics insurance coverage in this state. Upon
 1213 request by the commissioner and with three business days notice to the supervising entity, the
 1214 supervising entity shall make the registry open to inspection and examination by the
 1215 commissioner during regular business hours of the supervising entity.

1216 Section 5. Section **31A-22-1804** is enacted to read:

1217 **31A-22-1804. Application for license and fees.**

1218 (1) To obtain or renew a portable electronics insurance limited lines license under this
 1219 part, a person shall:

1220 (a) file with the department an application for a portable electronics limited lines
 1221 license on forms and in the manner the commissioner prescribes;

1222 (b) subject to Subsection (4), provide the name ~~H~~→ [;residence address;] ←~~H~~ and other
 1223 information required by the commissioner for ~~H~~→ [an employee or officer of the vendor that] a
 1223a licensed individual who ←~~H~~ is
 1224 designated by the applicant as the person responsible for the vendor's compliance with the
 1225 requirements of this chapter; and

1226 (c) pay a fee established by the department in accordance with Section 31A-3-103,
 1227 except for an initial or renewal portable electronics limited lines license in no event may the fee
 1228 exceed \$100 per location in the state at which the vendor engages in portable electronics
 1229 transactions.

1230 (2) A vendor engaged in portable electronics insurance transactions before July 1,
 1231 2012, shall apply for licensure within 90 days of the application being made available by the
 1232 department. An applicant commencing operations on or after July 1, 2012, shall obtain a
 1233 portable electronics limited lines license before offering portable electronics insurance.

1234 (3) A portable electronics limited lines license under this part has a term of two years

1266 representative of a vendor of portable electronics may not be compensated based primarily on
 1267 the number of customers enrolled for portable electronics insurance coverage, but may receive
 1268 compensation for activities under the limited lines license that are incidental to the employee's
 1269 or authorized representative's overall compensation.

1270 Section 7. Section 31A-22-1806 is enacted to read:

1271 **31A-22-1806. Penalties.**

1272 Notwithstanding Section 31A-2-308, if a vendor or the vendor's employee or authorized
 1273 representative violate this part, the commissioner may do any of the following in accordance
 1274 with Title 63G, Chapter 4, Administrative Procedures Act:

1275 (1) impose a fine not to exceed:

1276 (a) (i) ~~H→~~ [\$100] \$2,500 ←H per violation by ~~H→~~ [an] a licensed ←H individual; or

1277 (ii) \$5,000 per violation by an entity; or

1278 (b) \$40,000 in the aggregate for the conduct; or

1279 (2) impose other penalties that the commissioner considers necessary and reasonable to
 1280 carry out the purpose of this part, including:

1281 (a) suspending or revoking the privilege of transacting portable electronics insurance
 1282 pursuant to this part at a specific location where violations have occurred; and

1283 (b) suspending or revoking the ability of individual employees or authorized
 1284 representatives to act under the vendor's limited lines license.

1285 Section 8. Section 31A-22-1807 is enacted to read:

1286 **31A-22-1807. Requirements for sale of portable electronics insurance -- Policy**
 1287 **provides primary coverage.**

1288 (1) At each location where a vendor offers portable electronics insurance to a customer,
 1289 the vendor shall make available to a prospective customer written materials that:

1290 (a) disclose that portable electronics insurance may provide a duplication of coverage
 1291 already provided by the customer's homeowner's insurance policy, renter's insurance policy,
 1292 private passenger motor vehicle policy, or other source of coverage;

1293 (b) state that the enrollment by the customer in a portable electronics insurance
 1294 program is not required in order to purchase or lease portable electronics;

1295 (c) summarize the material terms of the portable electronics insurance coverage,
 1296 including:

1297 (i) the identity of the insurer;
 1298 (ii) the identity of the supervising entity;
 1299 (iii) the amount of any applicable deductible and how it is to be paid;
 1300 (iv) benefits of the coverage; and
 1301 (v) key terms and conditions of coverage, such as whether portable electronics may be
 1302 repaired or replaced with similar make and model reconditioned or non-original manufacturer
 1303 parts or equipment;

1304 (d) summarize the process for filing a claim, including a description of how to return
 1305 portable electronics and the maximum fee applicable in the event the customer fails to comply
 1306 with any equipment return requirements; and

1307 (e) state the cancellation rights under Subsection (2).

1308 (2) An enrolled customer may cancel enrollment for coverage under a portable
 1309 electronics insurance policy at any time, and the person paying the premium shall receive a
 1310 refund or credit of any applicable unearned premium.

1311 (3) Portable electronics insurance may be offered on a month to month or other
 1312 periodic basis as a group or master commercial inland marine policy issued to a vendor of
 1313 portable electronics for its enrolled customers. Notwithstanding any other provision of law to
 1314 the contrary, ~~H~~→ [a policy of] forms for ←~~H~~ portable electronics insurance shall be filed with the
 1314a commissioner in
 1315 accordance with Section 31A-21-201, and rates for portable electronics insurance shall be filed
 1316 in accordance with Section 31A-19a-203.

1317 (4) Eligibility and underwriting standards for customers electing to enroll in coverage
 1318 shall be filed with the department for each portable electronics insurance program.

1319 (5) A policy of portable electronics insurance shall provide primary coverage in the
 1320 event of a covered loss under more than one policy.

1321 Section 9. Section **31A-22-1808** is enacted to read:

1322 **31A-22-1808. Termination of or changes to portable electronics insurance.**

1323 Notwithstanding any other provision of law:

1324 (1) (a) An insurer may terminate or otherwise change the terms and conditions of a
 1325 policy of portable electronics insurance only upon providing the policyholder and enrolled
 1326 customers with at least 30 days notice.

1327 (b) Notwithstanding Subsection (1)(a), an insurer may terminate an enrolled customer's

1390 vendor in a fiduciary capacity for the benefit of the insurer.

1391 (4) A vendor may receive compensation for billing and collection services.

1391a **§→Section. 11. Section 31A-22-1810 is enacted to read:**

1391b **31A-22-1810. Applicability.**

1391c **This part is not applicable to a loan or lease originated by a federally insured depository**

1391d **institution, or a subsidiary or affiliate of a federally insured depository institution, or**

1391e **originated by any other entity as part of a plan to sell or assign an interest in the loan or lease**

1391f **to a federally insured depository institution, or a subsidiary or affiliate of a federally insured**

1391g **depository institution. ←§**

1392 Section **§→ [H] 12 ←§** . Section 31A-23a-106 is amended to read:

1393 **31A-23a-106. License types.**

1394 (1) (a) A resident or nonresident license issued under this chapter shall be issued under
1395 the license types described under Subsection (2).

1396 (b) A license type and a line of authority pertaining to a license type describe the type
1397 of licensee and the lines of business that a licensee may sell, solicit, or negotiate. A license
1398 type is intended to describe the matters to be considered under any education, examination, and
1399 training required of a license applicant under Sections 31A-23a-108, 31A-23a-202, and
1400 31A-23a-203.

1401 (2) (a) A producer license type includes the following lines of authority:

1402 (i) life insurance, including a nonvariable contract;

1403 (ii) variable contracts, including variable life and annuity, if the producer has the life
1404 insurance line of authority;

1405 (iii) accident and health insurance, including a contract issued to a policyholder under
1406 Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance
1407 Organizations and Limited Health Plans;

1408 (iv) property insurance;

1409 (v) casualty insurance, including a surety or other bond;

1410 (vi) title insurance under one or more of the following categories:

1411 (A) search, including authority to act as a title marketing representative;

1412 (B) escrow, including authority to act as a title marketing representative; and

1413 (C) title marketing representative only;

1414 (vii) personal lines insurance; and

1415 (viii) surplus lines, if the producer has the property or casualty or both lines of
1416 authority.