

SENATE BILL NO. 264

INTRODUCED BY E. ARNTZEN

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A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE PORTABLE ELECTRONICS INSURANCE ACT; REQUIRING LICENSURE TO SELL OR OFFER COVERAGE UNDER A POLICY OF PORTABLE ELECTRONICS INSURANCE; REVISING THE DEFINITION OF "HOME STATE"; REVISING LICENSE APPLICATION REQUIREMENTS FOR NONRESIDENT INSURANCE ADJUSTERS; GRANTING THE COMMISSIONER OF INSURANCE RULEMAKING AUTHORITY; AMENDING SECTIONS 33-17-102 AND 33-17-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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

NEW SECTION. **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:



- 1 (i) a service contract governed by Title 30, chapter 14, part 13;
- 2 (ii) a policy of insurance covering a seller's or a manufacturer's obligations under a warranty; or
- 3 (iii) a homeowner's, renter's, private passenger automobile, commercial, or similar policy.
- 4 (6) "Portable electronics transaction" means:
- 5 (a) the sale or lease of portable electronics by a vendor to a customer; or
- 6 (b) the sale of a service related to the use of portable electronics by a vendor to a customer.
- 7 (7) "Supervising entity" means a business entity that is a licensed insurer or insurance producer that is
- 8 authorized by a licensed insurer to supervise the administration of a portable electronics insurance program.
- 9 (8) "Vendor" means a person in the business of engaging in portable electronics transactions directly
- 10 or indirectly.

11

12 **NEW SECTION. Section 3. Licensure of vendors -- rulemaking.** (1) A vendor must hold a limited lines

13 insurance producer license to sell or offer coverage under a policy of portable electronics insurance.

14 (2) A license issued under [sections 1 through 9] authorizes any employee or authorized representative

15 of the vendor to sell or offer coverage under a policy of portable electronics insurance to a customer at each

16 location at which the vendor engages in portable electronics transactions.

17 (3) The supervising entity shall maintain a registry of vendor locations that are authorized to sell or solicit

18 portable electronics insurance coverage in this state. Upon request by the commissioner and with 10 days' notice

19 to the supervising entity, the registry must be open to inspection and examination by the commissioner during

20 regular business hours of the supervising entity.

21 (4) A license issued under [sections 1 through 9] authorizes the licensee and its employees or authorized

22 representatives to engage in those activities that are permitted in [sections 1 through 9].

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

24

25 **NEW SECTION. Section 4. Requirements for sale of portable electronics insurance.** (1) At each

26 location where portable electronics insurance is offered to customers, brochures or other written materials must

27 be made available to a prospective customer that:

- 28 (a) disclose that portable electronics insurance may provide a duplication of coverage already provided
- 29 by a customer's homeowner's insurance policy, renter's insurance policy, or other source of coverage;
- 30 (b) state that the enrollment by the customer in a portable electronics insurance program is not required

1 in order to purchase or lease portable electronics or services;

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

3 (i) the identity of the insurer;

4 (ii) the identity of the supervising entity;

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

6 (iv) benefits of the coverage; and

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

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

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

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

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

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

22

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

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

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

1 comply with the following:

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

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

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

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

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

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

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

23 (c) Vendors that are billing and collecting the charges are not required to maintain the funds in a
24 segregated account if the vendor is authorized by the insurer to hold the funds in an alternative manner and
25 remits the amounts to the supervising entity within 60 days of receipt. All funds received by a vendor from an
26 enrolled customer for the sale of portable electronics insurance are considered funds held in trust by the vendor
27 in a fiduciary capacity for the benefit of the insurer. Vendors may receive compensation for billing and collection
28 services.

29

30 NEW SECTION. **Section 6. Application for vendor license -- fees.** (1) An applicant for a license under

1 [sections 1 through 9] shall file with the commissioner an application on forms prescribed by the commissioner.

2 (2) The application must:

3 (a) provide the name, residence address, and other information required by the commissioner for an
4 employee or officer of the vendor that is designated by the applicant as the person responsible for the vendor's
5 compliance with the requirements of [sections 1 through 9], and if the vendor derives more than 50% of its
6 revenue from the sale of portable electronics insurance, the information required by this subsection (2)(a) must
7 be provided for all officers, directors, and shareholders of record having beneficial ownership of 10% or more of
8 any class of securities registered under federal securities law; and

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

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

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

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

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

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

21
22 **NEW SECTION. Section 7. Suspension or revocation of vendor license.** If a vendor of portable
23 electronics or its employee or authorized representative violates any provision of [sections 1 through 9], the
24 commissioner may do any of the following after notice and the opportunity for a hearing:

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

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

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

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

1 the license.

2

3 **NEW SECTION. Section 8. Termination of portable electronics insurance.** (1) Except as provided
4 in subsections (3) and (4), an insurer may terminate or otherwise change the terms and conditions of a policy of
5 portable electronics insurance upon providing the vendor policyholder and enrolled customers with at least 30
6 days' notice.

7 (2) If the insurer changes the terms and conditions of a policy of portable electronics insurance, the
8 insurer shall provide the vendor policyholder with a revised policy or endorsement and each enrolled customer
9 with a revised certificate, endorsement, updated brochure, or other evidence indicating that a change in the terms
10 and conditions has occurred and a summary of material changes.

11 (3) An insurer may terminate an enrolled customer's enrollment under a portable electronics insurance
12 policy upon 15 days' notice for discovery of fraud or material misrepresentation in obtaining coverage or in the
13 presentation of a claim under the coverage.

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

16 (a) for nonpayment of premium;

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

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

24 (5) When a portable electronics insurance policy is terminated by a vendor policyholder, the vendor
25 policyholder shall mail or deliver written notice to each enrolled customer advising the enrolled customer of the
26 termination of the policy and the effective date of termination. The written notice must be mailed or delivered to
27 the enrolled customer at least 30 days prior to the termination.

28 (6) Any notice or correspondence with respect to a policy of portable electronics insurance required by
29 this section or other applicable law must be in writing and sent within the required notice period. Notices and
30 correspondence may be sent either by mail or by electronic means as set forth in this subsection. If the notice

1 or correspondence is mailed, it must be sent to the vendor of portable electronics at the vendor's mailing address
2 specified for the purpose and to an affected enrolled customer's last-known mailing address on file with the
3 insurer. The insurer or vendor of portable electronics shall maintain proof of mailing in a form authorized or
4 accepted by the United States postal service or other commercial mail delivery service. If the notice or
5 correspondence is sent by electronic means, it must be sent to the vendor of portable electronics at the vendor's
6 electronic mail address specified for the purpose and to an affected enrolled customer's last-known electronic
7 mail address as provided by each enrolled customer to the insurer or vendor of portable electronics. For
8 purposes of this subsection, an enrolled customer's provision of an electronic mail address to the insurer or
9 vendor of portable electronics is considered to be consent to receive notices and correspondence by electronic
10 means. The insurer or vendor of portable electronics shall maintain proof that the notice or correspondence was
11 sent.

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

14
15 **NEW SECTION. Section 9. Portable electronics insurance claims.** (1) An individual who collects
16 claim information from or furnishes claim information to insureds or claimants and who conducts data entry,
17 including entering data into an automated claims adjudication system, is exempt from licensure under this title
18 if no more than 25 of these individuals are under the supervision of one licensed independent adjuster or licensed
19 insurance producer who is exempt from licensure pursuant to 33-17-102(1)(b)(iii).

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

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

26 (a) may be utilized only by a licensed independent adjuster, licensed insurance producer, or supervised
27 individual operating pursuant to this section;

28 (b) must comply with all claims payment requirements of this title; and

29 (c) must be certified as compliant with this section by a licensed independent adjuster that is an officer
30 of the entity that employs the individuals operating pursuant to this section.

- 1
- 2 **Section 10.** Section 33-17-102, MCA, is amended to read:
- 3 **"33-17-102. Definitions.** As used in this title, the following definitions apply:
- 4 (1) (a) "Adjuster" means a person who, on behalf of the insurer, for compensation as an independent
- 5 contractor or as the employee of an independent contractor or for a fee or commission investigates and
- 6 negotiates the settlement of claims arising under insurance contracts or otherwise acts on behalf of the insurer.
- 7 (b) The term does not include a:
- 8 (i) licensed attorney who is qualified to practice law in this state;
- 9 (ii) salaried employee of an insurer or of a managing general agent;
- 10 (iii) licensed insurance producer who adjusts or assists in adjustment of losses arising under policies
- 11 issued by the insurer;
- 12 (iv) licensed third-party administrator who adjusts or assists in adjustment of losses arising under policies
- 13 issued by the insurer; or
- 14 (v) claims examiner as defined in 39-71-116.
- 15 (2) "Adjuster license" means a document issued by the commissioner that authorizes a person to act
- 16 as an adjuster.
- 17 (3) (a) "Administrator" means a person who collects charges or premiums from residents of this state
- 18 in connection with life, disability, property, or casualty insurance or annuities or who adjusts or settles claims on
- 19 these coverages.
- 20 (b) The term does not include:
- 21 (i) an employer on behalf of its employees or on behalf of the employees of one or more subsidiaries of
- 22 affiliated corporations of the employer;
- 23 (ii) a union on behalf of its members;
- 24 (iii) (A) an insurer that is either authorized in this state or acting as an insurer with respect to a policy
- 25 lawfully issued and delivered by the insurer in and pursuant to the laws of a state in which the insurer is
- 26 authorized to transact insurance; or
- 27 (B) a health service corporation as defined in 33-30-101;
- 28 (iv) a life, disability, property, or casualty insurance producer who is licensed in this state and whose
- 29 activities are limited exclusively to the sale of insurance;
- 30 (v) a creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and

1 its debtors;

2 (vi) a trust established in conformity with 29 U.S.C. 186 or the trustees, agents, and employees of the
3 trust;

4 (vii) a trust exempt from taxation under section 501(a) of the Internal Revenue Code or the trustees and
5 employees of the trust;

6 (viii) a custodian acting pursuant to a custodian account that meets the requirements of section 401(f)
7 of the Internal Revenue Code or the agents and employees of the custodian;

8 (ix) a bank, credit union, or other financial institution that is subject to supervision or examination by
9 federal or state banking authorities;

10 (x) a company that issues credit cards and that advances for and collects premiums or charges from the
11 company's credit card holders who have authorized the company to do so, if the company does not adjust or
12 settle claims;

13 (xi) a person who adjusts or settles claims in the normal course of the person's practice or employment
14 as an attorney and who does not collect charges or premiums in connection with life or disability insurance or
15 annuities; or

16 (xii) a person appointed as a managing general agent in this state whose activities are limited exclusively
17 to those described in 33-2-1501(10) and Title 33, chapter 2, part 16.

18 (4) "Administrator license" means a document issued by the commissioner that authorizes a person to
19 act as an administrator.

20 (5) (a) "Business entity" means a corporation, association, partnership, limited liability company, limited
21 liability partnership, or other legal entity.

22 (b) The term does not include an individual.

23 (6) "Consultant" means an individual who for a fee examines, appraises, reviews, evaluates, makes
24 recommendations, or gives advice regarding an insurance policy, annuity, or pension contract, plan, or program.

25 (7) "Consultant license" means a document issued by the commissioner that authorizes an individual
26 to act as an insurance consultant.

27 (8) (a) "Home state" means the District of Columbia or any state or territory of the United States in which
28 ~~the~~ an insurance producer or adjuster:

29 ~~(a)~~(i) maintains a principal place of residence or a principal place of business; and

30 ~~(b)~~(ii) is licensed as an insurance producer or adjuster.

1 (b) If the resident state does not license adjusters, the adjuster shall designate as the adjuster's home
2 state any state in which the adjuster is licensed and in good standing.

3 (9) "Individual" means a natural person.

4 (10) "Insurance producer", except as provided in 33-17-103, means a person required to be licensed
5 under the laws of this state to sell, solicit, or negotiate insurance.

6 (11) "Lapse" means the expiration of the license for failure to renew by the biennial renewal date.

7 (12) "License" means a document issued by the commissioner that authorizes a person to act as an
8 insurance producer for the lines of authority specified in the document. The license itself does not create actual,
9 apparent, or inherent authority in the holder to represent or commit an insurer to a binding agreement.

10 (13) "Limited line credit insurance" includes credit life insurance, credit disability insurance, credit property
11 insurance, credit unemployment insurance, involuntary unemployment insurance, mortgage life insurance,
12 mortgage guaranty insurance, mortgage disability insurance, gap insurance, and any other form of insurance
13 offered in connection with an extension of credit that is limited to partially or wholly extinguishing the credit
14 obligation and that the commissioner determines should be designated as a form of limited line credit insurance.

15 (14) "Limited line credit insurance producer" means a person who sells, solicits, or negotiates one or
16 more forms of limited line credit insurance coverage to individuals through a master, corporate, group, or
17 individual policy.

18 (15) "Limited lines insurance" means those lines of insurance that the commissioner finds necessary to
19 recognize for the purposes of complying with 33-17-401(3).

20 (16) "Limited lines producer" means a person authorized by the commissioner to sell, solicit, or negotiate
21 limited lines insurance.

22 (17) "Lines of authority" means any kind of insurance as defined in Title 33.

23 (18) "Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or
24 prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or
25 conditions of the contract if the person engaged in negotiation either sells insurance or obtains insurance from
26 insurers for purchasers.

27 (19) "Person" means an individual or a business entity.

28 (20) "Public adjuster" means an adjuster employed by and representing the interests of the insured.

29 (21) "Sell" means to exchange a contract of insurance by any means, for money or the equivalent, on
30 behalf of an insurance company.

1 (22) "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind
2 of insurance.

3 (23) "Suspend" means to bar the use of a person's license for a period of time.

4 (24) "Uniform application" means the national association of insurance commissioners' uniform
5 application for resident and nonresident insurance producer licensing.

6 (25) "Uniform business entity application" means the national association of insurance commissioners
7 uniform business entity application for resident and nonresident business entities."

8

9 **Section 11.** Section 33-17-301, MCA, is amended to read:

10 **"33-17-301. Adjuster license -- qualifications -- catastrophe adjustments -- public adjuster.** (1) An
11 individual may not act as or purport to be an adjuster in this state unless licensed as an adjuster under this
12 chapter. An individual shall apply to the commissioner for an adjuster license in a form approved by the
13 commissioner. The commissioner shall issue the adjuster license to individuals qualified to be licensed as an
14 adjuster.

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

16 (a) must be an individual 18 years of age or more;

17 (b) must be a resident of Montana or a resident of another state that permits residents of Montana
18 regularly to act as adjusters in the other state. If the adjuster's resident state does not license adjusters, the
19 adjuster shall designate as the adjuster's home state any state in which the applicant is licensed and in good
20 standing.;

21 (c) shall pass an adjuster licensing examination as prescribed by the commissioner and pay the fee
22 pursuant to 33-2-708;

23 (d) must be trustworthy and of good character and reputation; and

24 (e) must have and shall maintain ~~in this state~~ an office accessible to the public and shall keep in the
25 office for not less than 5 years the usual and customary records pertaining to transactions under the license. This
26 provision does not prohibit maintenance of the office in the home of the licensee.

27 (3) A business entity, whether or not organized under the laws of this state, may be licensed as an
28 adjuster if each individual who is to exercise the adjuster license powers is separately licensed or is named in
29 the business entity adjuster license and is qualified for an individual adjuster license. A nonresident business
30 entity applying for an adjuster license shall submit the names, addresses, social security numbers, criminal and

1 administrative history, background checks, biographical statement, and fingerprints of all executive officers and
2 directors of the applicant and of all executive officers and directors of entities owning and any individuals owning,
3 directly or indirectly, 51% or more of the outstanding voting securities of the applicant. A nonresident business
4 entity applicant whose home state requires all of the information required by this subsection is not required to
5 submit a criminal history, background check, biographical statement, and fingerprints for its executive officers,
6 directors, and owners of outstanding voting securities.

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

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

14 (6) The commissioner may adopt rules providing for the examination, licensure, bonding, and regulation
15 of public adjusters."
16

17 **NEW SECTION. Section 12. Codification instruction.** [Sections 1 through 9] are intended to be
18 codified as an integral part of Title 33, chapter 24, and the provisions of Title 33, chapter 24, apply to [sections
19 1 through 9].
20

21 **NEW SECTION. Section 13. Effective date.** [This act] is effective on passage and approval.
22

- END -