

Introduced by

Representatives Louser, Beadle, Kasper

Senators Casper, Murphy, Oehlke

1 A BILL for an Act to create and enact chapter 26.1-56 of the North Dakota Century Code,  
2 relating to portable electronics insurance.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** Chapter 26.1-56 of the North Dakota Century Code is created and enacted as  
5 follows:

6 **26.1-56-01. Definitions.**

7 For purposes of this chapter:

- 8 1. "Business entity" means a corporation, association, partnership, limited liability  
9 company, limited liability partnership, or other legal entity.
- 10 2. "Customer" means a person that purchases a portable electronic device or services  
11 related to the use of a portable electronic device.
- 12 3. "Enrolled customer" means a customer that elects coverage under a portable  
13 electronics insurance policy issued to a vendor of portable electronic devices.
- 14 4. "Location" means any physical location in this state or any website, call center site, or  
15 similar location directed to residents of this state.
- 16 5. "Person" means an individual or a business entity.
- 17 6. "Portable electronic device":
  - 18 a. Means personal, self-contained, easily carried by hand, battery-operated  
19 electronic communication, viewing, listening, recording, gaming, computing, or  
20 global positioning devices, including cellular or satellite phones, personal global  
21 positioning satellite units, portable computers, portable audio listening, video  
22 viewing or recording devices, digital cameras, video camcorders, portable  
23 gaming systems, docking stations, and accessories for any of these devices with  
24 a retail value of less than five thousand dollars.

- 1           b. Does not include telecommunications switching equipment, transmission wires,  
2           cell site transceiver equipment, or other equipment and systems used by  
3           telecommunications companies to provide telecommunications service to  
4           consumers.
- 5        7. "Portable electronics insurance" means insurance providing coverage for the repair or  
6        replacement of portable electronic devices due to one or more of the following causes  
7        of loss: loss, theft, inoperability due to mechanical failure, malfunction, damage, or  
8        other similar cause of loss. The term includes any agreement whereby a person, in  
9        exchange for consideration paid, agrees to provide for the future repair or replacement  
10       of a portable electronic device. The term does not include:
- 11       a. A property service contract as defined under section 9-01-21;  
12       b. A policy of insurance covering a seller's or a manufacturer's obligations under a  
13       warranty; or  
14       c. A homeowner's, renter's, private passenger automobile, commercial multi-peril, or  
15       similar policy.
- 16       8. "Portable electronics transaction" means the sale or lease of portable electronic  
17       devices by a vendor to a customer or the sale of a service related to the use of a  
18       portable electronic device by a vendor to a customer.
- 19       9. "Vendor" means a person in the business of engaging in portable electronics  
20       transactions, directly or indirectly.
- 21       **26.1-56-02. Licensure of vendors.**
- 22       1. A vendor shall hold a limited lines license under this section to sell or offer coverage  
23       under a policy of portable electronics insurance.
- 24       2. A limited lines license issued under this section is limited to authorizing a vendor and  
25       the vendor's employees or authorized representatives to sell or offer coverage under a  
26       policy of portable electronics insurance to a customer to whom the vendor and the  
27       vendor's employees or authorized representatives sells or leases a portable electronic  
28       device or services related to the use of a portable electronic device.
- 29       3. A limited lines license issued under this section authorizes a vendor and the vendor's  
30       employees or authorized representatives to sell or offer portable electronics insurance

1 coverage at each location at which the vendor engages in portable electronics  
2 transactions.

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

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

12 **26.1-56-03. Requirements for sale of portable electronics insurance.**

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

16 a. Disclose portable electronics insurance may provide a duplication of coverage  
17 already provided by a customer's homeowner's insurance policy, renter's  
18 insurance policy, or other source of coverage;

19 b. State the enrollment by the customer in a portable electronics insurance program  
20 is not required in order to purchase or lease a portable electronic device or  
21 services;

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

23 (1) The identity of the insurer;

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

26 (3) Benefits of the coverage; and

27 (4) Key terms and conditions of coverage, such as whether a portable  
28 electronic device may be repaired or replaced with similar make and model  
29 reconditioned or nonoriginal manufacturer parts or equipment.

- 1           d. Summarize the process for filing a claim, including a description of how to return  
2           a portable electronic device and the maximum fee applicable in the event the  
3           customer fails to comply with any equipment return requirements.
- 4           e. State an enrolled customer may cancel enrollment for coverage under a portable  
5           electronics insurance policy at any time and the person paying the premium shall  
6           receive a refund of any applicable unearned premium.
- 7           2. The written materials required by this section are not subject to filing or approval  
8           requirements with the commissioner
- 9           3. Portable electronics insurance may be offered on a month-to-month or other periodic  
10           basis as a group or master commercial inland marine policy issued to a vendor of  
11           portable electronic devices for the vendor's enrolled customers.
- 12           4. A policy of portable electronics insurance must provide primary coverage in the event  
13           of a covered loss under more than one policy.
- 14           5. Eligibility and underwriting standards for customers electing to enroll in coverage must  
15           be established for each portable electronics insurance program.

16           **26.1-56-04. Authority of vendors of portable electronic devices.**

- 17           1. An employee and an authorized representative of a vendor may sell or offer portable  
18           electronics insurance to customers and are not subject to licensure as an insurance  
19           producer under this chapter if:
  - 20           a. The vendor obtains a limited lines license to authorize the vendor's employees or  
21           authorized representatives to sell or offer portable electronics insurance under  
22           this chapter.
  - 23           b. The vendor files an acknowledgment with the commissioner in a form and  
24           manner directed by the commissioner which the vendor's counter sales  
25           personnel and authorized representatives act on the vendor's behalf and the  
26           vendor is responsible for any representations made by the counter sales  
27           personnel or authorized representatives relating to insurance products offered  
28           through the vendor. The acknowledgment must state the commissioner may take  
29           any administrative action contemplated in this title.
  - 30           c. The insurer issuing the portable electronics insurance either directly supervises  
31           or the vendor supervises the development of a training program for employees

1           and authorized representatives of the vendors. The training required by this  
2           subdivision must comply with the following:

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

8           (2) Each employee and authorized representative shall receive basic instruction  
9           about the portable electronics insurance offered to customers and the  
10           disclosures required under section 26.1-56-03; and

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

14          2. A vendor's employees and authorized representatives may not be paid directly by an  
15           insurance company, a commission, or any other compensation for the sale of  
16           insurance. However, this section does not prevent a vendor from including the  
17           insurance products in an overall employee performance compensation incentive  
18           program.

19          3. The vendor of portable electronic devices may bill and collect charges for portable  
20           electronic devices insurance coverage. Any charge to the enrolled customer for  
21           coverage that is not included in the cost associated with the purchase or lease of a  
22           portable electronic device or related service must be separately itemized on the  
23           enrolled customer's bill. If the portable electronics insurance coverage is included with  
24           the purchase or lease of a portable electronic device or related services, the vendor  
25           clearly and conspicuously shall disclose to the enrolled customer the portable  
26           electronics insurance coverage is included with the portable electronic device or  
27           related service, and the stand-alone cost of the premium for the same or similar  
28           insurance must be made on the customer's bill and in any marketing materials made  
29           available at the point of sale. A vendor billing and collecting the charges are not  
30           required to maintain the funds in a segregated account if the vendor is authorized by  
31           the insurer to hold the funds in an alternative manner. All funds received by a vendor

1 from an enrolled customer for the sale of portable electronics insurance must be  
2 considered funds held in trust by the vendor in a fiduciary capacity for the benefit of  
3 the insurer. A vendor may receive compensation for billing and collection services.

4 **26.1-56-05. Termination of portable electronics insurance.**

5 Notwithstanding any other provision of law:

- 6 1. An insurer may terminate or otherwise change the terms and conditions of a policy of  
7 portable electronics insurance only upon providing the policyholder and enrolled  
8 customers with at least thirty days notice.
- 9 2. If the insurer changes the terms and conditions, the insurer shall provide the vendor  
10 policyholder with a revised policy or endorsement and each enrolled customer with a  
11 revised certificate, endorsement, updated brochure, or other evidence indicating a  
12 change in the terms and conditions has occurred and a summary of material changes.
- 13 3. Notwithstanding subsection 1, an insurer may terminate an enrolled customer's  
14 enrollment under a portable electronics insurance policy upon thirty days notice for  
15 discovery of fraud or material misrepresentation in obtaining coverage or in the  
16 presentation of a claim under the policy.
- 17 4. Notwithstanding subsection 1, an insurer may terminate an enrolled customer's  
18 enrollment under a portable electronics insurance policy upon ten days notice for  
19 nonpayment of premium;
- 20 5. Notwithstanding subsection 1, an insurer immediately may terminate an enrolled  
21 customer's enrollment under a portable electronics insurance policy without prior  
22 notice:
  - 23 a. If the enrolled customer ceases to have an active service with the vendor of  
24 portable electronic devices; or
  - 25 b. If an enrolled customer exhausts the aggregate limit of liability, if any, under the  
26 terms of the portable electronics insurance policy and the insurer sends notice of  
27 termination to the enrolled customer within thirty calendar days after exhaustion  
28 of the limit. However, if notice is not timely sent, coverage must continue.  
29 notwithstanding the aggregate limit of liability until the insurer sends notice of  
30 termination to the enrolled customer.

- 1       6. If a portable electronics insurance policy is terminated by a policyholder, the  
2       policyholder shall mail or deliver written notice to each enrolled customer advising the  
3       enrolled customer of the termination of the policy and the effective date of termination.  
4       The written notice must be mailed or delivered to the enrolled customer at least thirty  
5       days before the termination.
- 6       7. If notice or correspondence with respect to a policy of portable electronics insurance is  
7       required under this section or is otherwise required by law, the notice or  
8       correspondence must be in writing and sent within the notice period, if any, specified  
9       within the statute or regulation requiring the notice or correspondence.  
10      Notwithstanding any other provision of law, notices and correspondence may be sent  
11      by mail or by electronic means as set forth in this subsection. If the notice or  
12      correspondence is mailed, it must be sent to the vendor of portable electronic devices  
13      at the vendor's mailing address specified for this purpose and to the vendor's affected  
14      enrolled customers' last known mailing addresses on file with the insurer. The insurer  
15      or vendor of portable electronic devices, as the case may be, shall maintain proof of  
16      mailing in a form authorized or accepted by the United States postal service or other  
17      commercial mail delivery service. If the notice or correspondence is sent by electronic  
18      means, the notice or correspondence must be sent to the vendor of portable electronic  
19      devices at the vendor's electronic mail address specified for this purpose and to the  
20      vendor's affected enrolled customers' last known electronic mail address as provided  
21      by each enrolled customer to the insurer or vendor of portable electronic devices, as  
22      the case may be. For purposes of this subsection, an enrolled customer's provision of  
23      an electronic mail address to the insurer or vendor of portable electronic devices, as  
24      the case may be, is deemed consent to receive notices and correspondence by  
25      electronic means. The insurer or vendor of portable electronic devices, as the case  
26      may be, shall maintain proof the notice or correspondence was sent.
- 27      8. Notice or correspondence required by this section or otherwise required by law may  
28      be sent on behalf of an insurer or vendor, as the case may be, by a business entity  
29      that is a licensed insurance producer and that is appointed by the insurer issuing the  
30      portable electronics insurance policy to assist with the administration of the portable  
31      electronics insurance program.

1       **26.1-56-06. Application for license and fees.**

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

3       2. An applicant shall apply for licensure under the provisions of section 26.1-26-13.3. In  
4       lieu of providing the information for all officers, directors, and shareholders owning  
5       more than ten percent of the applicant, the requirements for the applicant are limited to  
6       requiring the applicant to provide the name, residence address, and other information  
7       required by the commissioner for an employee or officer of the vendor that is  
8       designated by the applicant as the person responsible for the vendor's compliance  
9       with the requirements of this chapter. However, if the vendor derives more than fifty  
10      percent of the vendor's revenue from the sale of portable electronics insurance the  
11      information required under this subsection must be provided for all officers, directors,  
12      and shareholder of record having beneficial ownership of ten percent or more.

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

15      4. Any vendor engaging in portable electronics insurance transactions before the  
16      effective date of this Act shall apply for licensure within ninety days of the application  
17      being made available by the commissioner. Any applicant commencing operations  
18      after the effective date of this Act shall obtain a license before offering portable  
19      electronics insurance. The provisions and penalties under this section are in addition  
20      to those provided under chapter 26.1-26.