HOUSE DOCKET, NO. 4268 FILED ON: 2/8/2012

HOUSE . . . . . No. 3954

The Commonwealth of Massachusetts

PRESENTED BY:

Aaron Michlewitz

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act Regulating Portable Electronics Insurance.

PETITION OF:

NAME:	DISTRICT/ADDRESS:

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HOUSE . . . . . No. 3954

By Mr. Michlewitz of Boston, a petition (subject to Joint Rule 12) of Aaron Michlewitz relative to regulating insurance for portable electronic devices. Financial Services.

The Commonwealth of Massachusetts

An Act Regulating Portable Electronics Insurance.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 175 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by inserting after section 162X the following new section:-

Section 162Y. (a) As used in this section, the following words shall, unless the context requires otherwise, have the following meanings:-

"Customer", a person who purchases portable electronics or services.

"Enrolled Customer", a customer who elects coverage under a portable electronics insurance policy issued to a vendor of portable electronics.

"Location", any physical location in the commonwealth or any website, call center site or similar location directed to residents of the commonwealth.

"Portable Electronics", electronic devices that are portable in nature, their accessories and services related to the use of the device.

"Portable Electronics Insurance", insurance providing coverage for the repair or replacement of portable electronics which may provide coverage for portable electronics against any one or more of the following causes of loss: loss, theft, inoperability due to mechanical failure, malfunction, damage or other similar causes of loss.

"Portable Electronics Insurance", does not include: (i) a service contract governed by sections 149M to 149X, inclusive, of chapter 175 of the General Laws; (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 multi-peril, or similar policy.

20 “Portable Electronics Transaction”, (a) the sale or lease of portable electronics by a
21 vendor to a customer; or (b) the sale of a service related to the use of portable electronics by a
22 vendor to a customer.

23 “Supervising Entity”, a business entity that is a licensed insurer or insurance producer
24 that is authorized by an insurer to supervise the administration of a portable electronics insurance
25 program.

26 “Vendor”, a person in the business of engaging in portable electronics transactions
27 directly or indirectly.

28 (b) A vendor is required to hold a limited lines license to sell or offer coverage under a
29 policy of portable electronics insurance.

30 (c) A limited lines license issued under this section shall authorize any employee or
31 authorized representative of the vendor to sell or offer coverage under a policy of portable
32 electronics insurance to a customer at each location at which the vendor engages in portable
33 electronics transactions.

34 (d) The supervising entity shall maintain a registry of vendor locations which are
35 authorized to sell or solicit portable electronics insurance coverage in the commonwealth. Upon
36 request by the commissioner and with 10 days notice to the supervising entity, the registry shall
37 be open to inspection and examination by the commissioner during regular business hours of the
38 supervising entity.

39 (e) Notwithstanding any general or special law or rule or regulation to the contrary, a
40 license issued pursuant to this section shall authorize the licensee and its employees or
41 authorized representatives to engage in those activities that are permitted in this section.

42 (f) At every location where portable electronics insurance is offered to customers,
43 brochures or other written materials must be made available to a prospective customer which:

44 (1) disclose that portable electronics insurance may provide a duplication of coverage
45 already provided by a customer’s homeowner's insurance policy, renter’s insurance policy or
46 other source of coverage;

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

49 (3) summarize the material terms of the insurance coverage, including: (i) the identity of
50 the insurer; (ii) the identity of the supervising entity; (iii) the amount of any applicable
51 deductible and how it is to be paid; (iv) benefits of the coverage; and (v) key terms and
52 conditions of coverage such as whether portable electronics may be repaired or replaced with
53 similar make and model reconditioned or non-original manufacturer parts or equipment.

54 (4) summarize the process for filing a claim, including a description of how to return
55 portable electronics and the maximum fee applicable in the event the customer fails to comply
56 with any equipment return requirements.

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

60 (g) Portable electronics insurance may be offered on a month to month or other periodic
61 basis as a group or master commercial inland marine policy issued to a vendor of portable
62 electronics for its enrolled customers.

63 (h) Eligibility and underwriting standards for customers electing to enroll in coverage
64 shall be established for each portable electronics insurance program.

65 (i) The employees and authorized representatives of vendors may sell or offer portable
66 electronics insurance to customers and shall not be subject to licensure as an insurance producer
67 under this chapter provided that:

68 (1) the vendor obtains a limited lines license to authorize its employees or authorized
69 representatives to sell or offer portable electronics insurance pursuant to this section;

70 (2) the insurer issuing the portable electronics insurance either directly supervises or
71 appoints a supervising entity to supervise the administration of the program including
72 development of a training program for employees and authorized representatives of the vendors.
73 The training required by this paragraph shall comply with the following: (i) the training shall be
74 delivered to employees and authorized representatives of a vendors who are directly engaged in
75 the activity of selling or offering portable electronics insurance; (ii) the training may be provided
76 in electronic form, however, if conducted in an electronic form the supervising entity shall
77 implement a supplemental education program regarding the portable electronics insurance
78 product that is conducted and overseen by licensed employees of the supervising entity; and (iii)
79 each employee and authorized representative shall receive basic instruction about the portable
80 electronics insurance offered to customers and the disclosures required under subsection (f); and

81 (3) no employee or authorized representative of a vendor of portable electronics shall
82 advertise, represent or otherwise hold himself or herself out as a non limited lines licensed
83 insurance producer.

84 (j) Section 177 of chapter 175 of the General Laws shall apply to all persons not
85 authorized to sell or offer portable electronics insurance pursuant to a license issued to a vendor
86 under this section.

87 (k) The charges for portable electronics insurance coverage may be billed and collected
88 by the vendor of portable electronics. Any charge to the enrolled customer for coverage that is

89 not included in the cost associated with the purchase or lease of portable electronics or related
90 services shall be separately itemized on the enrolled customer's bill. If the portable electronics
91 insurance coverage is included with the purchase or lease of portable electronics or related
92 services the vendor shall clearly and conspicuously disclose to the enrolled customer that the
93 portable electronics insurance coverage is included with the portable electronics or related
94 services. Vendors billing and collecting such charges shall not be required to maintain such
95 funds in a segregated account provided that the vendor is authorized by the insurer to hold such
96 funds in an alternative manner and remits such amounts to the supervising entity within sixty
97 days of receipt. All funds received by a vendor from an enrolled customer for the sale of portable
98 electronics insurance shall be considered funds held in trust by the vendor in a fiduciary capacity
99 for the benefit of the insurer. Vendors may receive compensation for billing and collection
100 services.

101 (l) If a vendor of portable electronics or its employee or authorized representative violates
102 any provision of this section, the commissioner may, after notice and hearing:

103 (1) impose fines not to exceed $500 per violation or $5,000 in the aggregate for such
104 conduct.

105 (2) impose other penalties that the commissioner deems necessary and reasonable to carry
106 out the purpose of this section, including: (i) suspending the privilege of transacting portable
107 electronics insurance pursuant to this section at specific business locations where violations have
108 occurred; and (ii) suspending or revoking the ability of individual employees or authorized
109 representatives to act under the license.

110 (m) Notwithstanding any general or special law or rule or regulation to the contrary:

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

114 (2) If the insurer changes the terms and conditions, then the insurer shall provide the
115 vendor policyholder with a revised policy or endorsement and each enrolled customer with a
116 revised certificate, endorsement, updated brochure, or other evidence indicating a change in the
117 terms and conditions has occurred and a summary of material changes.

118 (3) Notwithstanding paragraph (1) of this subsection, an insurer may terminate an
119 enrolled customer's enrollment under a portable electronics insurance policy upon fifteen days
120 notice for discovery of fraud or material misrepresentation in obtaining coverage or in the
121 presentation of a claim thereunder.

122 (n) Notwithstanding paragraph (1) of subsection (m) of this section, an insurer may
123 immediately terminate an enrolled customer's enrollment under a portable electronics insurance
124 policy:

125 (1) for nonpayment of premium;

126 (2) if the enrolled customer ceases to have an active service with the vendor of portable
127 electronics; or

128 (3) if an enrolled customer exhausts the aggregate limit of liability, if any, under the
129 terms of the portable electronics insurance policy and the insurer sends notice of termination to
130 the enrolled customer within thirty calendar days after exhaustion of the limit. However, if notice
131 is not timely sent, enrollment shall continue notwithstanding the aggregate limit of liability until
132 the insurer sends notice of termination to the enrolled customer.

133 (o) Where a portable electronics insurance policy is terminated by a policyholder, the
134 policyholder shall mail or deliver written notice to each enrolled customer advising the enrolled
135 customer of the termination of the policy and the effective date of termination. The written notice
136 shall be mailed or delivered to the enrolled customer at least thirty days prior to the termination.

137 (p) Whenever notice or correspondence with respect to a policy of portable electronics
138 insurance is required pursuant to this section or is otherwise required by law, it shall be in
139 writing and sent within the notice period, if any, specified within the statute or regulation
140 requiring the notice or correspondence. Notwithstanding any general or special law or rule or
141 regulation to the contrary, notices and correspondence may be sent either by mail or by
142 electronic means as set forth in this subsection. If the notice or correspondence is mailed, it shall
143 be sent to the vendor of portable electronics at the vendor's mailing address specified for such
144 purpose and to its affected enrolled customers' last known mailing addresses on file with the
145 insurer. The insurer or vendor of portable electronics, as the case may be, shall maintain proof of
146 mailing in a form authorized or accepted by the United States Postal Service or other commercial
147 mail delivery service. If the notice or correspondence is sent by electronic means, it shall be
148 sent to the vendor of portable electronics at the vendor's electronic mail address specified for
149 such purpose and to its affected enrolled customers' last known electronic mail address as
150 provided by each enrolled customer to the insurer or vendor of portable electronics, as the case
151 may be. For purposes of this subsection, an enrolled customer's provision of an electronic mail
152 address to the insurer or vendor of portable electronics, as the case may be, shall be deemed
153 consent to receive notices and correspondence by electronic means. The insurer or vendor of
154 portable electronics, as the case may be, shall maintain proof that the notice or correspondence
155 was sent.

156 (q) Notice or correspondence required by this section or otherwise required by law may
157 be sent on behalf of an insurer or vendor, as the case may be, by the supervising entity appointed
158 by the insurer.

159 (r) A sworn application for a license under this section shall be made to and filed with the
160 commissioner on forms prescribed and furnished by the commissioner.

161 (s) The application shall:

162 (1) provide the name, residence address, and other information required by the
163 commissioner for an employee or officer of the vendor that is designated by the applicant as the
164 person responsible for the vendor's compliance with the requirements of this section. However,
165 if the vendor derives more than fifty per cent of its revenue from the sale of portable electronics
166 insurance the information noted above shall be provided for all officers, directors, and
167 shareholder of record having beneficial ownership of 10 per cent or more of any class of
168 securities registered under the federal securities law; and

169 (2) the location of the applicant's home office.

170 (t) Any vendor engaging in portable electronics insurance transactions on or before the
171 effective date of this act must apply for licensure within ninety days of the application being
172 made available by the commissioner. Any applicant commencing operations after the effective
173 date of this act must obtain a license prior to offering portable electronics insurance.

174 (u) Initial licenses issued pursuant to this section shall be valid for a period of twenty-
175 four months and shall expire twenty-four months from the date of issue, unless sooner revoked or
176 suspended as provided herein.

177 (v) Each vendor of portable electronics licensed under this section shall pay to the
178 commissioner of insurance a fee as prescribed by the commissioner of insurance not to exceed
179 $1,000 for an initial portable electronics limited lines license and $500 for each renewal thereof.
180 However, for a vendor that is engaged in portable electronics transactions at 10 or fewer
181 locations in the state the fee shall not exceed $100 for an initial license and for each renewal
182 thereof.