



AN ACT CREATING THE PORTABLE ELECTRONICS INSURANCE ACT; REQUIRING LICENSURE TO SELL OR OFFER COVERAGE UNDER A POLICY OF PORTABLE ELECTRONICS INSURANCE; REVISING LICENSE APPLICATION REQUIREMENTS FOR NONRESIDENT INSURANCE ADJUSTERS; GRANTING THE COMMISSIONER OF INSURANCE RULEMAKING AUTHORITY; AMENDING SECTION 33-17-301, MCA; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1. Short title.** [Sections 1 through 9] may be cited as the "Portable Electronics Insurance Act".

**Section 2. Definitions.** As used in [sections 1 through 9], the following definitions apply:

(1) "Customer" means a person who purchases portable electronics or services related to the use of portable electronics.

(2) "Enrolled customer" means a customer who elects coverage under a portable electronics insurance policy issued to a vendor of portable electronics.

(3) "Location" means any physical location in this state or any website, call center site, or similar location directed to residents of this state.

(4) "Portable electronics" means electronic devices that are portable in nature and their accessories.

(5) (a) "Portable electronics insurance" means insurance providing coverage for the repair or replacement of portable electronics that may provide coverage for portable electronics against loss, theft, inoperability due to mechanical failure, malfunction, damage, or other similar causes of loss. Portable electronics insurance also includes any agreement in which a person or any legal entity, in exchange for consideration paid, agrees to provide for the future repair, replacement, or provision of portable electronics.

(b) The term does not include:

(i) a service contract governed by Title 30, chapter 14, part 13;

(ii) a policy of insurance covering a seller's or a manufacturer's obligations under a warranty; or

(iii) a homeowner's, renter's, private passenger automobile, commercial, or similar policy.

(6) "Portable electronics transaction" means:

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

(b) the sale of a service related to the use of portable electronics by a vendor to a customer.

(7) "Supervising entity" means a business entity that is a licensed insurer or insurance producer that is authorized by a licensed insurer to supervise the administration of a portable electronics insurance program.

(8) (a) "Vendor" means a person in the business of engaging in portable electronics transactions directly or indirectly.

(b) The term does not include a cooperative organized and transacting business in this state pursuant to Title 35, chapter 18, its subsidiaries, or any other entity affiliated with the cooperative or its subsidiaries through common ownership.

**Section 3. Licensure of vendors -- rulemaking.** (1) A vendor must hold a limited lines insurance producer license to sell or offer coverage under a policy of portable electronics insurance.

(2) A license issued under [sections 1 through 9] authorizes any employee or authorized representative of the vendor to sell or offer coverage under a policy of portable electronics insurance to a customer at each location at which the vendor engages in portable electronics transactions.

(3) The supervising entity shall maintain a registry of vendor locations that are authorized to sell or solicit portable electronics insurance coverage in this state. Upon request by the commissioner and with 10 days' notice to the supervising entity, the registry must be open to inspection and examination by the commissioner during regular business hours of the supervising entity.

(4) A license issued under [sections 1 through 9] authorizes the licensee and its employees or authorized representatives to engage in those activities that are permitted in [sections 1 through 9].

(5) The commissioner may adopt rules to implement the provisions of [sections 1 through 9].

**Section 4. Requirements for sale of portable electronics insurance.** (1) At each location where portable electronics insurance is offered to customers, brochures or other written materials must be made available to a prospective customer that:

(a) disclose that portable electronics insurance may provide a duplication of coverage already provided

by a customer's homeowner's insurance policy, renter's insurance policy, or other source of coverage;

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

(c) summarize the material terms of the insurance coverage, including:

(i) the identity of the insurer;

(ii) the identity of the supervising entity;

(iii) the amount of any applicable deductible and how it is to be paid;

(iv) benefits of the coverage; and

(v) key terms and conditions of coverage such as whether portable electronics may be repaired or replaced with similar make and model reconditioned or nonoriginal manufacturer parts or equipment;

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

(e) state that an enrolled customer may cancel enrollment for coverage under a portable electronics insurance policy at any time and that the person paying the premium shall receive a refund of any applicable unearned premium.

(2) The written materials required by this section are not subject to filing with or approval by the commissioner.

(3) Portable electronics insurance may be offered on a month-to-month or other periodic basis as a group or master commercial inland marine policy, subject to 33-1-221 through 33-1-229, issued to a vendor of portable electronics for its enrolled customers.

(4) Eligibility and underwriting standards for customers electing to enroll in coverage must be established by the supervising entity for each portable electronics insurance program.

**Section 5. Authority of vendors of portable electronics.** (1) An employee or authorized representative of a vendor may sell or offer portable electronics insurance to a customer and is not subject to licensure as an insurance producer under this title provided that:

(a) the vendor obtains a limited lines insurance producer license to authorize its employees or authorized representatives to sell or offer portable electronics insurance;

(b) the insurer issuing the portable electronics insurance either directly supervises or appoints a supervising entity to supervise the administration of the program, including development of a training program for employees and authorized representatives of the vendors. The training required by this subsection (1)(b) must comply with the following:

(i) the training must be delivered to employees and authorized representatives of a vendor who is directly engaged in the activity of selling or offering portable electronics insurance;

(ii) the training may be provided in electronic form. If the training is conducted in an electronic form, the supervising entity shall implement a supplemental education program regarding the portable electronics insurance product that is conducted and overseen by licensed insurance producers or adjusters employed by the supervising entity; and

(iii) each employee and authorized representative individually must receive basic instruction about the portable electronics insurance offered to customers and the disclosures required under [section 4].

(c) employees or authorized representatives of a vendor of portable electronics may not advertise, represent, or otherwise represent to the public that they are nonlimited lines licensed insurance producers.

(2) Employees or authorized representatives of a vendor of portable electronics may not be compensated based primarily on the number of customers enrolled for portable electronics insurance coverage but may receive compensation for activities under the limited lines insurance producer license that is incidental to their overall compensation.

(3) (a) The charges for portable electronics insurance coverage may be billed and collected by the vendor of portable electronics. Any charge to the enrolled customer for coverage that is not included in the cost associated with the purchase or lease of portable electronics or related services must be separately itemized on the enrolled customer's bill.

(b) If the portable electronics insurance coverage is included with the purchase or lease of portable electronics or related services, the vendor shall clearly and conspicuously disclose to the enrolled customer that the portable electronics insurance coverage is included with the portable electronics or related services.

(c) Vendors that are billing and collecting the charges are not required to maintain the funds in a segregated account if the vendor is authorized by the insurer to hold the funds in an alternative manner and remits the amounts to the supervising entity within 60 days of receipt. All funds received by a vendor from an enrolled customer for the sale of portable electronics insurance are considered funds held in trust by the vendor

in a fiduciary capacity for the benefit of the insurer. Vendors may receive compensation for billing and collection services.

**Section 6. Application for vendor license -- fees.** (1) An applicant for a license under [sections 1 through 9] shall file with the commissioner an application on forms prescribed by the commissioner.

(2) The application must:

(a) 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 [sections 1 through 9], and if the vendor derives more than 50% of its revenue from the sale of portable electronics insurance, the information required by this subsection (2)(a) must be provided for all officers, directors, and shareholders of record having beneficial ownership of 10% or more of any class of securities registered under federal securities law; and

(b) the location of the applicant's home office.

(3) Any vendor engaging in portable electronics insurance transactions on or before [the effective date of this act] shall apply for licensure within 90 days of the application being made available by the commissioner. Any applicant commencing operations after [the effective date of this act] shall obtain a license prior to offering portable electronics insurance.

(4) Initial licenses issued under [sections 1 through 9] are valid for a period of 24 months.

(5) Each vendor of portable electronics licensed under [sections 1 through 9] shall pay to the commissioner a fee determined by the commissioner as follows:

(a) for a vendor that is engaged in portable electronics transactions at 10 or fewer locations in the state, the fee may not exceed \$100 for an initial license or for each renewal; and

(b) for a vendor that is engaged in portable electronics transaction at more than 10 locations in the state, the fee may not exceed \$1,000 for an initial license or \$500 for each renewal.

**Section 7. Suspension or revocation of vendor license.** If a vendor of portable electronics or its employee or authorized representative violates any provision of [sections 1 through 9], the commissioner may do any of the following after notice and the opportunity for a hearing:

(1) impose fines not to exceed \$500 for each violation or \$5,000 in the aggregate for violations;

(2) impose other penalties that the commissioner considers reasonable to carry out the purpose of [sections 1 through 9], including:

(a) suspending the privilege of transacting portable electronics insurance under [sections 1 through 9], at specific business locations where violations have occurred; or

(b) suspending or revoking the ability of individual employees or authorized representatives to act under the license.

**Section 8. Termination of portable electronics insurance.** (1) Except as provided in subsections (3) through (5), an insurer may terminate or otherwise change the terms and conditions of a policy of portable electronics insurance upon providing the vendor policyholder and enrolled customers with at least 30 days' notice.

(2) If the insurer changes the terms and conditions of a policy of portable electronics insurance, 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 that a change in the terms and conditions has occurred and a summary of material changes.

(3) 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 under the coverage.

(4) An insurer may terminate an enrolled customer's enrollment under a portable electronics insurance policy for nonpayment of premium with at least 10 days' notice.

(5) An insurer may immediately terminate an enrolled customer's enrollment under a portable electronics insurance policy without prior notice:

(a) if the enrolled customer ceases to have an active service agreement with the vendor of portable electronics; or

(b) if an enrolled customer exhausts the aggregate limit of liability, if any, under the terms of the portable electronics insurance policy and the insurer sends notice of termination to the enrolled customer within 30 calendar days after exhaustion of the limit. If the notice of exhaustion is not timely sent, the customer's enrollment must continue regardless of the aggregate limit of liability until the insurer sends notice of termination to the enrolled customer.

(6) When a portable electronics insurance policy is terminated by a vendor policyholder, the vendor

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 must be mailed or delivered to the enrolled customer at least 30 days prior to the termination.

(7) Any notice or correspondence with respect to a policy of portable electronics insurance required by this section or other applicable law must be in writing and sent within the required notice period. Notices and correspondence may be sent either by mail or by electronic means as set forth in this subsection. If the notice or correspondence is mailed, it must be sent to the vendor of portable electronics at the vendor's mailing address specified for the purpose and to an affected enrolled customer's last-known mailing address on file with the insurer. The insurer or vendor of portable electronics shall maintain proof of mailing in a form authorized or accepted by the United States postal service or other commercial mail delivery service. If the notice or correspondence is sent by electronic means, it must be sent to the vendor of portable electronics at the vendor's electronic mail address specified for the purpose and to an affected enrolled customer's last-known electronic mail address as provided by each enrolled customer to the insurer or vendor of portable electronics. For purposes of this subsection, an enrolled customer's provision of an electronic mail address to the insurer or vendor of portable electronics is considered to be consent to receive notices and correspondence by electronic means. The insurer or vendor of portable electronics shall maintain proof that the notice or correspondence was sent.

(8) Notices or correspondence required by [sections 1 through 9] or otherwise required by law may be sent on behalf of an insurer or vendor by the supervising entity appointed by the insurer.

**Section 9. Portable electronics insurance claims.** (1) An individual who collects claim information from or furnishes claim information to insureds or claimants and who conducts data entry, including entering data into an automated claims adjudication system, is exempt from licensure under this title if no more than 25 of these individuals are under the supervision of one licensed independent adjuster or licensed insurance producer who is exempt from licensure pursuant to 33-17-102(1)(b)(iii).

(2) For purposes of portable electronics insurance claims, residents of Canada may not be licensed as nonresident adjusters unless they have obtained a resident license in another state or designated another state as their home state.

(3) For purposes of this section, "automated claims adjudication system" means a preprogrammed computer system designed for the collection, data entry, calculation, and final resolution of portable electronics

insurance claims that:

- (a) may be utilized only by a licensed independent adjuster, licensed insurance producer, or supervised individual operating pursuant to this section;
- (b) must comply with all claims payment requirements of this title; and
- (c) must be certified as compliant with this section by a licensed independent adjuster that is an officer of the entity that employs the individuals operating pursuant to this section.

**Section 10.** Section 33-17-301, MCA, is amended to read:

**"33-17-301. Adjuster license -- qualifications -- catastrophe adjustments -- public adjuster -- education and examination exemption.** (1) An individual may not act as or purport to be an adjuster in this state unless licensed as an adjuster under this chapter. An individual shall apply to the commissioner for an adjuster license in a form approved by the commissioner. The commissioner shall issue the adjuster license to individuals qualified to be licensed as an adjuster.

(2) To be licensed as an adjuster, the applicant:

- (a) must be an individual 18 years of age or more;
- (b) must be a resident of Montana or a resident of another state that permits residents of Montana regularly to act as adjusters in the other state~~;~~;
- (c) except as provided in subsection (4), shall pass an adjuster licensing examination as prescribed by the commissioner and pay the fee pursuant to 33-2-708;
- (d) must be trustworthy and of good character and reputation; and
- (e) must have and shall maintain ~~in this state~~ in this state an office accessible to the public and shall keep in the office for not less than 5 years the usual and customary records pertaining to transactions under the license. This provision does not prohibit maintenance of the office in the home of the licensee.

(3) A business entity, whether or not organized under the laws of this state, may be licensed as an adjuster if each individual who is to exercise the adjuster license powers is separately licensed or is named in the business entity adjuster license and is qualified for an individual adjuster license.

(4) (a) Subject to the provisions of subsection (4)(b), an individual who applies for a nonresident adjuster license in this state and who was previously licensed in another state may not be required to complete any preclicensing education or examination.

(b) The exemption in subsection (4)(a) is available only if the individual is currently licensed in the other state or the individual's application is received within 90 days of the cancellation of the individual's previous license and the other state issues a certification or the state's database records indicate that, at the time of the cancellation, the individual was in good standing in that state.

~~(4)(5)~~ An adjuster license or qualifications are not required for an adjuster who is sent into this state by and on behalf of an insurer or adjusting business entity for the purpose of investigating or making adjustments of a particular loss under an insurance policy or for the adjustment of a series of losses resulting from a catastrophe common to all losses.

~~(5)(6)~~ An adjuster license continues in force until lapsed, suspended, revoked, or terminated. The licensee shall renew the license by the biennial renewal date and pay the appropriate fee or the license will lapse. The biennial fee is established pursuant to 33-2-708.

~~(6)(7)~~ The commissioner may adopt rules providing for the examination, licensure, bonding, and regulation of public adjusters."

**Section 11. Codification instruction.** [Sections 1 through 9] are intended to be codified as an integral part of Title 33, chapter 24, and the provisions of Title 33, chapter 24, apply to [sections 1 through 9].

**Section 12. Effective date.** [This act] is effective August 1, 2013.

- END -

I hereby certify that the within bill,  
SB 0264, originated in the Senate.

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Secretary of the Senate

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2013.

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2013.

SENATE BILL NO. 264

INTRODUCED BY E. ARNTZEN

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