

**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 472**

(SENATOR MINARD, *original sponsor*)

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[Passed March 12, 2011; in effect ninety days from passage.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-12-32a, relating to providing an exemption from insurance licensing requirements for vendors of portable electronics when offering portable electronics insurance generally; defining terms; establishing requirements and authority regarding the sale of portable electronics insurance; stating authority of vendors of portable electronics to sell portable electronics insurance; requiring training of employees who sell portable electronics insurance; providing for the suspension of privileges and imposition of fines for violations of this section; providing for the termination of portable electronics insurance; and giving the Insurance Commissioner the authority to bring administrative actions on supervising entities.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §33-12-32a, to read as follows:

**ARTICLE 12. Insurance Producers and Solicitors.**

**§33-12-32a. Exemption for Portable Electronics.**

1 (a) Definitions. For purposes of this section, the  
2 following terms have the following meanings:

3 (1) “Authorized Representative” means any individual who  
4 is authorized by a vendor to engage in portable electronic  
5 transactions on behalf of the vendor and who conducts such  
6 transactions under the direction and authority of such  
7 vendor;

8 (2) “Customer” means a person who purchases portable  
9 electronics or services;

10 (3) “Enrolled Customer” means a customer who elects  
11 coverage under a portable electronics insurance policy and  
12 issued to a vendor of portable electronics;

13 (4) “Location” means any physical location in the State of  
14 West Virginia or any website, call center site, or similar  
15 location directed to residents of the State of West Virginia.

16 (5) “Portable Electronics” means electronic devices that  
17 are portable in nature, their accessories and services related  
18 to the use of the device;

19 (6) (A) “Portable Electronic Insurance” means insurance  
20 providing coverage for the repair or replacement of portable  
21 electronics which may cover portable electronics against any  
22 one or more of the following causes of loss: loss, theft,  
23 mechanical failure, malfunction, damage or other applicable  
24 perils.

25 (B) “Portable Electronics Insurance” does not include:

26 (i) A service contract or extended warranty providing  
27 coverage limited solely to the repair, replacement, or mainte-  
28 nance of property for the operational or structural failure of

29 property due to a defect in materials, workmanship, accident-  
30 tal damage from handling or normal wear and tear;

31 (ii) A policy of insurance covering a seller's or a manufac-  
32 turer's obligations under a warranty; or

33 (iii) A homeowner's, renter's, private passenger automo-  
34 bile, commercial multi-peril, or similar policy.

35 (7) "Portable Electronics Transaction" means:

36 (A) The sale or lease of portable electronics by a vendor to  
37 a customer; or

38 (B) The sale of a service related to the use of portable  
39 electronics by a vendor to a customer.

40 (8) "Supervising Entity" means a business entity that is a  
41 licensed insurance producer or an insurer;

42 (9) "Vendor" means a person in the business of engaging in  
43 portable electronics transactions directly or indirectly,  
44 whether through an entity that is a corporate affiliate or an  
45 entity with which it has a contractual relationship to market  
46 portable electronics.

47 (b) *Exemption from licensing.*

48 (1) A vendor that complies with the provisions of this  
49 section is deemed to be in compliance with the requirements  
50 of this article regarding producer licensing not only for the  
51 vendor, but also for any employee or authorized representa-  
52 tive of the vendor selling or offering coverage under a policy  
53 of portable electronics insurance to a customer at each  
54 location at which the vendor engages in portable electronics  
55 transactions.

56 (2) A vendor shall maintain, and share with its supervising  
57 entity, a list of all locations in this state that offer portable  
58 electronics insurance on its behalf. The supervising entity

59 shall submit the list to the Insurance Commissioner within  
60 thirty days upon request.

61 (c) *Requirements for Sale of Portable Electronics Insur-*  
62 *ance.*

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

66 (A) Disclose that portable electronics insurance may  
67 provide a duplication of coverage already provided by a  
68 customer's homeowner's insurance policy, renter's insurance  
69 policy or other source of coverage;

70 (B) State that the enrollment by the customer in a portable  
71 electronics insurance program is not required in order to  
72 purchase or lease portable electronics or services;

73 (C) Summarize the material terms of the insurance cover-  
74 age, including:

75 (i) The identity of the insurer;

76 (ii) The identity of the supervising entity;

77 (iii) The amount of any applicable deductible and how it is  
78 to be paid;

79 (iv) Benefits of the coverage; and

80 (v) Key terms and conditions of coverage such as whether  
81 portable electronics may be repaired or replaced with similar  
82 make and model reconditioned or non-original manufacturer  
83 parts or equipment.

84 (D) Summarize the process for filing a claim, including a  
85 description of any requirements:

86 (i) To return portable electronics and the maximum fee  
87 applicable in the event the enrolled customer fails to comply  
88 with any equipment return requirements; and

89 (ii) Proof of loss requirements.

90 (E) State that the enrolled customer may cancel enrollment  
91 for coverage under a portable electronics insurance policy at  
92 any time and the person paying the premium shall receive a  
93 refund of any applicable unearned premium.

94 (2) Portable electronics insurance may be offered on a  
95 month to month or other periodic basis as a group or master  
96 commercial insurance policy issued to a vendor of portable  
97 electronics under which individual customers may elect to  
98 enroll for coverage.

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

102 (d) *Authority of Vendors of Portable Electronics.*

103 (1) The employees and authorized representatives of  
104 vendors may sell or offer portable electronics insurance to  
105 customers and shall not be subject to licensure as an insur-  
106 ance producer under this article provided that:

107 (A) The vendor complies with the provisions of this section;

108 (B) The insurer issuing the portable electronics insurance  
109 appoints a supervising entity to supervise the administration  
110 of the program including development of a training program  
111 for employees and authorized representatives of the vendors.  
112 The training required by this subdivision shall comply with  
113 the following:

114 (i) The training shall be delivered to all employees and  
115 authorized representatives of the vendors who sell or offer  
116 portable electronics insurance.

117 (ii) The training may be provided in electronic form.  
118 However, if conducted in an electronic form the supervising  
119 entity shall implement a supplemental education program

120 regarding portable electronics insurance that is conducted  
121 and overseen by licensed employees of the supervising entity;  
122 and

123 (iii) Each employee and authorized representative shall  
124 receive basic instruction about the portable electronics  
125 insurance offered to customers and the disclosures required  
126 under subsection c;

127 (C) No employee or authorized representative of a vendor  
128 of portable electronics shall advertise, represent or otherwise  
129 hold himself or herself out as a licensed insurance producer.

130 (D) No employee or authorized representative of a vendor  
131 of portable electronics is compensated based primarily on  
132 the number of customers enrolled for portable electronics  
133 insurance coverage but may receive compensation for  
134 enrolling customers for portable electronics insurance  
135 coverage so long as the compensation for those activities is  
136 incidental to their overall compensation.

137 (2) The charges for portable electronics insurance cover-  
138 age may be billed and collected by the vendor of portable  
139 electronics. Any charge to the enrolled customer for coverage  
140 that is not included in the cost associated with the purchase  
141 or lease of portable electronics or related services shall be  
142 separately itemized on the enrolled customer's bill. If the  
143 coverage is included in the purchase or lease of portable  
144 electronics or related services the vendor shall clearly and  
145 conspicuously disclose to the enrolled customer that the  
146 portable electronics insurance coverage is included with the  
147 portable electronics or related services. No vendor shall  
148 require the purchase of any kind of insurance specified in  
149 this section as a condition of the purchase or lease of porta-  
150 ble electronics or services. Vendors billing and collecting  
151 such charges shall not be required to maintain such funds in  
152 a segregated account provided that the vendor is authorized  
153 by the insurer to hold such funds in an alternative manner  
154 and remits such amounts to the supervising entity within  
155 sixty (60) days of receipt. All funds received by a vendor

156 from an enrolled customer for the sale of portable electronics  
157 insurance shall be considered funds held in trust by the  
158 vendor in a fiduciary capacity for the benefit of the insurer.  
159 Vendors may receive compensation for billing and collection  
160 services.

161 (e) *Suspension of Privileges.*

162 (1) If a vendor of portable electronics or its employee or  
163 authorized representative violates any provision of this  
164 section, the Insurance Commissioner may do any of the  
165 following:

166 (A) After notice and hearing, impose fines not to exceed  
167 \$500 per violation or \$5,000 in the aggregate for such  
168 conduct.

169 (B) After notice and hearing, impose other penalties that  
170 the commissioner deems necessary and reasonable to carry  
171 out the purpose of this article, including:

172 (i) Suspending the privilege of transacting portable  
173 electronics insurance pursuant to this section at specific  
174 business locations where violations have occurred; and

175 (ii) Suspending or revoking the ability of individual  
176 employees or authorized representatives to act under the  
177 section.

178 (f) *Termination of Portable Electronics Insurance.*

179 (1) Notwithstanding any other provision of law:

180 (A) An insurer may terminate or otherwise change the  
181 terms and conditions of a policy of portable electronics  
182 insurance only upon providing the policyholder and enrolled  
183 customers with at least thirty (30) days notice.

184 (B) If the insurer changes the terms and conditions, then  
185 the insurer shall provide the vendor policyholder with a

186 revised policy of endorsement and each enrolled customer  
187 with a revised certificate, endorsement, updated brochure, or  
188 other evidence indicating a change in the terms and condi-  
189 tions has occurred and a summary of material changes.

190 (2) Notwithstanding subdivision (1) of this subsection, an  
191 insurer may terminate an enrolled customer's enrollment  
192 under a portable electronics insurance policy upon fifteen  
193 (15) days notice for discovery of fraud or material misrepre-  
194 sentation in obtaining coverage or in the presentation of a  
195 claim number.

196 (3) Notwithstanding subdivision (2) of this subsection, an  
197 insurer may immediately terminate an enrolled customer's  
198 enrollment under a portable electronics insurance policy:

199 (A) For nonpayment of premium;

200 (B) If the enrolled customer ceases to have an active  
201 service with the vendor of portable electronics; or

202 (C) If an enrolled customer exhausts the aggregate limit of  
203 liability, if any, under the terms of the portable electronics  
204 insurance policy and the insurer sends notice of termination  
205 to the enrolled customer within thirty (30) calendar days  
206 after exhaustion of the limit. However, if notice is not timely  
207 sent, enrollment shall continue notwithstanding the aggre-  
208 gate limit of liability until the insurer sends notice of  
209 termination to the enrolled customer.

210 (4) Where a portable electronics insurance policy is  
211 terminated by a policyholder, the policyholder shall mail or  
212 deliver written notice to each enrolled customer advising the  
213 enrolled customer of the termination. The written notice  
214 shall be mailed or delivered to the enrolled customer at least  
215 (30) days prior to the termination.

216 (5) Whenever notice is required pursuant to this section,  
217 it shall be in writing and may be mailed or delivered to the  
218 vendor of portable electronics at the vendor's mailing



219 address and to its affected enrolled customers' last known  
220 mailing addresses on file with the insurer. If notice is mailed,  
221 the insurer or vendor of portable electronics, as the case may  
222 be, shall maintain proof of mailing in a form authorized or  
223 accepted by the United States Postal Service or other  
224 commercial mail delivery service. Alternatively, an insurer  
225 or vendor policyholder may comply with any notice required  
226 by this section by providing electronic notice to a vendor or  
227 its affected enrolled customers, as the case may be, by  
228 electronic means. If notice is accomplished through elec-  
229 tronic means the insurer or vendor of portable electronics, as  
230 the case may be, shall maintain proof that the notice was  
231 sent.

232 (g) If a supervising entity is determined by the Insurance  
233 Commissioner to have not performed its required duties  
234 under this section or has otherwise violated any provision of  
235 this section, it shall be subject to the administrative actions  
236 set forth in section twenty-four of this article.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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*Chairman Senate Committee*

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*Chairman House Committee*

Originated in the Senate.

In effect ninety days from passage.

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*Clerk of the Senate*

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*Clerk of the House of Delegates*

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*Acting President of the Senate*

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*Speaker of the House of Delegates*

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The within ..... this the .....  
Day of ....., 2011.

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*Governor*