

E AND R AMENDMENTS TO LB 535

Introduced by Larson, 40, Chairperson Enrollment and Review

1 1. Strike the original sections and all amendments
2 thereto and insert the following new sections:

3 Section 1. Sections 1 to 9 of this act shall be known and
4 may be cited as the Portable Electronics Insurance Act.

5 Sec. 2. For purposes of the Portable Electronics
6 Insurance Act:

7 (1) Customer means a person who purchases portable
8 electronics;

9 (2) Covered customer means a customer who elects coverage
10 pursuant to a portable electronics insurance policy issued to a
11 vendor of portable electronics;

12 (3) Director means the Director of Insurance;

13 (4) Location means any physical location in this state or
14 any web site, call center, or other site or similar location to
15 which Nebraska customers may be directed;

16 (5) Portable electronics means a device that is
17 personal, self-contained, easily carried by an individual,
18 and battery-operated and includes devices used for electronic
19 communication, viewing, listening, recording, computing, or
20 global positioning. Portable electronics does not include
21 telecommunications switching equipment, transmission wires,
22 cellular site transceiver equipment, or other equipment or system
23 used by a telecommunications company to provide telecommunications

1 service to consumers;

2 (6) (a) Portable electronics insurance means insurance
3 that provides coverage for the repair or replacement of portable
4 electronics and may provide coverage for portable electronics that
5 are lost, stolen, damaged, or inoperable due to mechanical failure
6 or malfunction or suffer other similar causes of loss; and

7 (b) Portable electronics insurance does not include:

8 (i) A service contract under the Motor Vehicle Service
9 Contract Reimbursement Insurance Act;

10 (ii) A service contract or extended warranty providing
11 coverage as described in subdivision (2) of section 44-102.01;

12 (iii) A policy of insurance providing coverage for a
13 seller's or manufacturer's obligations under a warranty; or

14 (iv) A homeowner's, renter's, private passenger
15 automobile, commercial multiperil, or other similar policy;

16 (7) Portable electronics transaction means the sale or
17 lease of portable electronics by a vendor to a customer or the sale
18 of a service related to the use of portable electronics by a vendor
19 to a customer;

20 (8) Supervising entity means a business entity that is a
21 licensed insurance producer or insurer; and

22 (9) Vendor means a person in the business of engaging in
23 portable electronics transactions directly or indirectly.

24 Sec. 3. (1) A vendor shall hold a limited lines insurance
25 license issued under the Portable Electronics Insurance Act to sell
26 or offer coverage under a policy of portable electronics insurance.

27 (2) The director may issue a limited lines insurance

1 license under the act. Such license shall authorize an employee or
2 authorized representative of a vendor to sell or offer coverage
3 under a policy of portable electronics insurance to a customer at
4 each location at which the vendor engages in a portable electronics
5 transaction.

6 (3) The vendor shall submit an application for a limited
7 lines insurance license pursuant to section 4 of this act to the
8 director, and a list of all locations in this state at which the
9 vendor intends to offer such insurance coverage shall accompany
10 the application. A vendor shall maintain such list and make it
11 available for the director upon request.

12 (4) Notwithstanding any other provision of law, a limited
13 lines insurance license issued under the act shall authorize the
14 vendor and its employees or authorized representatives to engage in
15 the activities permitted by the act.

16 Sec. 4. (1) An application for a limited lines insurance
17 license shall be made to and filed with the director on forms
18 prescribed and furnished by the director.

19 (2) An application for an initial or a renewal license
20 shall:

21 (a) Provide the name, residence address, and other
22 information required by the director for an employee or authorized
23 representative of the vendor that is designated by the vendor
24 as the person responsible for the vendor's compliance with the
25 Portable Electronics Insurance Act. If the vendor derives more than
26 fifty percent of its revenue from the sale of portable electronics
27 insurance, the information required by this subdivision shall be

1 provided for all persons of record having beneficial ownership of
2 ten percent or more of any class of securities of the vendor
3 registered under federal securities law; and

4 (b) Provide the location of the vendor's home office.

5 (3) Any application for licensure under the act for
6 an existing vendor shall be made within ninety days after the
7 application is made available by the director.

8 (4) An initial license issued pursuant to the act shall
9 be valid for one year and expires on April 30 of each year.

10 (5) Any vendor licensed under the act shall pay an
11 initial license fee to the director in an amount prescribed by
12 the director but not to exceed one hundred dollars and shall pay
13 a renewal fee in an amount prescribed by the director but not to
14 exceed one hundred dollars.

15 Sec. 5. (1) At each location at which portable
16 electronics insurance is offered to a customer, a brochure or other
17 written material shall be available to the customer which:

18 (a) Discloses the fact that portable electronics
19 insurance may provide a duplication of coverage already provided
20 by a customer's homeowner's insurance policy, renter's insurance
21 policy, or other similar insurance coverage;

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

25 (c) Summarizes the material terms of the portable
26 electronics insurance, including:

27 (i) The identity of the insurer;

1 (ii) The identity of the supervising entity;

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

4 (iv) The benefits of the coverage; and

5 (v) The key terms and conditions of the coverage,
6 including whether portable electronics may be repaired or replaced
7 with a similar reconditioned make or model or with nonoriginal
8 manufacturer parts or equipment;

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

13 (e) States that the customer may cancel enrollment for
14 portable electronics insurance coverage at any time and receive any
15 applicable unearned premium refund on a pro rata basis.

16 (2) Portable electronics insurance may be offered on
17 a month-to-month or other periodic basis as a group or master
18 commercial inland marine policy issued to a vendor for its covered
19 customers. A covered customer who elects to enroll for coverage
20 shall receive a certificate of insurance and an explanation of
21 coverage or instructions on how to obtain such materials upon
22 request.

23 (3) Eligibility and underwriting standards for customers
24 who elect to enroll in portable electronics insurance coverage
25 shall be established by the insurer for each portable electronics
26 insurance program.

27 Sec. 6. (1) An employee or authorized representative of

1 a vendor may sell or offer for sale portable electronics insurance
2 to customers and shall not be subject to licensure as an insurance
3 producer if:

4 (a) The vendor obtains a limited lines insurance license
5 pursuant to section 3 of this act that authorizes its employees
6 or authorized representatives to sell or offer for sale portable
7 electronics insurance under this section;

8 (b) The insurer issuing the portable electronics
9 insurance directly supervises or appoints a supervising entity to
10 supervise the administration of the insurance program, including
11 development of a training program for employees and authorized
12 representatives of a vendor. The training required by this
13 subdivision shall comply with the following:

14 (i) The training shall be delivered to employees and
15 authorized representatives of a vendor who are directly involved in
16 the activity of selling or offering for sale portable electronics
17 insurance;

18 (ii) The training may be provided in electronic form. If
19 the training is provided in electronic form, the supervising entity
20 shall implement a supplemental education program that is conducted
21 and overseen by licensed employees of the supervising entity; and

22 (iii) Each employee and authorized representative shall
23 receive basic instruction on the portable electronics insurance
24 offered to customers and the disclosures required by section 5 of
25 this act; and

26 (c) The vendor does not advertise, represent, or
27 otherwise hold itself or any of its employees or authorized

1 representatives out as authorized insurers or licensed insurance
2 producers.

3 (2) The charges for portable electronics insurance
4 coverage may be billed and collected by the vendor. Any charge
5 to the customer for coverage that is not included in the cost
6 associated with the purchase or lease of portable electronics
7 shall be separately itemized on the covered customer's bill. If
8 the portable electronics insurance coverage is included in the
9 purchase or lease of portable electronics or related services, the
10 vendor shall clearly and conspicuously disclose to the customer
11 that portable electronics insurance coverage is included with the
12 portable electronics or related services. No vendor shall require
13 the purchase of any kind of insurance specified in this section as
14 a condition of the purchase or lease of portable electronics or
15 services. If such insurance is purchased, the portable electronics
16 insurance coverage offered by the limited lines insurance licensee
17 to a customer is primary over any other insurance coverage
18 applicable to the portable electronics. A vendor who bills and
19 collects such charges shall not be required to maintain such funds
20 in a segregated account if the vendor is authorized by the insurer
21 to hold such funds in an alternative manner and remits such amounts
22 to the supervising entity within sixty days after receipt. All
23 funds received by a vendor from a covered customer for the sale
24 of portable electronics insurance shall be considered funds held
25 in trust by the vendor in a fiduciary capacity for the benefit
26 of the insurer. A vendor may receive compensation for billing and
27 collection services.

1 Sec. 7. If a vendor violates any provision of the
2 Portable Electronics Insurance Act, the director may, after notice
3 and a hearing:

4 (1) Revoke or suspend a limited lines insurance license
5 issued under the act;

6 (2) Impose such other penalties, including suspension of
7 the transaction of insurance at specific vendor locations where
8 violations have occurred, as the director deems necessary or
9 convenient to carry out the purposes of the act; and

10 (3) Impose an administrative fine of not more than one
11 thousand dollars per violation or five thousand dollars in the
12 aggregate.

13 Sec. 8. Notwithstanding any other provision of law:

14 (1) An insurer may terminate or otherwise change the
15 terms and conditions of a policy of portable electronics insurance
16 only upon providing the vendor and enrolled customers with at least
17 sixty days' notice, except that:

18 (a) An insurer may terminate an enrolled customer's
19 insurance policy upon fifteen days' notice for:

20 (i) Discovery of fraud or material misrepresentation in
21 obtaining coverage or in the presentation of a claim under such
22 policy; or

23 (ii) Nonpayment of premium; or

24 (b) An insurer may immediately terminate an enrolled
25 customer's insurance policy:

26 (i) If the enrolled customer ceases to have active
27 service with the vendor of portable electronics; or

1 (ii) If an enrolled customer exhausts the aggregate limit
2 of liability, if any, under the portable electronics insurance
3 policy and the insurer sends notice of termination to the customer
4 within thirty days after exhaustion of the limit. If such notice
5 is not sent within the thirty-day period, the customer shall
6 continue to be enrolled in such insurance policy notwithstanding
7 the aggregate limit of liability until the insurer sends notice of
8 termination to the customer;

9 (2) If the insurer changes the terms and conditions,
10 the insurer shall provide the vendor with a revised policy or
11 endorsement and each enrolled customer with a revised certificate,
12 endorsement, updated brochure, or other evidence indicating a
13 change in the terms and conditions has occurred and a summary of
14 the material changes;

15 (3) If a portable electronics insurance policy is
16 terminated by a vendor, the vendor shall mail or deliver written
17 notice to each enrolled customer at least thirty days prior to the
18 termination advising the customer of such termination and of the
19 effective date of termination; and

20 (4) If notice is required under this section, it shall
21 be:

22 (a) In writing and may be mailed or delivered to a vendor
23 at the vendor's mailing address and to an enrolled customer at such
24 customer's last-known mailing address on file with the insurer. The
25 insurer or vendor, as applicable, shall maintain proof of mailing
26 in a form authorized or accepted by the United States Postal
27 Service or a commercial mail delivery service; or

1 (b) In electronic form. If notice is delivered in
2 electronic form, the insurer or vendor, as applicable, shall
3 maintain proof that the notice was sent.

4 Sec. 9. Any records pertaining to transactions under the
5 Portable Electronics Insurance Act shall be kept available and open
6 to inspection by the director or his or her representatives with
7 notice and during business hours. Records shall be maintained for
8 three years following the completion of transactions under the act.

9 Sec. 10. Section 44-102.01, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 44-102.01 For purposes of Chapter 44, insurance ~~shall~~
12 does not include a service contract. For purposes of this section,
13 service contract ~~shall mean~~ means (1) a motor vehicle service
14 contract as defined in section 44-3521 or (2) a contract or
15 agreement, whether designated as a service contract, maintenance
16 agreement, warranty, extended warranty, or similar term, whereby
17 a person undertakes to furnish, arrange for, or, in limited
18 circumstances, reimburse for service, repair, or replacement of
19 any or all of the components, parts, or systems of any covered
20 residential dwelling or consumer product when such service, repair,
21 or replacement is necessitated by wear and tear, by failure,
22 malfunction, inoperability, inherent defect, or ~~by the~~ failure of
23 an inspection to detect the likelihood of failure.

24 Sec. 11. This act becomes operative on January 1, 2012.

25 Sec. 12. Original section 44-102.01, Reissue Revised
26 Statutes of Nebraska, is repealed.

27 2. On page 1, strike beginning with "require" in line 1

1 through line 5 and insert "amend section 44-102.01, Reissue Revised
2 Statutes of Nebraska; to adopt the Portable Electronics Insurance
3 Act; to redefine service contract; to provide an operative date;
4 and to repeal the original section."