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Bailey
2/25/13

CS FOR SENATE BILL NO. 52()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR COGHILL

A BILL

FOR AN ACT ENTITLED

1 **"An Act providing that portable electronics insurance is not a service contract;**
2 **providing that a portable electronics manufacturer's warranty or extended warranty is**
3 **not regulated as insurance; relating to portable electronics insurance; authorizing the**
4 **director of insurance to issue a limited producer license to a portable electronics vendor**
5 **for the sale of portable electronics insurance; and relating to authorization and training**
6 **of employees and representatives of a vendor to transact portable electronics insurance;**
7 **and providing for an effective date."**

8 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

9 *** Section 1. AS 21.03.021(e) is amended to read:**

10 **(e) This title does not apply to a service contract offered, issued for delivery,**
11 **delivered, or renewed in this state. In this subsection, "service contract"**

12 **(1) means a service contract or agreement for a separate or additional**
13 **consideration, for a specific duration, to**

1 (A) maintain, service, repair, or replace tangible personal
 2 property, *including portable electronics*, or to indemnify for repair, replacement, or maintenance, for an
 3 operational or structural failure due to a defect in materials or workmanship or
 4 normal wear and tear, with or without additional provision for incidental
 5 indemnity payments when service, repair, or replacement is not reasonably or
 6 commercially feasible;

7 (B) repair, replace, or maintain tangible personal property
 8 damaged as a result of power surges or as a result of accidental damage from
 9 the handling of property, *including portable electronics*, ~~damaged by power surges~~; or

*Amendments
 N.3 & N.4*

10 (C) repair, replace, or maintain household consumer goods,
 11 household appliances, and household systems, including damage resulting
 12 from operational or structural failure due to a defect in materials or
 13 workmanship or normal wear and tear;

14 (2) does not include

15 (A) mechanical breakdown insurance;

16 (B) a contract that requires an indemnity payment per incident
 17 and the payment exceeds the purchase price of the property serviced;

18 (C) a contract to provide service on a motor vehicle subject to
 19 registration under AS 28.10.011; [OR]

20 (D) a home warranty; in this subparagraph, "home warranty"
 21 means a warranty that covers the entire home and does not include a warranty
 22 limited to a household system or appliance; or

23 (E) portable electronics insurance as defined in
 24 AS 21.36.515.

25 * Sec. 2. AS 21.03.021 is amended by adding a new subsection to read:

26 (g) This title does not apply to a portable electronics manufacturer's warranty
 27 or extended warranty.

28 * Sec. 3. AS 21.27.060(d) is amended to read:

29 (d) This section does not apply to an applicant

30 (1) for a limited license under AS 21.27.150(a)(1), (4), [OR] (5), or

31 (8); or

1 (2) who, at any time within the one-year period immediately preceding
2 the date the current pending application is received by the division, had been licensed
3 in good standing in this state under a license requiring substantially similar
4 qualifications as required by the license applied for.

5 * Sec. 4. AS 21.27.150(a) is amended to read:

6 (a) The director may issue a

7 (1) travel insurance limited producer license to a person who is
8 appointed under AS 21.27.100 and who sells insurance connected with transportation
9 provided by a common carrier, and limited to a specific trip, that covers

10 (A) trip cancellation;

11 (B) trip interruption; or

12 (C) life, health, disability, or personal effects;

13 (2) title insurance limited producer license to a person whose place of
14 business is located in this state and whose sole purpose is to be appointed by and act
15 on behalf of a title insurer;

16 (3) bail bond limited producer license to a person who is appointed by
17 and acts on behalf of a surety insurer pertaining to bail bonds;

18 (4) motor vehicle rental agency limited producer license to a person
19 and, subject to the approval of the director, to employees of the person licensed that
20 the licensee authorizes to transact the business of insurance on the licensee's behalf if,
21 as to an employee, the licensee complies with (D) of this paragraph and if the licensee

22 (A) rents to others, without operators,

23 (i) private passenger motor vehicles, including
24 passenger vans, minivans, and sport utility vehicles; or

25 (ii) cargo motor vehicles, including cargo vans, pickup
26 trucks, and trucks with a gross vehicle weight of less than 26,000
27 pounds that do not require the operator to possess a commercial driver's
28 license;

29 (B) rents motor vehicles only to persons under rental
30 agreements that do not exceed a term of 90 days;

31 (C) transacts only the following kinds of insurance:

1 (i) motor vehicle liability insurance with respect to
2 liability arising out of the use of a vehicle rented from the licensee
3 during the term of the rental agreement;

4 (ii) uninsured or underinsured motorist coverage, with
5 minimum limits described in AS 21.96.020(c) and (d) arising from the
6 use of a vehicle rented from the licensee during the term of the rental
7 agreement;

8 (iii) insurance against medical, hospital, surgical, and
9 disability benefits to an injured person and funeral and death benefits to
10 dependents, beneficiaries, or personal representatives of a deceased
11 person if the insurance is issued as incidental coverage with or
12 supplemental to liability insurance and arises out of the use of a vehicle
13 rented from the licensee during the term of the rental agreement;

14 (iv) personal effects insurance, including loss of use,
15 with respect to damage to or loss of personal property of a person
16 renting the vehicle and other vehicle occupants while that property is
17 being loaded into, transported by, or unloaded from a vehicle rented
18 from the licensee during the term of the rental agreement;

19 (v) towing and roadside assistance with respect to
20 vehicles rented from the licensee during the term of the rental
21 agreement; and

22 (vi) other insurance as may be authorized by regulation
23 by the director;

24 (D) notifies the director in writing, within 30 days of
25 employment, of the name, date of birth, social security number, location of
26 employment, and home address of an employee authorized by the licensee to
27 transact insurance on the licensee's behalf; and

28 (E) provides other information as required by the director;

29 (5) nonresident limited producer license to a person; a license that the
30 director issues under this paragraph grants the same scope of authority as a limited
31 lines producer license issued to the person by the person's home state;

1 (6) credit insurance limited producer license to a person who sells
2 limited lines credit insurance;

3 (7) miscellaneous limited producer license to a person who transacts
4 insurance in this state that restricts the person's authority to less than the total authority
5 for a line of authority described in AS 21.27.115(1) - (6), (8), and (9);

6 (8) portable electronics limited producer license to a vendor that
7 sells or offers portable electronics insurance as defined in AS 21.36.515; the
8 following provisions apply to a license issued under this paragraph:

9 (A) a vendor shall file with the director a sworn application
10 for a license under this paragraph on a form prescribed and furnished by
11 the director; the vendor shall provide the name, residence address,
12 location of the vendor's home office, and other information required by
13 the director for an employee or officer that is designated by the vendor as
14 the person responsible for the vendor's compliance with the requirements
15 of this chapter; however, if the vendor derives more than 50 percent of its
16 revenue from the sale of portable electronics insurance, the vendor shall
17 provide the information required under this subparagraph for all officers,
18 directors, and shareholders of record having beneficial ownership of 10
19 percent or more of any class of securities registered under the federal
20 securities law;

21 (B) a portable electronics limited producer license issued
22 under this paragraph must authorize the employees or authorized
23 representatives of a vendor to transact portable electronics insurance at
24 each location at which a vendor offers portable electronics to customers in
25 this state; and

26 (C) the employees or authorized representatives of the
27 vendor may transact portable electronics insurance and are not required
28 to obtain a limited producer license if

29 (i) the employees or authorized representatives are
30 not compensated based primarily on the number of customers
31 enrolled for coverage; however, an employee or authorized

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representative may receive compensation for activities under the license that is incidental to the employee's or authorized representative's overall compensation;

(ii) the insurer issuing the portable electronics insurance provides a training program for employees and authorized representatives of the portable electronics limited producer licensee that includes instruction about the portable electronics insurance offered to customers and the disclosures required under AS 21.36.515;

~~(iii) the vendor maintains a register listing the employees or authorized representatives of the vendor that includes the name, date of birth, location of employment, and home address for each employee or authorized representative authorized by the vendor to transact portable electronics insurance on the vendor's behalf and submits the register to the director within 30 days after the director requests the register; and~~

~~(iv) the vendor maintains a register of each location in the state where the vendor offers portable electronics insurance and submits the register to the director within 30 days after the director requests the register.~~

Amendment
N-2

* Sec. 5. AS 21.36 is amended by adding a new section to article 5 to read:

Sec. 21.36.515. Portable electronics insurance. (a) Portable electronics insurance may be offered, issued for delivery, issued, or renewed only if the insurer makes available to customers written material stating

(1) a summary of the material terms of the insurance, including

(A) the identity of the insurer;

(B) the identity of the vendor offering or selling the portable electronics insurance;

(C) the amount of the premium for coverage to be paid by the customer;

(D) the period for which coverage is effective;

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- (E) deductible amounts, and how the deductible is to be paid;
 - (F) the benefits of the coverage;
 - (G) the process for filing a claim;
 - (H) requirements for returning a device to the vendor or insurer, including related costs;
 - (I) proof-of-loss requirements;
- (2) whether the portable electronic device may be repaired or replaced by the insurer in response to a claim;
- (3) whether similar make and model reconditioned devices or nonoriginal manufacturer parts and equipment may be used by the insurer in response to a claim;
- (4) that the insurance offered may duplicate coverage in a homeowner's, renter's, or other similar insurance policy;
- (5) that the customer is not obligated to purchase insurance to purchase, lease, or service a portable electronic device; and
- (6) that the customer may cancel enrollment for coverage at any time and receive a refund or credit based on a proration of the premium amount paid by the customer for the period that coverage was effective.
- (b) The written materials required by this section are not subject to the requirements of AS 21.42.120.
- (c) Portable electronics insurance may be offered on a month-to-month or other periodic basis as a group or master policy issued to a vendor under which an individual customer may elect to enroll for coverage. The insurer offering coverage under a group or master policy shall establish eligibility and underwriting standards for customers electing to enroll in coverage for each portable electronics insurance program.
- (d) Portable electronics insurance may be offered as commercial inland marine insurance.
- (e) A premium for portable electronics insurance may be billed and collected by the vendor of portable electronics. A charge to the customer for coverage that is not included in the cost associated with the purchase or lease of portable electronics or

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1 related services must be itemized separately from the charges for the purchase, lease,
2 or service of a portable electronic device. If the coverage is included with the purchase
3 or lease of portable electronics or related services, the vendor shall clearly and
4 conspicuously disclose to the consumer that the coverage is included with the portable
5 electronics or related services. Vendors collecting premiums for portable electronics
6 insurance are not required to maintain premiums in a segregated account if the vendor
7 is authorized by the producer or insurer to hold premiums in an alternative manner and
8 pays the premiums to the insurer within 60 days after receipt. Premiums received by a
9 vendor from a customer purchasing portable electronics insurance shall be held in a
10 fiduciary capacity for the benefit of the insurer. A vendor may receive compensation
11 for billing and collection services.

12 (f) A portable electronics insurance policy may be changed or terminated as
13 follows:

14 (1) an insurer may cancel or change the terms and conditions of the
15 policy; the insurer shall provide the vendor and enrolled customers with at least 30
16 days' notice and shall provide the vendor with a revised policy or endorsement and
17 each enrolled customer with a revised certificate, endorsement, updated brochure, or
18 other evidence indicating that a change in the terms and conditions has occurred and a
19 summary of material changes;

20 (2) an insurer may, upon 15 days' notice, terminate an enrolled
21 customer's enrollment under a portable electronics insurance policy for fraud or
22 material misrepresentation in obtaining coverage or in the presentation of a claim
23 under the terms of the policy;

24 (3) an insurer may, without prior notice, immediately terminate an
25 enrolled customer's enrollment under a portable electronics insurance policy

26 (A) for nonpayment of premium;

27 (B) if the enrolled customer ceases to have an active service
28 contract with the vendor; or

29 (C) if an enrolled customer exhausts the aggregate limit of
30 liability, if any, under the terms of the portable electronics insurance policy
31 and the insurer sends notice of termination to the enrolled customer within 30

1 calendar days after exhaustion of the limit; however, if notice is not sent within
2 30 calendar days, enrollment shall continue, notwithstanding the exhaustion of
3 the aggregate limit of liability, until the insurer sends notice of termination to
4 the enrolled customer.

5 (4) if a portable electronics insurance policy is terminated by a vendor,
6 the vendor shall mail or deliver written notice to each enrolled customer advising the
7 enrolled customer of the termination of the policy and the effective date of
8 termination; the written notice shall be mailed or delivered to the enrolled customer at
9 least 30 days before the termination.

10 (5) if a policy of portable electronics insurance is terminated by an
11 insurer or a vendor, the insurer or vendor shall, within 60 days after termination, return
12 any unearned premium to the person who paid the premium.

13 (6) if notice or correspondence with respect to a policy of portable
14 electronics insurance is required under this section or is otherwise required by law, the
15 notice or correspondence must be in writing; notices and correspondence may be sent
16 either by mail or by electronic means as follows:

17 (A) if the notice or correspondence is mailed, it shall be sent to
18 the vendor of portable electronics at the vendor's mailing address specified for
19 that purpose and to the vendor's affected enrolled customers' last known
20 mailing addresses on file with the insurer; the insurer or vendor of portable
21 electronics shall maintain proof of mailing in a form authorized or accepted by
22 the United States Postal Service or other commercial mail delivery service;

23 (B) if the notice or correspondence is sent by electronic means,
24 it shall be sent to the vendor of portable electronics at the vendor's electronic
25 mail address specified for that purpose and to the vendor's affected enrolled
26 customers' last known electronic mail addresses as provided by each enrolled
27 customer to the insurer or vendor of portable electronics; for purposes of this
28 subparagraph, an enrolled customer's provision of an electronic mail address to
29 the insurer or vendor of portable electronics shall be considered consent to
30 receive notices and correspondence electronically; the insurer or vendor of
31 portable electronics shall maintain proof that the notice or correspondence was

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sent.

(7) notice or correspondence required by this section or otherwise required by law may be sent on behalf of an insurer or vendor by a producer appointed by the insurer.

(g) A portable electronics insurance policy must provide that, in the event of a covered loss under more than one policy, the portable electronics policy will provide primary coverage.

(h) In this section,

(1) "portable electronics insurance"

(A) means insurance offered, issued for delivery, delivered, or renewed by a vendor engaged in the business of selling, leasing, or servicing portable electronic devices to cover the loss, theft, mechanical failure, malfunction, damage, repair, or replacement of a small electronic device, including a cell phone, laptop computer, electronic tablet, GPS device, radio, portable music player, or associated accessory;

(B) does not include

(i) a service contract governed by AS 21.03.021(e);

(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 multiperil, or similar policy that covers loss or theft of portable electronics;

(2) "vendor" means a business entity in the business of selling or leasing portable electronics and related services and accessories.

* Sec. 6. This Act takes effect January 1, 2014.

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