

HOUSE CS FOR CS FOR SENATE BILL NO. 52(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 4/6/13

Referred: Rules

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, 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 [DAMAGED BY POWER SURGES]; or

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**

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

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

10 (iii) the vendor maintains a register of each location
 11 in the state where the vendor offers portable electronics insurance
 12 and submits the register to the director within 30 days after the
 13 director requests the register.

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

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

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

19 (A) the identity of the insurer;

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

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

24 (D) the period for which coverage is effective;

25 (E) deductible amounts, and how the deductible is to be paid;

26 (F) the benefits of the coverage;

27 (G) the process for filing a claim;

28 (H) requirements for returning a device to the vendor or
 29 insurer, including related costs;

30 (I) proof-of-loss requirements;

31 (2) whether the portable electronic device may be repaired or replaced

1 by the insurer in response to a claim;

2 (3) whether similar make and model reconditioned devices or
3 nonoriginal manufacturer parts and equipment may be used by the insurer in response
4 to a claim;

5 (4) that the insurance offered may duplicate coverage in a
6 homeowner's, renter's, or other similar insurance policy;

7 (5) that the customer is not obligated to purchase insurance to
8 purchase, lease, or service a portable electronic device; and

9 (6) that the customer may cancel enrollment for coverage at any time
10 and receive a refund or credit based on a proration of the premium amount paid by the
11 customer for the period that coverage was effective.

12 (b) The written materials required by this section are not subject to the
13 requirements of AS 21.42.120.

14 (c) Portable electronics insurance may be offered on a month-to-month or
15 other periodic basis as a group or master policy issued to a vendor under which an
16 individual customer may elect to enroll for coverage. The insurer offering coverage
17 under a group or master policy shall establish eligibility and underwriting standards
18 for customers electing to enroll in coverage for each portable electronics insurance
19 program.

20 (d) Portable electronics insurance may be offered as commercial inland marine
21 insurance.

22 (e) A premium for portable electronics insurance may be billed and collected
23 by the vendor of portable electronics. A charge to the customer for coverage that is not
24 included in the cost associated with the purchase or lease of portable electronics or
25 related services must be itemized separately from the charges for the purchase, lease,
26 or service of a portable electronic device. If the coverage is included with the purchase
27 or lease of portable electronics or related services, the vendor shall clearly and
28 conspicuously disclose to the consumer that the coverage is included with the portable
29 electronics or related services. Vendors collecting premiums for portable electronics
30 insurance are not required to maintain premiums in a segregated account if the vendor
31 is authorized by the producer or insurer to hold premiums in an alternative manner and

1 pays the premiums to the insurer within 60 days after receipt. Premiums received by a
2 vendor from a customer purchasing portable electronics insurance shall be held in a
3 fiduciary capacity for the benefit of the insurer. A vendor may receive compensation
4 for billing and collection services.

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

7 (1) an insurer may cancel or change the terms and conditions of the
8 policy; the insurer shall provide the vendor and enrolled customers with at least 30
9 days' notice and shall provide the vendor with a revised policy or endorsement and
10 each enrolled customer with a revised certificate, endorsement, updated brochure, or
11 other evidence indicating that a change in the terms and conditions has occurred and a
12 summary of material changes;

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

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

19 (A) for nonpayment of premium;

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

22 (C) if an enrolled customer exhausts the aggregate limit of
23 liability, if any, under the terms of the portable electronics insurance policy
24 and the insurer sends notice of termination to the enrolled customer within 30
25 calendar days after exhaustion of the limit; however, if notice is not sent within
26 30 calendar days, enrollment shall continue, notwithstanding the exhaustion of
27 the aggregate limit of liability, until the insurer sends notice of termination to
28 the enrolled customer;

29 (4) if a portable electronics insurance policy is terminated by a vendor,
30 the vendor shall mail or deliver written notice to each enrolled customer advising the
31 enrolled customer of the termination of the policy and the effective date of

1 termination; the written notice shall be mailed or delivered to the enrolled customer at
2 least 30 days before the termination;

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

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

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

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

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

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

1 (h) In this section,

2 (1) "portable electronics insurance"

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

9 (B) does not include

10 (i) a service contract described in AS 21.03.021(e);

11 (ii) a policy of insurance covering a seller's or a
12 manufacturer's obligations under a warranty; or

13 (iii) a homeowner's, renter's, private passenger
14 automobile, commercial multiperil, or similar policy that covers loss or
15 theft of portable electronics;

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

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