

**A-Engrossed**  
**House Bill 3411**

Ordered by the House April 26  
Including House Amendments dated April 26

Sponsored by COMMITTEE ON GENERAL GOVERNMENT AND CONSUMER PROTECTION

**SUMMARY**

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Prohibits issuance or sale of portable electronics insurance coverage without licensure by Department of Consumer and Business Services. Requires vendors of portable electronics to make disclosures about portable electronics insurance coverage to prospective customers. Authorizes department to suspend, revoke or modify terms of license, or impose civil penalty, for violation of provisions of Act. Directs department to adopt rules.

Becomes operative January 1, 2012.

Declares emergency, effective on passage.

**A BILL FOR AN ACT**

1  
2 Relating to portable electronics; and declaring an emergency.

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

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

5 (1) **"Customer"** means a person that purchases or leases portable electronics.

6 (2) **"Enrolled customer"** means a customer that purchases portable electronics insurance  
7 coverage from a vendor policyholder.

8 (3) **"Insurer"** means an insurer as defined in ORS 731.106 that issues, sells or offers for  
9 sale policies of portable electronics insurance to vendor policyholders.

10 (4) **"Limited license"** means a license that authorizes a vendor to issue, sell or offer for  
11 sale portable electronics insurance coverage.

12 (5) **"Location"** means a physical location in this state or a website, call center site or  
13 similar electronic or telephonic location where portable electronics may be purchased or  
14 leased.

15 (6) **"Person"** means an individual, partnership, corporation, incorporated or  
16 unincorporated association, joint stock company or any similar entity or combination of en-  
17 tities acting in concert.

18 (7) **"Portable electronics"** means an electronics device that is portable and includes ac-  
19 cessories and services, including but not limited to wireless services, related to use of the  
20 device.

21 (8)(a) **"Portable electronics insurance coverage"** means insurance that provides coverage  
22 for the repair or replacement of portable electronics in the event of loss, theft, inoperability  
23 due to mechanical failure, malfunction, damage or need for repair or replacement as a result  
24 of some other covered source of peril.

25 (b) **"Portable electronics insurance coverage" does not include:**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.  
New sections are in **boldfaced** type.

1 (A) A service contract as defined in ORS 646A.152 that is governed by ORS 646A.150 to  
2 646A.172;

3 (B) A warranty;

4 (C) A maintenance agreement as defined in ORS 646A.152; or

5 (D) A policy of insurance covering the obligations of a vendor or of a portable electronics  
6 manufacturer under a warranty.

7 (9) "Supervising entity" means an insurer as defined in ORS 731.106, or an insurance  
8 producer as defined in ORS 731.104, that may or may not issue, sell or offer for sale policies  
9 of portable electronics insurance to vendor policyholders.

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

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

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

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

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

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

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

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

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

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

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

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

1 policyholder shall clearly and conspicuously disclose in writing to the enrolled customer that  
2 the coverage is included with the purchase or lease of the portable electronics.

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

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

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

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

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

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

20 (2) That issuance of portable electronics insurance coverage is not required for the cus-  
21 tomer to purchase or lease portable electronics;

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

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

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

27 (c) The benefits of coverage; and

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

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

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

38 **SECTION 5.** (1) An employee, agent or authorized representative of a vendor policyholder  
39 may issue, sell or offer for sale portable electronics insurance coverage to a customer with-  
40 out obtaining a limited license under section 2 of this 2011 Act if:

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

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

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

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

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

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

15 (3) The acts of an employee, agent or authorized representative of a vendor policyholder  
16 who is authorized to issue, sell or offer for sale portable electronics insurance coverage un-  
17 der this section are deemed to be the acts of the vendor policyholder for purposes of sections  
18 1 to 7 of this 2011 Act.

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

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

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

27 (A) The vendor policyholder with a revised policy or endorsement evidencing the modifi-  
28 cation; and

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

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

34 (A) Upon discovery of fraud or material misrepresentation made by the enrolled cus-  
35 tomer in obtaining the coverage or in the presentation of a claim; or

36 (B) For nonpayment of a premium.

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

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

45 (4) A vendor policyholder that has issued portable electronics insurance coverage to an

1 enrolled customer may not terminate the coverage unless the vendor policyholder provides  
2 the enrolled customer with notice of the termination not less than 30 days prior to the ef-  
3 fective date of the termination.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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