

HOUSE No. 955

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 passage of the accompanying bill:

An Act regulating portable electronics insurance.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

Aaron Michlewitz

3rd Suffolk

Anthony W. Petruccelli

First Suffolk and Middlesex

HOUSE No. 955

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.

[SIMILAR MATTER FILED IN PREVIOUS SESSION

SEE

□ □ HOUSE
□ , NO. 4351 OF 2011-2012.]

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

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 1 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 3 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 6 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 8 location directed to residents of the commonwealth. 9

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

13 “Portable electronics insurance”, insurance providing coverage for the repair or
14 replacement of 12 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:
46 43

47 (1) disclose that portable electronics insurance may provide a duplication of coverage
48 already 44 provided by a customer's homeowner's insurance policy, renter's insurance policy or
49 other 45 source of coverage; 46

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

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

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

61 (5) state that an enrolled customer may cancel enrollment for coverage under a portable
62 57 electronics insurance policy at any time and the person paying the premium shall receive a 58
63 refund or credit of any applicable unearned premium. 59

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

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

69 (i) The employees and authorized representatives of vendors may sell or offer portable 65
70 electronics insurance to customers and shall not be subject to licensure as an insurance producer
71 66 under this chapter provided that: 67

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

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

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81 selling or offering portable electronics insurance; (ii) the training may be provided in
82 electronic 75 form; provided, however, if conducted in an electronic form the supervising entity
83 shall 76 implement a supplemental education program regarding the portable electronics
84 insurance 77 product that is conducted and overseen by licensed employees of the supervising
85 entity; and (iii) 78 each employee and authorized representative shall receive basic instruction
86 about the portable 79 electronics insurance offered to customers and the disclosures required
87 under subsection (f); and 80

88 (3) no employee or authorized representative of a vendor of portable electronics shall
89 advertise, 81 represent or otherwise hold himself out as a non limited lines licensed insurance
90 producer. 82

91 (j) Section 177 of chapter 175 shall apply to all persons not authorized to sell or offer
92 portable 83 electronics insurance pursuant to a license issued to a vendor under this section. 84

93 (k) The charges for portable electronics insurance coverage may be billed and collected
94 by the 85 vendor of portable electronics. Any charge to the enrolled customer for coverage that is
95 not 86 included in the cost associated with the purchase or lease of portable electronics or related
96 87 services shall be separately itemized on the enrolled customer's bill. If the portable
97 electronics 88 insurance coverage is included with the purchase or lease of portable electronics
98 or related 89 services the vendor shall clearly and conspicuously disclose to the enrolled
99 customer that the 90 portable electronics insurance coverage is included with the portable
100 electronics or related 91 services. Vendors billing and collecting such charges shall not be
101 required to maintain such 92 funds in a segregated account provided that the vendor is authorized
102 by the insurer to hold such 93 funds in an alternative manner and remits such amounts to the
103 supervising entity within 60 days 94 of receipt. All funds received by a vendor from an enrolled
104 customer for the sale of portable 95 electronics insurance shall be considered funds held in trust
105 by the vendor in a fiduciary capacity 96

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107 for the benefit of the insurer. Vendors may receive compensation for billing and
108 collection 97 services. 98

109 (l) If a vendor of portable electronics or its employee or authorized representative violates
110 any 99 provision of this section, the commissioner may, after notice and hearing: 100

111 (1) impose fines not to exceed \$500 per violation or \$5,000 in the aggregate for such
112 conduct; 101 and 102

113 (2) impose other penalties that the commissioner deems necessary and reasonable to carry
114 out the 103 purpose of this section, including: (i) suspending the privilege of transacting portable
115 electronics 104 insurance pursuant to this section at specific business locations where violations

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

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

119 (1) An insurer may terminate or otherwise change the terms and conditions of a policy of
120 109 portable electronics insurance only upon providing the policyholder and enrolled customers
121 with 110 at least 30 days notice. 111

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

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

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

132 (n) Notwithstanding paragraph (1) of subsection (m), an insurer may immediately
133 terminate an 120 enrolled customer's enrollment under a portable electronics insurance policy:
134 121

135 (1) for nonpayment of premium; 122

136 (2) if the enrolled customer ceases to have an active service with the vendor of portable
137 123 electronics; or 124

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

144 (o) Where a portable electronics insurance policy is terminated by a policyholder, the 130
145 policyholder shall mail or deliver written notice to each enrolled customer advising the enrolled
146 131 customer of the termination of the policy and the effective date of termination. The written
147 notice 132 shall be mailed or delivered to the enrolled customer at least 30 days prior to the
148 termination. 133

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

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

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

173 (r) A sworn application for a license under this section shall be made to and filed with the
174 155 commissioner on forms prescribed and furnished by the commissioner. 156

175 (s) The application shall: 157

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

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181 vendor derives more than 50 per cent of its revenue from the sale of portable electronics
182 161 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.