

# Enrolled House Bill 3411

Sponsored by COMMITTEE ON GENERAL GOVERNMENT AND CONSUMER PROTECTION

CHAPTER .....

AN ACT

Relating to portable electronics; and declaring an emergency.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1. As used in sections 1 to 7 of this 2011 Act:**

- (1) "Customer" means a person that purchases or leases portable electronics.
- (2) "Enrolled customer" means a customer that purchases portable electronics insurance coverage from a vendor policyholder.
- (3) "Insurer" means an insurer as defined in ORS 731.106 that issues, sells or offers for sale policies of portable electronics insurance to vendor policyholders.
- (4) "Limited license" means a license that authorizes a vendor to issue, sell or offer for sale portable electronics insurance coverage.
- (5) "Location" means a physical location in this state or a website, call center site or similar electronic or telephonic location where portable electronics may be purchased or leased.
- (6) "Person" means an individual, partnership, corporation, incorporated or unincorporated association, joint stock company or any similar entity or combination of entities acting in concert.
- (7) "Portable electronics" means an electronics device that is portable and includes accessories and services, including but not limited to wireless services, related to use of the device.
- (8)(a) "Portable electronics insurance coverage" means insurance that provides coverage for the repair or replacement of portable electronics in the event of loss, theft, inoperability due to mechanical failure, malfunction, damage or need for repair or replacement as a result of some other covered source of peril.
- (b) "Portable electronics insurance coverage" does not include:
  - (A) A service contract as defined in ORS 646A.152 that is governed by ORS 646A.150 to 646A.172;
  - (B) A warranty;
  - (C) A maintenance agreement as defined in ORS 646A.152; or
  - (D) A policy of insurance covering the obligations of a vendor or of a portable electronics manufacturer under a warranty.
- (9) "Supervising entity" means an insurer as defined in ORS 731.106, or an insurance producer as defined in ORS 731.104, that may or may not issue, sell or offer for sale policies of portable electronics insurance to vendor policyholders.

(10) "Vendor" means a person engaged in the business of selling or leasing or offering for sale or lease portable electronics.

(11) "Vendor policyholder" means a vendor that holds a limited license under section 2 of this 2011 Act and that has been issued a policy by an insurer or a supervising entity pursuant to which the vendor may issue, sell or offer for sale portable electronics insurance coverage to customers.

**SECTION 2.** (1) A vendor may not issue, sell or offer for sale portable electronics insurance coverage unless the vendor has been issued a limited license by the Department of Consumer and Business Services under this section.

(2)(a) An application for a limited license under this section must be submitted on a form in accordance with paragraph (b) of this subsection and accompanied by a fee as prescribed by the department by rule.

(b) The application must, at a minimum, include:

(A) The name and street address of an employee, agent or authorized representative of the vendor who is the person designated by the vendor as being responsible for the vendor's compliance with sections 1 to 7 of this 2011 Act; and

(B) The name and address in this state of a person designated by the vendor as the vendor's agent upon whom may be served, in the manner described in ORS 59.155, at any time any process, notice or demand in a civil proceeding brought in connection with portable electronics insurance coverage, including a proceeding brought by the Director of the Department of Consumer and Business Services.

(c) A vendor licensed under this section shall annually update the contact information provided to the department under paragraph (b) of this subsection.

(3)(a) A limited license issued under this section is valid for two years unless suspended or revoked by the department.

(b) A limited license may be renewed upon expiration for another two-year period upon application of the vendor and payment of a fee as prescribed by the department by rule.

(4) A vendor licensed under this section may not advertise, represent or otherwise hold itself out as being licensed to sell any other type of insurance unless the vendor is actually licensed under the laws of this state to sell the other type of insurance.

**SECTION 3.** (1) A vendor policyholder may bill and collect the cost of portable electronics insurance coverage purchased by an enrolled customer. Any charge to the enrolled customer for coverage that is not included in the cost to the enrolled customer to purchase or lease portable electronics must be separately itemized in writing. If the coverage is included with the purchase or lease of portable electronics, whether or not the coverage is included in the cost to the enrolled customer of the purchase or lease of the portable electronics, the vendor policyholder shall clearly and conspicuously disclose in writing to the enrolled customer that the coverage is included with the purchase or lease of the portable electronics.

(2) If authorized by an insurer or a supervising entity, a vendor policyholder that bills and collects the cost of portable electronics insurance coverage from an enrolled customer is not required to deposit the amount paid in a segregated account but shall remit the amount collected to the insurer or the supervising entity within 60 days of receipt from the enrolled customer.

(3) Moneys collected by a vendor policyholder from an enrolled customer for the cost of portable electronics insurance coverage are funds held by the vendor policyholder in trust for the benefit of the insurer or the supervising entity.

(4) A vendor policyholder may receive compensation from an insurer or a supervising entity for billing and collecting the cost of portable electronics insurance coverage purchased by enrolled customers.

(5) Vendor policyholders, insurers and supervising entities are not subject to ORS 744.083 and 744.084.

**SECTION 4.** A vendor policyholder shall make available to prospective customers of portable electronics written materials that disclose:

(1) That portable electronics insurance coverage may duplicate coverage already held by the customer, including but not limited to homeowner's insurance or renter's insurance;

(2) That issuance of portable electronics insurance coverage is not required for the customer to purchase or lease portable electronics;

(3) The material terms of coverage, including but not limited to:

(a) The identity of and contact information for the insurer or the supervising entity that issued the insurance policy to the vendor policyholder;

(b) The amount of any applicable deductible and how the deductible is required to be paid when a claim is made;

(c) The benefits of coverage; and

(d) Whether the covered portable electronics will be repaired or replaced with a similar make and model, with a new or reconditioned device, accessory or part, or with a device, accessory or part from other than the original manufacturer;

(4) The process and requirements for returning portable electronics, and any fees that will apply in the event the enrolled customer does not comply with the process and requirements; and

(5) That the enrolled customer may cancel the portable electronics insurance coverage at any time and that the person paying the premium shall receive a refund of the unused portion of any amount that has been paid for coverage. A reasonable administrative fee may be charged in an amount not to exceed 10 percent of the refund due.

**SECTION 5.** (1) An employee, agent or authorized representative of a vendor policyholder may issue, sell or offer for sale portable electronics insurance coverage to a customer without obtaining a limited license under section 2 of this 2011 Act if:

(a) The vendor policyholder has been issued a limited license under section 2 of this 2011 Act; and

(b) The insurer or the supervising entity that issued a policy of portable electronics insurance to the vendor policyholder develops a training program for employees, agents and authorized representatives of the vendor policyholder that:

(A) Is completed by employees, agents and authorized representatives of the vendor policyholder who are directly engaged in the issuing, selling or offering for sale of portable electronics insurance coverage to customers;

(B) Includes basic instruction about portable electronics insurance coverage and the disclosures required under section 4 of this 2011 Act; and

(C) If delivered electronically, includes a supplementary education program that is conducted and overseen by employees of the insurer or the supervising entity.

(2) An employee, agent or authorized representative of a vendor policyholder who is authorized to issue, sell or offer for sale portable electronics insurance coverage under this section may not advertise, represent or otherwise hold themselves out as holding a limited license under section 2 of this 2011 Act or being a licensed insurer or insurance producer as those terms are defined in ORS 731.104 and 731.106 unless the employee, agent or authorized representative has been issued a limited license or is licensed as an insurer or insurance producer under the laws of this state.

(3) The acts of an employee, agent or authorized representative of a vendor policyholder who is authorized to issue, sell or offer for sale portable electronics insurance coverage under this section are deemed to be the acts of the vendor policyholder for purposes of sections 1 to 7 of this 2011 Act.

**SECTION 6.** (1) Except as provided in subsections (2) and (3) of this section, the insurer or the supervising entity that has issued a policy of portable electronics insurance to a vendor policyholder may not modify or terminate the terms and conditions of the policy unless the insurer or the supervising entity:

(a) Provides the vendor policyholder and enrolled customers with notice of the modification or termination not less than 60 days prior to the effective date of the modification or termination; and

(b) In the event of a modification only, provides:

(A) The vendor policyholder with a revised policy or endorsement evidencing the modification; and

(B) Each enrolled customer with a revised certificate, endorsement or other evidence of a change in terms and conditions, updated written materials and a summary of the material changes to the terms and conditions of coverage.

(2)(a) An insurer or a supervising entity may terminate an enrolled customer's portable electronics insurance coverage:

(A) Upon discovery of fraud or material misrepresentation made by the enrolled customer in obtaining the coverage or in the presentation of a claim; or

(B) For nonpayment of a premium.

(b) The insurer or the supervising entity must notify the enrolled customer at least 15 days before a termination under this subsection.

(3) An insurer or a supervising entity may immediately terminate an enrolled customer's portable electronics insurance coverage if the enrolled customer ceases to have active wireless service with the vendor policyholder or the enrolled customer exhausts the aggregate limit of liability, and the insurer or the supervising entity sends notice of termination to the enrolled customer within 30 days after the active service ceases or the limit has been exhausted.

(4) A vendor policyholder that has issued portable electronics insurance coverage to an enrolled customer may not terminate the coverage unless the vendor policyholder provides the enrolled customer with notice of the termination not less than 30 days prior to the effective date of the termination.

(5)(a) Notice to a vendor policyholder or enrolled customer that is required under this section may either be sent as an electronic record in accordance with ORS 84.001 to 84.061 and 84.070, or:

(A) In the case of a vendor policyholder, mailed by registered or certified mail or delivered to the vendor policyholder at the vendor policyholder's principal place of business in this state; or

(B) In the case of an enrolled customer, mailed by registered or certified mail to the enrolled customer's last known mailing address.

(b) An insurer, a supervising entity or a vendor policyholder providing notice under this section must maintain proof of providing the notice for a minimum of three years after the termination of the portable electronics insurance coverage.

**SECTION 7.** The Department of Consumer and Business Services shall adopt rules to carry out the provisions of sections 1 to 7 of this 2011 Act.

**SECTION 8.** In addition to all other penalties and enforcement provisions provided by law, if a person violates a provision of sections 1 to 7 of this 2011 Act or a rule adopted by the Department of Consumer and Business Services under section 7 of this 2011 Act, the department may:

(1) Suspend or revoke the person's limited license issued under section 2 of this 2011 Act;

(2) Modify the terms of the person's limited license issued under section 2 of this 2011 Act to limit:

(a) The locations at which a vendor policyholder may issue, sell or offer for sale portable electronics insurance coverage; or

(b) The ability of employees, agents or authorized representatives of the vendor policyholder to issue, sell or offer for sale portable electronics insurance coverage; and

(3) Impose a civil penalty in the manner provided in ORS 183.745 not to exceed \$1,000 per violation or \$10,000 for multiple violations.

**SECTION 9.** A vendor that is engaged in the issuance, sale or offering for sale of portable electronics insurance coverage on the operative date set forth in section 10 of this 2011 Act shall apply for a limited license under section 2 of this 2011 Act within 90 days after the operative date specified in section 10 of this 2011 Act.

**SECTION 10.** Sections 1 to 9 of this 2011 Act become operative on January 1, 2012.

**SECTION 11.** The Department of Consumer and Business Services may take any action before the operative date specified in section 10 of this 2011 Act that is necessary for the department to exercise, on and after the operative date specified in section 10 of this 2011 Act, all of the duties, functions and powers conferred on the department by sections 1 to 8 of this 2011 Act.

**SECTION 12.** This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.

Passed by House May 2, 2011

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Ramona Kenady Line, Chief Clerk of House

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Passed by Senate May 31, 2011

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2011

Approved:

.....M,....., 2011

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2011

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Kate Brown, Secretary of State