

# HOUSE . . . . . No. 3954

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## 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 adoption of the accompanying bill:

An Act Regulating Portable Electronics Insurance.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

DATE ADDED:

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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.

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## The Commonwealth of Massachusetts

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In the Year Two Thousand Twelve  
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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:*

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

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

5           “Customer”, a person who purchases portable electronics or services.

6           “Enrolled Customer”, a customer who elects coverage under a portable electronics  
7 insurance policy issued to a vendor of portable electronics.

8           “Location”, any physical location in the commonwealth or any website, call center site or  
9 similar location directed to residents of the commonwealth.

10          “Portable Electronics”, electronic devices that are portable in nature, their accessories and  
11 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.

“Portable Electronics Transaction”, (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.

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

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

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

(c) A limited lines license issued under this section shall authorize 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.

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

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

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

(1) 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;

(2) 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;

(3) 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 non-original manufacturer parts or equipment.

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

(5) state that 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 or credit of any applicable unearned premium.

(g) 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 electronics for its enrolled customers.

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

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

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

(2) 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 paragraph shall comply with the following: (i) the training shall be delivered to employees and authorized representatives of a vendors who are directly engaged in the activity of selling or offering portable electronics insurance; (ii) the training may be provided in electronic form, however, if 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 employees of the supervising entity; and (iii) each employee and authorized representative shall receive basic instruction about the portable electronics insurance offered to customers and the disclosures required under subsection (f); and

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

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

(k) 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 shall be separately itemized on the enrolled customer's bill. 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. Vendors billing and collecting such charges shall not be required to maintain such

funds in a segregated account provided that the vendor is authorized by the insurer to hold such funds in an alternative manner and remits such amounts to the supervising entity within sixty days of receipt. All funds received by a vendor from an enrolled customer for the sale of portable electronics insurance shall be 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.

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

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

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

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

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

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

(1) for nonpayment of premium;

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

(3) 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, enrollment shall continue notwithstanding the aggregate limit of liability until the insurer sends notice of termination to the enrolled customer.

(o) Where 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 shall be mailed or delivered to the enrolled customer at least thirty days prior to the termination.



(p) Whenever notice or correspondence with respect to a policy of portable electronics insurance is required pursuant to this section or is otherwise required by law, it shall be in writing and sent within the notice period, if any, specified within the statute or regulation requiring the notice or correspondence. Notwithstanding any general or special law or rule or regulation to the contrary, 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 shall be sent to the vendor of portable electronics at the vendor's mailing address specified for such purpose and to its affected enrolled customers' last known mailing addresses on file with the insurer. The insurer or vendor of portable electronics, 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, it shall be sent to the vendor of portable electronics at the vendor's electronic mail address specified for such purpose and to its affected enrolled customers' last known electronic mail address as provided by each enrolled customer to the insurer or vendor of portable electronics, 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 electronics, as the case may be, shall be deemed consent to receive notices and correspondence by electronic means. The insurer or vendor of portable electronics, as the case may be, shall maintain proof that the notice or correspondence was sent.

(q) 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 the supervising entity appointed by the insurer.

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

(s) The application shall:

(1) 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 section. However, if the vendor derives more than fifty per cent of its revenue from the sale of portable electronics insurance the information noted above shall be provided for all officers, directors, and shareholder of record having beneficial ownership of 10 per cent or more of any class of securities registered under the federal securities law; and

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

(t) Any vendor engaging in portable electronics insurance transactions on or before the effective date of this act must 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 must obtain a license prior to offering portable electronics insurance.

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

(v) Each vendor of portable electronics licensed under this section shall pay to the commissioner of insurance a fee as prescribed by the commissioner of insurance not to exceed \$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.