

# HOUSE . . . . . No. 955

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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:
<i>Aaron Michlewitz</i>	<i>3rd Suffolk</i>	<i>1/8/2013</i>
<i>Anthony W. Petrucci</i>	<i>First Suffolk and Middlesex</i>	

# HOUSE . . . . . No. 955

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By Mr. Michlewitz of Boston, a petition (accompanied by bill, House, No. 955) of Aaron Michlewitz and Anthony W. Petruccelli relative to regulating insurance for portable electronic devices. Financial Services.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 4351 OF 2011-2012.]

## The Commonwealth of Massachusetts

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In the Year Two Thousand Thirteen  
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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:- 2

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

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

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

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

10 “Portable electronics”, electronic devices that are portable in nature, their accessories and  
11 services related to the use of the device. 11

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13 “Portable electronics insurance”, insurance providing coverage for the repair or  
14 replacement of portable electronics which may provide coverage for portable electronics

15 against any one or 13 more of the following causes of loss: theft, inoperability due to mechanical  
16 failure, malfunction, 14 damage or other similar causes of loss. The term “Portable electronics  
17 insurance”, shall not 15 include: (i) a service contract governed by sections 149M to 149X,  
18 inclusive, of chapter 175; (ii) 16 a policy of insurance covering a seller’s or a manufacturer’s  
19 obligations under a warranty; or (iii) 17 a homeowner’s, renter’s, private passenger automobile,  
20 commercial multi-peril, or similar 18 policy. 19

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

24 “Supervising entity”, a business entity that is a licensed insurer or insurance producer that  
25 is 23 authorized by an insurer to supervise the administration of a portable electronics insurance  
26 24 program. 25

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

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

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

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

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

44 (f) At every location where portable electronics insurance is offered to customers,  
45 brochures or 42 other written materials shall be made available to a prospective customer which:  
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(1) disclose that portable electronics insurance may provide a duplication of coverage already 44 provided by a customer's homeowner's insurance policy, renter's insurance policy or other 45 source of coverage; 46

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

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

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

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

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

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

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

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

(2) the insurer issuing the portable electronics insurance either directly supervises or appoints a 70 supervising entity to supervise the administration of the program including development of a 71 training program for employees and authorized representatives of the vendors. The training 72 required by this paragraph shall comply with the following: (i) the training shall be delivered to 73 employees and authorized representatives of a vendor who are directly engaged in the activity of 74

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selling or offering portable electronics insurance; (ii) the training may be provided in electronic form; provided, 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 out as a non limited lines licensed insurance producer.

(j) Section 177 of chapter 175 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 60 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

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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; 105 and (ii) suspending or revoking the ability of individual employees or authorized representatives 106 to act under the license. 107

(m) Notwithstanding any general or special law or rule or regulation to the contrary: 108

(1) An insurer may terminate or otherwise change the terms and conditions of a policy of 109 portable electronics insurance only upon providing the policyholder and enrolled customers with 110 at least 30 days notice. 111

(2) If the insurer changes the terms and conditions, then the insurer shall provide the vendor 112 policyholder with a revised policy or endorsement and each enrolled customer with a revised 113 certificate, endorsement, updated brochure, or other evidence indicating a change in the terms 114 and conditions has occurred and a summary of material changes. 115

(3) Notwithstanding paragraph (1) of this subsection, an insurer may terminate an enrolled 116 customer's enrollment under a portable electronics insurance policy upon 15 days notice for 117

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discovery of fraud or material misrepresentation in obtaining coverage or in the presentation of a 118 claim thereunder. 119

(n) Notwithstanding paragraph (1) of subsection (m), an insurer may immediately terminate an 120 enrolled customer's enrollment under a portable electronics insurance policy: 121

(1) for nonpayment of premium; 122

(2) if the enrolled customer ceases to have an active service with the vendor of portable 123 electronics; or 124

(3) if an enrolled customer exhausts the aggregate limit of liability, if any, under the terms of the 125 portable electronics insurance policy and the insurer sends notice of termination to the enrolled 126 customer within 30 calendar days after exhaustion of the limit; provided, however, if notice is 127 not timely sent, enrollment shall continue notwithstanding the aggregate limit of liability until 128 the insurer sends notice of termination to the enrolled customer. 129

(o) Where a portable electronics insurance policy is terminated by a policyholder, the 130 policyholder shall mail or deliver written notice to each enrolled customer advising the enrolled 131 customer of the termination of the policy and the effective date of termination. The written notice 132 shall be mailed or delivered to the enrolled customer at least 30 days prior to the termination. 133

(p) Whenever notice or correspondence with respect to a policy of portable electronics insurance 134 is required pursuant to this section or is otherwise required by law, it shall be in writing and sent 135 within the notice period, if any, specified within the statute or regulation requiring the notice or 136 correspondence. Notwithstanding any general or special law or rule or regulation to the contrary, 137 notices and correspondence may be sent either by mail or by electronic means as set forth in this 138

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subsection. If the notice or correspondence is mailed, it shall be sent to the vendor of portable 139 electronics at the vendor's mailing address specified for such purpose and to its affected enrolled 140 customers' last known mailing addresses on file with the insurer. The insurer or vendor of 141 portable electronics, as the case may be, shall maintain proof of mailing in a form authorized or 142 accepted by the United States Postal Service or other commercial mail delivery service. If the 143 notice or correspondence is sent by electronic means, it shall be sent to the vendor of portable 144 electronics at the vendor's electronic mail address specified for such purpose and to its affected 145 enrolled customers' last known electronic mail address as provided by each enrolled customer to 146 the insurer or vendor of portable electronics, as the case may be. For purposes of this subsection, 147 an enrolled customer's provision of an electronic mail address to the insurer or vendor of portable 148 electronics, as the case may be, shall be deemed consent to receive notices and correspondence 149 by electronic means. The insurer or vendor of portable electronics, as the case may be, shall 150 maintain proof that the notice or correspondence was sent. 151

(q) Notice or correspondence required by this section or otherwise required by law may be sent 152 on behalf of an insurer or vendor, as the case may be, by the supervising entity appointed by the 153 insurer. 154

(r) A sworn application for a license under this section shall be made to and filed with the 155 commissioner on forms prescribed and furnished by the commissioner. 156

(s) The application shall: 157

(1) provide the name, residence address, and other information required by the commissioner for 158 an employee or officer of the vendor that is designated by the applicant as the person responsible 159 for the vendor's compliance with the requirements of this section; provided, however, if the 160

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vendor derives more than 50 per cent of its revenue from the sale of portable electronics 161 insurance the information noted above shall be provided for all officers, directors, and 162

183 shareholder of record having beneficial ownership of 10 per cent or more of any class of 163  
184 securities registered under the federal securities law; and 164

185 (2) the location of the applicant's home office. 165

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187 (t) Initial licenses issued pursuant to this section shall be valid for a period of 24 months  
188 and 167 shall expire 24 months from the date of issue, unless sooner revoked or suspended as  
189 provided 168 herein. 169

190 (u) A vendor of portable electronics licensed under this section shall pay to the  
191 commissioner of 170 insurance a fee as prescribed by the commissioner of insurance not to  
192 exceed \$1,000 for an 171 initial portable electronics limited lines license and \$500 for each  
193 renewal thereof. . 172

194 (v) Notwithstanding any general or special law to the contrary, the provisions of chapter  
195 176D 173 shall apply to any person engaged in the business of portable electronics insurance as  
196 defined by 174 this section. 175

197 SECTION 2. A vendor engaging in portable electronics insurance transactions on or  
198 before the 176 effective date of this act shall apply for licensure within 90 days of the application  
199 being made 177 available by the commissioner of insurance. Any applicant commencing  
200 operations after the 178 effective date of this act shall obtain a license prior to offering portable  
201 electronics insurance.