Sixty-fourth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2015

HOUSE BILL NO. 1384
(Representatives Louser, Beadle, Kasper)
(Senators Casper, Murphy, Oehlke)

AN ACT to create and enact chapter 26.1-26.7 of the North Dakota Century Code, relating to portable electronics insurance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 26.1-26.7 of the North Dakota Century Code is created and enacted as follows:

26.1-26.7-01. Definitions.

For purposes of this chapter:

1. "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

2. "Customer" means a person that purchases a portable electronic device or services related to the use of a portable electronic device.

3. "Enrolled customer" means a customer that elects coverage under a portable electronics insurance policy issued to a vendor of portable electronic devices.

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

5. "Person" means an individual or a business entity.

6. "Portable electronic device":

   a. Means personal, self-contained, easily carried by hand, battery-operated electronic communication, viewing, listening, recording, gaming, computing, or global positioning devices, including cellular or satellite phones, personal global positioning satellite units, portable computers, portable audio listening, video viewing or recording devices, digital cameras, video camcorders, portable gaming systems, docking stations, and accessories for any of these devices with a retail value of less than five thousand dollars.

   b. Does not include telecommunications switching equipment, transmission wires, cell site transceiver equipment, or other equipment and systems used by telecommunications companies to provide telecommunications service to consumers.

7. "Portable electronics insurance" means insurance providing coverage for the repair or replacement of portable electronic devices due to one or more of the following causes of loss: loss, theft, inoperability due to mechanical failure, malfunction, damage, or other similar cause of loss. The term includes any agreement whereby a person, in exchange for consideration paid, agrees to provide for the future repair or replacement of a portable electronic device. The term does not include:

   a. A property service contract as defined under section 9-01-21;

   b. A policy of insurance covering a seller's or a manufacturer's obligations under a warranty; or

c. A homeowner's, renter's, private passenger automobile, commercial multi-peril, or similar policy.

8. "Portable electronics transaction" means the sale or lease of portable electronic devices by a vendor to a customer or the sale of a service related to the use of a portable electronic device by a vendor to a customer.

9. "Vendor" means a person in the business of engaging in portable electronics transactions, directly or indirectly.

26.1-26.7-02. Licensure of vendors.

1. A vendor shall hold a limited lines license under this section to sell or offer coverage under a policy of portable electronics insurance.

2. A limited lines license issued under this section is limited to authorizing a vendor and the vendor's employees or authorized representatives to sell or offer coverage under a policy of portable electronics insurance to a customer to whom the vendor and the vendor's employees or authorized representatives sells or leases a portable electronic device or services related to the use of a portable electronic device.

3. A limited lines license issued under this section authorizes a vendor and the vendor's employees or authorized representatives to sell or offer portable electronics insurance coverage at each location at which the vendor engages in portable electronics transactions.

4. The vendor shall maintain a registry of locations that are authorized to sell or solicit portable electronics insurance coverage in this state. Upon request by the commissioner, and with five days' notice to the vendor, the vendor shall provide the registry to the commissioner for inspection and examination.

5. Notwithstanding any other provision of law, a license issued under this section authorizes the licensee and the licensee's employees or authorized representatives to engage only in those activities that are permitted in this chapter in connection with the business of insurance unless authorized to do so under an existing license issued by the commissioner.

26.1-26.7-03. Requirements for sale of portable electronics insurance.

1. At every location where portable electronics insurance is offered to customers, the vendor shall make available to a prospective customer brochures or other written materials that:

   a. Disclose 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 the enrollment by the customer in a portable electronics insurance program is not required in order to purchase or lease a portable electronic device or services.

   c. Summarize the material terms of the insurance coverage, including:

      (1) The identity of the insurer;

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

      (3) Benefits of the coverage; and

      (4) Key terms and conditions of coverage, such as whether a portable electronic device 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 a portable electronic device and the maximum fee applicable in the event the customer fails to comply with any equipment return requirements.

e. State an enrolled customer may cancel enrollment for coverage under a portable electronics insurance policy at any time and 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 or approval requirements with 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 issued to a vendor of portable electronic devices for the vendor's enrolled customers.

4. A policy of portable electronics insurance must provide primary coverage in the event of a covered loss under more than one policy.

5. Eligibility and underwriting standards for customers electing to enroll in coverage must be established for each portable electronics insurance program.

26.1-26.7-04. Authority of vendors of portable electronic devices.

1. An employee and an authorized representative of a vendor may sell or offer portable electronics insurance to customers and are not subject to licensure as an insurance producer under this chapter if:

a. The vendor obtains a limited lines license to authorize the vendor's employees or authorized representatives to sell or offer portable electronics insurance under this chapter.

b. The vendor files an acknowledgment with the commissioner in a form and manner directed by the commissioner which the vendor's counter sales personnel and authorized representatives act on the vendor's behalf and the vendor is responsible for any representations made by the counter sales personnel or authorized representatives relating to insurance products offered through the vendor. The acknowledgment must state the commissioner may take any administrative action contemplated in this title.

c. The insurer issuing the portable electronics insurance either directly supervises or the vendor supervises the development of a training program for employees and authorized representatives of the vendors. The training required by this subdivision must comply with the following:

(1) The training must be delivered to employees and authorized representatives of vendors who are directly engaged in the activity of selling or offering portable electronics insurance, and the training materials must be maintained by the vendor and be made available to the commissioner for inspection upon request; and

(2) Each employee and authorized representative shall receive basic instruction about the portable electronics insurance offered to customers and the disclosures required under section 26.1-26.7-03; and

d. An employee or authorized representative of a vendor of portable electronic devices may not advertise, represent, or otherwise hold out to the public as a nonlimited lines-licensed insurance producer.

2. A vendor's employees and authorized representatives may not be paid directly by an insurance company, a commission, or any other compensation for the sale of insurance.

However, this section does not prevent a vendor from including the insurance products in an overall employee performance compensation incentive program.

3. The vendor of portable electronic devices may bill and collect charges for portable electronic devices insurance coverage. Any charge to the enrolled customer for coverage that is not included in the cost associated with the purchase or lease of a portable electronic device or related service must be separately itemized on the enrolled customer's bill. If the portable electronics insurance coverage is included with the purchase or lease of a portable electronic device or related services, the vendor clearly and conspicuously shall disclose to the enrolled customer any portable electronics insurance coverage included with the portable electronic device or related service, and the stand-alone cost of the premium for the same or similar insurance must be made on the customer's bill and in any marketing materials made available at the point of sale. A vendor 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. All funds received by a vendor from an enrolled customer for the sale of portable electronics insurance must be considered funds held in trust by the vendor in a fiduciary capacity for the benefit of the insurer. A vendor may receive compensation for billing and collection services.

26.1-26.7-05. Termination of portable electronics insurance.

Notwithstanding any other provision of law:

1. An insurer may terminate or otherwise change the terms and conditions of a policy of portable electronics insurance only upon providing the policyholder and enrolled customers with at least thirty days notice.

2. If the insurer changes the terms and conditions, 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 a change in the terms and conditions has occurred and a summary of material changes.

3. Notwithstanding subsection 1, an insurer may terminate an enrolled customer's enrollment under a portable electronics insurance policy upon thirty days notice for discovery of fraud or material misrepresentation in obtaining coverage or in the presentation of a claim under the policy.

4. Notwithstanding subsection 1, an insurer may terminate an enrolled customer's enrollment under a portable electronics insurance policy upon ten days notice for nonpayment of premium.

5. Notwithstanding subsection 1, an insurer immediately may 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 with the vendor of portable electronic devices; 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 thirty calendar days after exhaustion of the limit. However, if notice is not timely sent, coverage must continue, notwithstanding the aggregate limit of liability until the insurer sends notice of termination to the enrolled customer.

6. If a portable electronics insurance policy is terminated by a policyholder, the 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 thirty days before the termination.

7. If notice or correspondence with respect to a policy of portable electronics insurance is required under this section or is otherwise required by law, the notice or correspondence must be in writing and sent within the notice period, if any, specified within the statute or regulation requiring the notice or correspondence. Notwithstanding any other provision of law, notices and correspondence may be sent 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 electronic devices at the vendor's mailing address specified for this purpose and to the vendor's affected enrolled customers' last known mailing addresses on file with the insurer. The insurer or vendor of portable electronic devices, as the case may be, 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, the notice or correspondence must be sent to the vendor of portable electronic devices at the vendor's electronic mail address specified for this purpose and to the vendor's affected enrolled customers' last known electronic mail address as provided by each enrolled customer to the insurer or vendor of portable electronic devices, as the case may be. For purposes of this subsection, an enrolled customer's provision of an electronic mail address to the insurer or vendor of portable electronic devices, as the case may be, is deemed consent to receive notices and correspondence by electronic means. The insurer or vendor of portable electronic devices, as the case may be, shall maintain proof the notice or correspondence was sent.

8. Notice or correspondence required by this section or otherwise required by law may be sent on behalf of an insurer or vendor, as the case may be, by a business entity that is a licensed insurance producer and that is appointed by the insurer issuing the portable electronics insurance policy to assist with the administration of the portable electronics insurance program.

26.1-26.7-06. Application for license and fees.

1. A vendor shall apply for licensure under subsection 2 of section 26.1-26-13.3.

2. An applicant shall apply for licensure under the provisions of section 26.1-26-13.3. In lieu of providing the information for all officers, directors, and shareholders owning more than ten percent of the applicant, the requirements for the applicant are limited to requiring the applicant to 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 this chapter. However, if the vendor derives more than fifty percent of the vendor's revenue from the sale of portable electronics insurance the information required under this subsection must be provided for all officers, directors, and shareholder of record having beneficial ownership of ten percent or more.

3. Each vendor of portable portable electronic devices licensed under this chapter shall pay to the commissioner a fee as prescribed by the commissioner.

4. Any vendor engaging in portable electronics insurance transactions before the effective date of this Act shall apply for licensure within ninety 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 before offering portable electronics insurance. The provisions and penalties under this section are in addition to those provided under chapter 26.1-26.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-fourth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1384.

House Vote:	Yeas 90	Nays 2	Absent 2
Senate Vote:	Yeas 46	Nays 0	Absent 1

Chief Clerk of the House

Received by the Governor at 10:44 A.M. on April 8, 2015.

Approved at 2:37 P.M. on April 9, 2015.

Governor

Filed in this office this 9th day of April, 2015,

at 4:37 o'clock P M.

Secretary of State