

# House Bill 3411

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 **as introduced**.

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:**

### **SECTION 1. As used in sections 1 to 8 of this 2011 Act:**

4  
5 (1) **“Covered customer” means a customer that purchases portable electronics insurance**  
6 **coverage from a vendor policyholder.**

7 (2) **“Customer” means a person that purchases or leases portable electronics.**

8 (3) **“Person” means an individual, partnership, corporation, incorporated or**  
9 **unincorporated association, joint stock company or any similar entity or combination of en-**  
10 **tities acting in concert.**

11 (4) **“Portable electronics” means an electronics device that is portable and includes ac-**  
12 **cessories and services related to use of the device.**

13 (5)(a) **“Portable electronics insurance coverage” means insurance that provides coverage**  
14 **for the repair or replacement of portable electronics in the event of loss, theft, mechanical**  
15 **failure, malfunction, damage or need for repair or replacement as a result of some other**  
16 **covered source of peril.**

17 (b) **“Portable electronics insurance coverage” does not include:**

18 (A) **A service contract as defined in ORS 646A.152 that is governed by ORS 646A.150 to**  
19 **646A.172;**

20 (B) **A warranty;**

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

22 (D) **A policy of insurance covering the obligations of a vendor or of a portable electronics**  
23 **manufacturer under a warranty.**

24 (6) **“Portable electronics transaction” means the sale or lease of portable electronics by**  
25 **a vendor to a customer.**

26 (7) **“Supervising agency” means a person that is licensed as an insurance producer in**  
27 **accordance with ORS 744.052 to 744.089 to sell policies of portable electronics insurance to**  
28 **vendor policyholders.**

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

3 (9) "Vendor policyholder" means a vendor that is licensed under section 2 of this 2011  
4 Act and that has been issued a policy by a supervising agency pursuant to which the vendor  
5 may issue, sell or offer for sale portable electronics insurance coverage to customers.

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

9 (2)(a) An application for a license under this section must be submitted on a form in  
10 accordance with paragraph (b) of this subsection and as prescribed by the department by rule  
11 and must be accompanied by the fee prescribed by the department in accordance with sub-  
12 section (5) of this section.

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

14 (A) The name and residence address of an employee, agent or representative of the ven-  
15 dor who is the person designated by the vendor as being responsible for the vendor's com-  
16 pliance with sections 1 to 8 of this 2011 Act; and

17 (B) Appointment of the department as the vendor's agent upon whom may be served, in  
18 the manner described in ORS 59.155, at any time any process, notice or demand in a civil  
19 proceeding brought in connection with portable electronics insurance coverage, including a  
20 proceeding brought by the Director of the Department of Consumer and Business Services.

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

23 (3) A license issued under this section authorizes a vendor to issue, sell or offer for sale  
24 portable electronics insurance coverage to a customer at all locations in this state where the  
25 vendor engages in portable electronics transactions.

26 (4)(a) A license issued under this section is valid for two years unless suspended or re-  
27 voked by the department.

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

30 (5) If a vendor is engaged in portable electronics transactions at 10 or fewer locations in  
31 this state, the fee for an initial application for a license and for a renewal of a license may  
32 not exceed \$200.

33 **SECTION 3.** (1) A vendor policyholder may charge and collect the cost of portable elec-  
34 tronics insurance coverage purchased by a covered customer. If the charge for coverage is  
35 included in the cost of the portable electronics purchased by the covered customer, the  
36 vendor policyholder shall clearly and conspicuously disclose in writing to the covered cus-  
37 tomer that the charge includes the cost of coverage.

38 (2) If authorized in a policy issued by a supervising agency to a vendor policyholder, a  
39 vendor policyholder that charges and collects the cost of portable electronics insurance  
40 coverage from a covered customer is not required to deposit the amount paid in a segregated  
41 account but shall remit the amount collected to the supervising agency within 60 days of  
42 receipt from the covered customer.

43 (3) Moneys collected by a vendor policyholder from a covered customer for the cost of  
44 portable electronics insurance coverage are funds held by the vendor policyholder in trust  
45 for the benefit of the supervising agency.

1 (4) A vendor policyholder may receive compensation from a supervising agency for  
2 charging and collecting the cost of portable electronics insurance coverage purchased by  
3 covered customers.

4 **SECTION 4.** A vendor licensed under section 2 of this 2011 Act shall make available to  
5 prospective customers of portable electronics written materials that disclose:

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

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

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

11 (a) The identity of and contact information for the supervising agency that issued the  
12 insurance policy to the vendor policyholder;

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

15 (c) The benefits of coverage; and

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

19 (4) The process and requirements for making a claim, including but not limited to infor-  
20 mation regarding:

21 (a) Whether and how portable electronics must be returned;

22 (b) How the customer must establish proof of claim; and

23 (c) Fees that will apply in the event the customer does not comply with the process and  
24 requirements for filing a claim; and

25 (5) That the customer may cancel the portable electronics insurance coverage at any  
26 time and receive a refund of the unused portion of any amount the customer has paid for  
27 coverage or any unearned premium.

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

31 (a) The vendor policyholder has been licensed under section 2 of this 2011 Act and the  
32 license provides that employees, agents and representatives of the vendor policyholder may  
33 issue, sell or offer for sale portable electronics insurance coverage without being licensed  
34 under section 2 of this 2011 Act; and

35 (b) The supervising agency that issued a policy of portable electronics insurance to the  
36 vendor policyholder develops a training program for employees, agents and representatives  
37 of the vendor policyholder that:

38 (A) Is completed by all employees, agents and representatives of the vendor policyholder  
39 who issue, sell or offer for sale portable electronics insurance coverage to customers;

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

42 (C) If delivered electronically, includes supplementary in-person training.

43 (2) An employee, agent or representative of a vendor policyholder who is authorized to  
44 issue, sell or offer for sale portable electronics insurance coverage under this section may  
45 not advertise, represent or otherwise hold themselves out as being a vendor licensed under

1 section 2 of this 2011 Act.

2 (3) The acts of an employee, agent or representative of a vendor policyholder who is au-  
3 thorized to issue, sell or offer for sale portable electronics insurance coverage under this  
4 section are deemed to be the acts of the vendor policyholder for purposes of sections 1 to 8  
5 of this 2011 Act.

6 **SECTION 6.** In addition to all other penalties and enforcement provisions provided by  
7 law, if a person violates a provision of section 2, 3 or 4 of this 2011 Act or a rule adopted by  
8 the Department of Consumer and Business Services under section 8 of this 2011 Act, the  
9 department may:

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

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

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

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

17 (3) Impose a civil penalty in the manner provided in ORS 183.745 not to exceed \$500 per  
18 violation, or \$5,000 for multiple violations.

19 **SECTION 7.** (1) Except as provided in subsections (2) and (3) of this section, the super-  
20 vising agency that has issued a policy of portable electronics insurance to a vendor  
21 policyholder may not modify or terminate the terms and conditions of the policy unless the  
22 supervising agency:

23 (a) Provides the vendor policyholder and covered 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 covered customer with a revised certificate or endorsement, updated written  
30 materials and a summary of the material changes to the terms and conditions of coverage.

31 (2)(a) A supervising agency may terminate a covered customer's portable electronics in-  
32 surance coverage:

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

35 (B) For nonpayment of a premium.

36 (b) The supervising agency must notify the covered customer at least 15 days before a  
37 termination under this subsection.

38 (3) A supervising agency may immediately terminate a covered customer's portable  
39 electronics insurance coverage if the covered customer exhausts the aggregate limit of li-  
40 ability and the supervising agency sends notice of termination to the covered customer  
41 within 30 days after the limit has been exhausted.

42 (4) A vendor policyholder that has issued portable electronics insurance coverage to a  
43 customer may not terminate the coverage unless the vendor policyholder provides the cov-  
44 ered customer with notice of the termination not less than 30 days prior to the effective date  
45 of the termination.

1       **(5)(a) Notice to a vendor policyholder or covered customer that is required under this**  
2 **section must be in writing and either sent by electronic transmission or:**

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

6       **(B) In the case of a covered customer, mailed by registered or certified mail to the cov-**  
7 **ered customer's last known mailing address.**

8       **(b) A supervising agency or vendor policyholder providing notice under this section must**  
9 **maintain proof of providing the notice for a minimum of three years.**

10       **SECTION 8.** **The Department of Consumer and Business Services shall adopt rules to**  
11 **carry out the provisions of sections 1 to 8 of this 2011 Act.**

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

16       **SECTION 10.** **Sections 1 to 7 of this 2011 Act become operative on January 1, 2012.**

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

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

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