

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 617

Short Title: Portable Electronics Insurance Coverage. (Public)

Sponsors: Representative Dockham (Primary Sponsor).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Insurance.

April 6, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR THE REGULATION OF PORTABLE ELECTRONICS
3 INSURANCE.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Chapter 58 of the General Statutes is amended by adding a new
6 Article to read:

7 "Article 44A.

8 "Portable Electronics Insurance.

9 "**§ 58-44A-1. Definitions.**

10 As used in this Article, the following definitions apply:

- 11 (1) Customer. – A person who purchases portable electronics or services.
- 12 (2) Enrolled customer. – A customer who elects coverage under a portable
13 electronics insurance policy issued to a vendor of portable electronics.
- 14 (3) Location. – Any physical location in the State of North Carolina or any Web
15 site, call center site, or similar location directed to residents of the State of
16 North Carolina.
- 17 (4) Portable electronics. – Electronic devices that are portable in nature, their
18 accessories, and services related to the use of the device.
- 19 (5) Portable electronics insurance. – Insurance providing coverage for the repair
20 or replacement of portable electronics which may provide coverage for
21 portable electronics against any one or more of the following causes of loss:
22 loss, theft, inoperability due to mechanical failure, malfunction, damage, or
23 other similar causes of loss. The term does not include the following:
- 24 a. A service contract or extended warranty providing coverage limited
25 to the repair, replacement, or maintenance of property for the
26 operational or structural failure of the property due to a defect in
27 materials, workmanship, accidental damage from handling, power
28 surges, or normal wear and tear.
- 29 b. A policy of insurance covering a seller's or a manufacturer's
30 obligations under a warranty.
- 31 c. A homeowner's, renter's, private passenger automobile, commercial
32 multiperil, or similar policy.
- 33 (6) Portable electronics transaction. – Either of the following:
- 34 a. The sale or lease of portable electronics by a vendor to a customer.



1 b. The sale of a service related to the use of portable electronics by a
2 vendor to a customer.

3 (7) Supervising entity. – A business entity that is a licensed insurer or insurance
4 producer.

5 (8) Vendor. – A person in the business of engaging in portable electronics
6 transactions directly or indirectly.

7 **"§ 58-44A-5. Licensure of vendors.**

8 (a) A vendor is required to hold a limited lines license to sell or offer coverage under a
9 policy of portable electronics insurance.

10 (b) A limited lines license issued under this subdivision shall authorize any employee or
11 authorized representative of the vendor to sell or offer coverage under a policy of portable
12 electronics insurance to a customer at each location at which the vendor engages in portable
13 electronics transactions.

14 (c) In connection with a vendor's application for licensure, and quarterly thereafter, the
15 vendor shall provide a list to the Commissioner of all locations in this State at which it offers
16 coverage.

17 (d) Notwithstanding any other provision of law, a license issued pursuant to this section
18 shall authorize the licensee and its employees or authorized representatives to engage in those
19 activities that are permitted in this section.

20 **"§ 58-44A-10. Requirements for sale of portable electronics insurance.**

21 (a) At every location where portable electronics insurance is offered to customers,
22 brochures or other written materials shall be made available to a prospective customer. Those
23 materials shall do the following:

24 (1) Disclose that portable electronics insurance may provide a duplication of
25 coverage already provided by a customer's homeowner's insurance policy,
26 renter's insurance policy, or other source of coverage.

27 (2) State that the enrollment by the customer in a portable electronics insurance
28 program is not required in order to purchase or lease portable electronics or
29 services.

30 (3) Summarize the material terms of the insurance coverage, including:

31 a. The identity of the insurer.

32 b. The identity of the supervising entity.

33 c. The amount of any applicable deductible and how it is to be paid.

34 d. Benefits of the coverage.

35 e. Key terms and conditions of coverage, such as whether portable
36 electronics may be repaired or replaced with similar make and model
37 reconditioned or nonoriginal manufacturer parts or equipment.

38 (4) Summarize the process for filing a claim, including a description of how to
39 return portable electronics and the maximum fee applicable in the event the
40 enrolled customer fails to comply with any equipment return requirements.

41 (5) State that the enrolled customer may cancel enrollment for coverage under a
42 portable electronics insurance policy at any time and the person paying the
43 premium shall receive a refund of any applicable unearned premium.

44 (b) Portable electronics insurance may be offered on a month-to-month or other
45 periodic basis as a group or master commercial inland marine policy issued to a vendor of
46 portable electronics for its enrolled customers.

47 (c) Eligibility and underwriting standards for customers electing to enroll in coverage
48 shall be established for each portable electronics insurance program.

49 **"§ 58-44A-15. Authority of vendors of portable electronics.**

1 (a) The employees and authorized representatives of vendors may sell or offer portable
2 electronics insurance to customers and shall not be subject to licensure as an insurance
3 producer under this Chapter provided that the following are true:

4 (1) The vendor obtains a limited lines license to authorize its employees or
5 authorized representatives to sell or offer portable electronics insurance
6 pursuant to this section.

7 (2) The insurer issuing the portable electronics insurance either directly
8 supervises or appoints a supervising entity to supervise the administration of
9 the program, including development of a training program for employees
10 and authorized representatives of the vendors. The training required by this
11 subdivision shall comply with the following:

12 a. The training shall be delivered to employees and authorized
13 representatives of a vendor who are directly engaged in the activity
14 of selling or offering portable electronics insurance.

15 b. The training may be provided in electronic form. If conducted in an
16 electronic form, the supervising entity shall implement a
17 supplemental education program regarding portable electronics
18 insurance that is conducted and overseen by licensed employees of
19 the supervising entity.

20 c. Each employee and authorized representative shall receive basic
21 instruction about the portable electronics insurance offered to
22 customers and the disclosures required under G.S. 50-44A-10.

23 (3) No employee or authorized representative of a vendor of portable electronics
24 shall advertise, represent, or otherwise hold himself or herself out as a
25 non-limited lines licensed insurance producer.

26 (b) The charges for portable electronics insurance coverage may be billed and collected
27 by the vendor of portable electronics. Any charge to the enrolled customer for coverage that is
28 not included in the cost associated with the purchase or lease of portable electronics or related
29 services, shall be separately itemized on the enrolled customer's bill. If the portable electronics
30 insurance coverage is included with the purchase or lease of portable electronics or related
31 services, the vendor shall clearly and conspicuously disclose to the enrolled customer that the
32 portable electronics insurance coverage is included with the portable electronics or related
33 services. Vendors billing and collecting such charges shall not be required to maintain such
34 funds in a segregated account, provided that the vendor is authorized by the insurer to hold
35 such funds in an alternative manner and remits such amounts to the supervising entity within 60
36 days of receipt. All funds received by a vendor from an enrolled customer for the sale of
37 portable electronics insurance shall be considered funds held in trust by the vendor in a
38 fiduciary capacity for the benefit of the insurer. Vendors may receive compensation for billing
39 and collection services.

40 **"§ 58-44A-20. Suspension or revocation of license.**

41 If a vendor of portable electronics or its employee or authorized representative violates any
42 provision of this section, the Commissioner may do any of the following:

43 (1) After notice and hearing, impose fines not to exceed five hundred dollars
44 (\$500.00) per violation or five thousand dollars (\$5,000) in the aggregate for
45 such conduct.

46 (2) After notice and hearing, impose other penalties that the Commissioner
47 deems necessary and reasonable to carry out the purpose of this Article,
48 including the following:

49 a. Suspending the privilege of transacting portable electronics insurance
50 pursuant to this section at specific business locations where
51 violations have occurred.

b. Suspending or revoking the ability of individual employees or authorized representatives to act under the license.

"§ 58-44A-25. Termination of portable electronics insurance.

(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) If the insurer changes the terms and conditions, then the insurer shall provide the vendor policyholder with a revised policy or endorsement and each 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.

(c) Notwithstanding subsection (a) of this section, an insurer may terminate an enrolled customer's enrollment under a portable electronics insurance policy upon 15 days' notice for discovery of fraud or material misrepresentation in obtaining coverage or in the presentation of a claim thereunder.

(d) Notwithstanding subsection (a) of this section, an insurer may immediately terminate an enrolled customer's enrollment under a portable electronics insurance policy for any of the following reasons:

(1) Nonpayment of premium.

(2) The enrolled customer ceases to have an active service with the vendor of portable electronics.

(3) An enrolled customer exhausts the aggregate limit of liability, if any, under the terms of the portable electronics insurance policy and the insurer sent notice of termination to the enrolled customer within 30 calendar days after exhaustion of the limit. However, if notice was not timely sent, then enrollment shall continue, notwithstanding the aggregate limit of liability until the insurer sends notice of termination to the enrolled customer.

(e) Where a portable electronics insurance policy is terminated by a 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 shall be mailed or delivered to the enrolled customer at least 30 days prior to the termination.

(f) Whenever notice is required pursuant to this section, it shall be in writing and may be mailed or delivered to the vendor of portable electronics at the vendor's mailing address and to its affected enrolled customers' last known mailing addresses on file with the insurer. If notice is mailed, the insurer or vendor of portable electronics, 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. Alternatively, an insurer or vendor policyholder may comply with any notice required by this section by providing electronic notice to a vendor or its affected enrolled customers, as the case may be, by electronic means. If notice is accomplished through electronic means, the insurer or vendor of portable electronics, as the case may be, shall maintain proof that the notice was sent.

"§ 58-44A-30. Application for license and fees.

(a) A sworn application for a license under this Article shall be made to and filed with the Department of Insurance on forms prescribed and furnished by the Commissioner.

(b) The application shall do the following:

(1) Provide the name, residence address, and other information required by the Commissioner for an employee or officer of the vendor that is designated by the applicant as the person responsible for the vendor's compliance with the requirements of this Chapter. However, if the vendor derives more than fifty percent (50%) of its revenue from the sale of portable electronics insurance, then the information noted above shall be provided for all officers, directors,

1 and shareholders of record having beneficial ownership of ten percent (10%)
2 or more of any class of securities registered under the federal securities law.

3 (2) Appoint the Commissioner as the applicant's attorney to receive service of
4 all legal process issued against it in any civil action or proceeding in this
5 State brought in connection with portable electronics insurance coverage and
6 agreeing that process so served shall be valid and binding against the
7 applicant. The appointment shall be irrevocable, shall bind the company and
8 any successor in interest as the assets or liabilities of the applicant, and shall
9 remain in effect as long as the applicant's licensure remains in force in this
10 State.

11 (3) Provide the location of the applicant's home office.

12 (c) Applications for licensure under this Article shall be made within 90 days of the
13 application being made available by the Commissioner.

14 (d) Initial licenses issued pursuant to this Article shall be valid for a period of 24
15 months.

16 (e) Each vendor of portable electronics licensed under this Chapter shall pay to the
17 Commissioner a fee as prescribed by the Commissioner, subject to the following fee
18 maximums:

19 (1) One thousand dollars (\$1,000) for an initial license.

20 (2) Five hundred dollars (\$500.00) for each renewal.

21 (3) One hundred dollars (\$100.00) either for an initial license or for each
22 renewal if the vendor is engaged in portable electronics transactions at 10 or
23 fewer locations in the State."

24 **SECTION 2.** This act becomes effective October 1, 2011.