

1 SENATE BILL 206

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 Phil A. Griego

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10 AN ACT

11 RELATING TO INSURANCE; ENACTING THE PORTABLE ELECTRONICS
12 INSURANCE ACT WITHIN THE NEW MEXICO INSURANCE CODE TO REGULATE
13 PORTABLE ELECTRONICS INSURANCE; AMENDING SECTIONS OF THE NEW
14 MEXICO INSURANCE CODE TO CREATE AN ADJUSTER LICENSURE EXEMPTION
15 FOR PORTABLE ELECTRONICS INSURANCE.

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. A new section of the New Mexico Insurance Code
19 is enacted to read:

20 "[NEW MATERIAL] SHORT TITLE.--Sections 1 through 7 of this
21 act may be cited as the "Portable Electronics Insurance Act".

22 SECTION 2. A new section of the New Mexico Insurance Code
23 is enacted to read:

24 "[NEW MATERIAL] DEFINITIONS.--As used in the Portable
25 Electronics Insurance Act:

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1 A. "customer" means a person who purchases portable
2 electronics or services;

3 B. "enrolled customer" means a customer who elects
4 coverage under a portable electronics insurance policy issued
5 to a vendor of portable electronics;

6 C. "location" means any physical location in the
7 state of New Mexico or any web site, call center site or
8 similar location directed to residents of the state of New
9 Mexico;

10 D. "portable electronics" means electronic devices
11 that are portable in nature and their accessories;

12 E. "portable electronics insurance" means insurance
13 providing coverage for the repair or replacement of portable
14 electronics that may provide coverage for portable electronics
15 against any one or more of the following causes of loss: loss,
16 theft, inoperability due to mechanical failure, malfunction,
17 damage or other similar causes of loss. "Portable electronics
18 insurance" also includes any agreement whereby a person or any
19 legal entity, in exchange for consideration paid, agrees to
20 provide for the future repair, replacement or provision of
21 portable electronics. "Portable electronics insurance" does
22 not include:

23 (1) a service contract governed by the Service
24 Contract Regulation Act;

25 (2) a policy of insurance covering a seller's

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1 or a manufacturer's obligations under a warranty; or

2 (3) a homeowner's, renter's, private passenger
3 automobile, commercial multiperil or similar policy;

4 F. "portable electronics transaction" means:

5 (1) the sale or lease of portable electronics
6 by a vendor to a customer; or

7 (2) the sale of a service related to the use
8 of portable electronics by a vendor to a customer;

9 G. "superintendent" means the superintendent of
10 insurance;

11 H. "supervising entity" means a business entity
12 that is a licensed insurer or insurance producer that is
13 appointed by an insurer to supervise the administration of a
14 portable electronics insurance program; and

15 I. "vendor" means a person in the business of
16 engaging in portable electronics transactions directly or
17 indirectly."

18 SECTION 3. A new section of the New Mexico Insurance Code
19 is enacted to read:

20 "[NEW MATERIAL] LICENSURE OF VENDORS.--

21 A. A vendor is required to hold a limited agent's
22 license pursuant to Section 59A-12-18 NMSA 1978 to sell or
23 offer coverage under a policy of portable electronics
24 insurance.

25 B. A limited agent's license issued to a vendor

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1 shall authorize any employee or authorized representative of
2 the vendor to sell or offer coverage under a policy of portable
3 electronics insurance to a customer at each location at which
4 the vendor engages in portable electronics transactions.

5 C. The supervising entity shall maintain a registry
6 of vendor locations that are authorized to sell or solicit
7 portable electronics insurance coverage in this state. Upon
8 request by the superintendent and with ten days' notice to the
9 supervising entity, the registry shall be open to inspection
10 and examination by the superintendent during regular business
11 hours of the supervising entity.

12 D. Notwithstanding any other provision of law, a
13 limited agent's license issued to a vendor shall authorize the
14 licensee and its employees or authorized representatives to
15 engage in those activities that are permitted by the Portable
16 Electronics Insurance Act."

17 SECTION 4. A new section of the New Mexico Insurance Code
18 is enacted to read:

19 "[NEW MATERIAL] REQUIREMENTS FOR SALE OF PORTABLE
20 ELECTRONICS INSURANCE.--

21 A. At every location where portable electronics
22 insurance is offered to customers, brochures or other written
23 materials shall be made available to a prospective customer
24 that:

25 (1) disclose that portable electronics

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1 insurance may provide a duplication of coverage already
2 provided by a customer's homeowner's insurance policy, renter's
3 insurance policy or other source of coverage;

4 (2) state that the enrollment by the customer
5 in a portable electronics insurance program is not required in
6 order to purchase or lease portable electronics or services;

7 (3) summarize the material terms of the
8 insurance coverage, including:

9 (a) the identity of the insurer;

10 (b) the identity of the supervising
11 entity;

12 (c) the amount of any applicable
13 deductible and how it is to be paid;

14 (d) benefits of the coverage; and

15 (e) key terms and conditions of
16 coverage, including whether portable electronics may be
17 repaired or replaced with similar make and model reconditioned
18 or nonoriginal manufacturer parts or equipment;

19 (4) summarize the process for filing a claim,
20 including a description of how to return portable electronics,
21 and the maximum fee applicable in the event the customer fails
22 to comply with any equipment return requirements; and

23 (5) state that an enrolled customer may cancel
24 enrollment for coverage under a portable electronics insurance
25 policy at any time and the person paying the premium shall

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1 receive a refund of any applicable unearned premium.

2 B. The written materials required by this section
3 shall not be subject to filing or approval requirements with
4 the superintendent.

5 C. Portable electronics insurance may be offered on
6 a month-to-month or other periodic basis as a group or master
7 commercial inland marine policy issued to a vendor for its
8 enrolled customers.

9 D. Eligibility and underwriting standards for
10 customers electing to enroll in coverage shall be established
11 for each portable electronics insurance program."

12 SECTION 5. A new section of the New Mexico Insurance Code
13 is enacted to read:

14 "[NEW MATERIAL] AUTHORITY OF VENDORS OF PORTABLE
15 ELECTRONICS.--

16 A. The employees and authorized representatives of
17 vendors may sell or offer portable electronics insurance to
18 customers and shall not be subject to licensure as insurance
19 agents under any other provision of the Insurance Code,
20 provided that:

21 (1) the vendor obtains a limited agent's
22 license to authorize its employees or authorized
23 representatives to sell or offer portable electronics insurance
24 and complies with the provisions of the Portable Electronics
25 Insurance Act;

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1 (2) the insurer issuing the portable
2 electronics insurance either directly supervises or appoints a
3 supervising entity to supervise the administration of the
4 program, including development of a training program for
5 employees and authorized representatives of the vendors. The
6 training:

7 (a) shall be delivered to employees and
8 authorized representatives of vendors who are directly engaged
9 in the activity of selling or offering portable electronics
10 insurance;

11 (b) may be provided in electronic form,
12 provided that the supervising entity implements a supplemental
13 education program regarding the portable electronics insurance
14 product that is conducted and overseen by licensed employees of
15 the supervising entity; and

16 (c) shall provide to each employee and
17 authorized representative of a vendor basic instruction about
18 the portable electronics insurance offered to customers and the
19 disclosures required by the Portable Electronics Insurance Act;
20 and

21 (3) employees or authorized representatives of
22 a vendor of portable electronics shall not advertise, represent
23 or otherwise hold themselves out as nonlimited lines licensed
24 insurance producers.

25 B. Notwithstanding any other provision of law,

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1 employees or authorized representatives of a vendor shall not
2 be compensated based primarily on the number of customers
3 enrolled for portable electronics insurance coverage but may
4 receive compensation for activities under the limited agent's
5 license that is incidental to their overall compensation.

6 C. The charges for portable electronics insurance
7 coverage may be billed and collected by the vendor. Any charge
8 to an enrolled customer for coverage that is not included in
9 the cost associated with the purchase or lease of portable
10 electronics or related services shall be separately itemized on
11 the enrolled customer's bill. If the portable electronics
12 insurance coverage is included with the purchase or lease of
13 portable electronics or related services, the vendor shall
14 clearly and conspicuously disclose to the enrolled customer
15 that the portable electronics insurance coverage is included
16 with the portable electronics or related services. Vendors
17 billing and collecting such charges shall not be required to
18 maintain such funds in a segregated account; provided that the
19 vendor is authorized by the insurer to hold such funds in an
20 alternative manner and remits such amounts to the supervising
21 entity within sixty days of receipt. All funds received by a
22 vendor from an enrolled customer for the sale of portable
23 electronics insurance shall be considered funds held in trust
24 by the vendor in a fiduciary capacity for the benefit of the
25 insurer. Vendors may receive compensation for billing and

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1 collection services."

2 SECTION 6. A new section of the New Mexico Insurance Code
3 is enacted to read:

4 "[NEW MATERIAL] PENALTIES--SUSPENSION OR REVOCATION OF
5 LICENSE.--A person who violates any provision of the Portable
6 Electronics Insurance Act may, after notice and hearing, be
7 subject to:

8 A. fines not to exceed five hundred dollars (\$500)
9 per violation, not to exceed a total of five thousand dollars
10 (\$5,000); or

11 B. as the superintendent deems necessary:

12 (1) suspension of the privilege of transacting
13 portable electronics insurance at specific locations where
14 violations have occurred; or

15 (2) suspension or revocation of the ability of
16 individual employees or authorized representatives of a vendor
17 to act under the license."

18 SECTION 7. A new section of the New Mexico Insurance Code
19 is enacted to read:

20 "[NEW MATERIAL] TERMINATION OF PORTABLE ELECTRONICS
21 INSURANCE.--Notwithstanding any other provision of law:

22 A. an insurer may terminate or otherwise change the
23 terms and conditions of a policy of portable electronics
24 insurance only upon providing the policyholder and enrolled
25 customers with at least thirty days' notice;

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1 B. if the insurer changes the terms and conditions
2 of a policy, the insurer shall provide the vendor with a
3 revised policy or endorsement and each enrolled customer with a
4 revised certificate, endorsement, updated brochure or other
5 evidence indicating that a change in the terms and conditions
6 has occurred and shall provide a summary of material changes;

7 C. notwithstanding the provisions of Subsection A
8 of this section, an insurer may terminate an enrolled
9 customer's enrollment under a portable electronics insurance
10 policy upon fifteen days' notice for discovery of fraud or
11 material misrepresentation in obtaining coverage or in the
12 presentation of a claim thereunder;

13 D. notwithstanding the provisions of Subsection A
14 of this section, an insurer may immediately terminate an
15 enrolled customer's enrollment under a portable electronics
16 insurance policy without prior notice:

17 (1) for nonpayment of premium;
18 (2) if the enrolled customer ceases to have an
19 active service with the vendor; or

20 (3) if an enrolled customer exhausts the
21 aggregate limit of liability, if any, under the terms of the
22 portable electronics insurance policy and the insurer sends
23 notice of termination to the enrolled customer within thirty
24 calendar days after exhaustion of the limit. However, if
25 notice is not timely sent, enrollment shall continue

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1 notwithstanding the aggregate limit of liability until the
2 insurer sends notice of termination to the enrolled customer;

3 E. if a portable electronics insurance policy is
4 terminated by a policyholder, the policyholder shall mail or
5 deliver written notice to each enrolled customer advising the
6 enrolled customer of the termination of the policy and the
7 effective date of termination. The written notice shall be
8 mailed or delivered to the enrolled customer at least thirty
9 days prior to the termination;

10 F. if notice or correspondence with respect to a
11 policy of portable electronics insurance is required pursuant
12 to this section or is otherwise required by law, it shall be in
13 writing and sent within the notice period, if any, specified
14 within the statute or regulation requiring the notice or
15 correspondence. Notwithstanding any other provision of law,
16 notices and correspondence may be sent either by mail or by
17 electronic means as set forth in this subsection. If the
18 notice or correspondence is mailed, it shall be sent to the
19 vendor at the vendor's mailing address specified for such
20 purpose and to its affected enrolled customers' last known
21 mailing addresses on file with the insurer. The insurer or
22 vendor shall maintain proof of mailing in a form authorized or
23 accepted by the United States postal service or other
24 commercial mail delivery service. If the notice or
25 correspondence is sent by electronic means, it shall be sent to

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1 the vendor at the vendor's electronic mail address specified
2 for such purpose and to its affected enrolled customers' last
3 known electronic mail addresses as provided by each enrolled
4 customer to the insurer or vendor. For purposes of this
5 subsection, an enrolled customer's provision of an electronic
6 mail address to the insurer or vendor shall be deemed consent
7 to receive notices and correspondence by electronic means. The
8 insurer or vendor shall maintain proof that the notice or
9 correspondence was sent; and

10 G. notice or correspondence required by this
11 section or otherwise required by law may be sent on behalf of
12 an insurer or vendor by the supervising entity."

13 SECTION 8. Section 59A-12-18 NMSA 1978 (being Laws 1984,
14 Chapter 127, Section 219, as amended) is amended to read:

15 "59A-12-18. LIMITED LICENSE.--

16 A. The superintendent may issue a limited agent's
17 license to:

18 (1) individual applicants qualified pursuant
19 to Chapter 59A, Article 12 NMSA 1978 and employed as
20 transportation ticket sellers by public carriers, who in the
21 course of such employment solicit or sell insurance incidental
22 to transportation of persons or storage or transportation of
23 baggage, provided that the license is limited to that
24 insurance; or

25 (2) individual applicants employed full time

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1 by a vendor of merchandise or other property or by a financial
2 institution making consumer loans, on terms with respect to
3 which credit life insurance or health insurance under
4 individual policies is customarily required of or offered to
5 the purchaser or borrower, covering only that credit life and
6 health insurance.

7 ~~[B. The superintendent may issue a limited agent's~~
8 ~~license to applicants who are retail vendors or lessors of~~
9 ~~portable electronics or services. The license shall authorize~~
10 ~~any employee or authorized representative of the vendor, in~~
11 ~~connection with the lease, retail sale or provision of~~
12 ~~portable electronics or services for portable electronics, to~~
13 ~~sell insurance covering the loss, theft, mechanical failure or~~
14 ~~malfunction of or damage to the portable electronics. A~~
15 ~~license issued pursuant to this section shall authorize the~~
16 ~~licensee and its employees or authorized representatives to~~
17 ~~engage only in those activities that are expressly permitted~~
18 ~~in this section. The licensee shall be required to keep a~~
19 ~~record of the name, address, contact information and any other~~
20 ~~information of the locations operating pursuant to this~~
21 ~~section as required by the superintendent. These records~~
22 ~~shall be made available by the vendor upon the request of the~~
23 ~~superintendent. The licensee shall provide training to all~~
24 ~~employees and authorized representatives of the vendors who~~
25 ~~sell that insurance. The conduct of the licensee's business~~

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1 ~~under the limited license by its employees or authorized~~
2 ~~representatives shall be attributed to the licensee. As used~~
3 ~~in this subsection, "portable electronics" means electronic~~
4 ~~devices that are portable in nature and their accessories and~~
5 ~~services related to the use of the device.]~~

6 B. The superintendent may issue a limited agent's
7 license to vendors in accordance with provisions of the
8 Portable Electronics Insurance Act. The application shall
9 provide:

10 (1) the name, residence address and other
11 information required by the superintendent for an employee or
12 officer of the vendor that is designated by the applicant as
13 the person responsible for the vendor's compliance with the
14 requirements of the Portable Electronics Insurance Act.

15 However, if the vendor derives more than fifty percent of its
16 revenue from the sale of portable electronics insurance, the
17 information noted above shall be provided for all officers,
18 directors and shareholders of record having beneficial
19 ownership of ten percent or more of any class of securities
20 registered under the federal securities law; and

21 (2) the location of the applicant's home
22 office.

23 C. No holder of a limited license issued pursuant
24 to Subsection A of this section shall concurrently be
25 otherwise licensed under the Insurance Code."

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1 SECTION 9. Section 59A-13-2 NMSA 1978 (being Laws 1984,
2 Chapter 127, Section 230, as amended) is amended to read:

3 "59A-13-2. DEFINITIONS.--

4 A. For the purposes of the Insurance Code:

5 (1) "adjuster" [~~is~~] means a person that:

6 (a) investigates, negotiates, settles
7 or adjusts a loss or claim arising under an insurance
8 contract on behalf of an insurer, insured or self-insurer,
9 for a fee, commission or other compensation; however, an
10 adjuster acting on behalf of an insured shall not
11 investigate, negotiate, settle or adjust a claim involving
12 personal injury to the insured; and

13 (b) advises the insured of the
14 insured's rights to settlement and the insured's rights to
15 settle, arbitrate and litigate the dispute;

16 (2) "automated claims adjudication system"
17 means a preprogrammed computer system designed for the
18 collection, data entry, calculation and final resolution of
19 portable electronics insurance claims that shall:

20 (a) only be utilized by a licensed
21 independent adjuster, licensed agent or supervised
22 individuals operating pursuant to Subsection C of Section
23 59A-13-3 NMSA 1978;

24 (b) comply with all claims payment
25 requirements of the Insurance Code; and

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1 insurer;

2 (3) an agent or employee of a life or health
3 insurer who adjusts claims or losses under the insurer's
4 policies or contracts to administer policies or benefits of
5 that type; [~~or~~]

6 (4) a salaried or part-time claims agent or
7 investigator employed by a self-insured person; or

8 (5) an individual who, for purposes of
9 portable electronics insurance claims, collects claim
10 information from, or furnishes claim information to, insureds
11 or claimants, and who conducts data entry, including entering
12 data into an automated claims adjudication system, provided
13 that the individual is an employee of a licensed independent
14 adjuster or its affiliate where no more than twenty-five such
15 persons are under the supervision of one licensed independent
16 adjuster or licensed agent who is exempt from licensure
17 pursuant to Paragraph (2) of this subsection."

18 SECTION 10. Section 59A-13-3 NMSA 1978 (being Laws
19 1984, Chapter 127, Section 231, as amended) is amended to
20 read:

21 "59A-13-3. LICENSE REQUIRED.--

22 A. No person shall, in this state, act as, or
23 [~~hold himself out to be~~] make any representation as being, an
24 adjuster unless licensed as such by the superintendent under
25 the Insurance Code.

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1 B. No person, regardless of location, shall act
2 as, or ~~[hold himself out to be]~~ make any representation as
3 being, an adjuster with respect to workers' compensation
4 claims of claimants resident or located in New Mexico unless
5 licensed as such by the superintendent under the Insurance
6 Code.

7 C. Notwithstanding any other provision of law, a
8 resident of Canada may be licensed as a nonresident
9 independent adjuster for the purposes of portable electronics
10 insurance if that applicant has designated another state as
11 the applicant's resident state and has complied with the
12 other provisions of the Insurance Code typically applied to
13 resident-state applicants."

14 SECTION 11. Section 59A-13-4 NMSA 1978 (being Laws
15 1984, Chapter 127, Section 232) is amended to read:

16 "59A-13-4. QUALIFICATIONS FOR LICENSE AS ADJUSTER.--

17 A. The superintendent shall license as an
18 adjuster only an individual who is otherwise in compliance
19 with ~~[this article and Article 11 (licensing procedures) of~~
20 ~~the Insurance Code]~~ Chapter 59A, Articles 11 and 13 NMSA 1978
21 and who has furnished evidence satisfactory to the
22 superintendent that the applicant for license:

23 (1) is not less than eighteen [~~18~~] years
24 of age;

25 (2) is a bona fide resident of this state,

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1 or of a state or country that permits residents of this state
2 to act as adjusters therein, except that under circumstances
3 of necessity the superintendent may waive the requirement of
4 reciprocity;

5 (3) can demonstrate a good business
6 reputation, and intends to engage in a bona fide manner in
7 the business of adjusting insurance claims;

8 (4) except as to temporary license provided
9 for under Section [~~234 of this article~~] 59A-13-6 NMSA 1978,
10 has had at least one year's experience or special education
11 or training in handling of losses or claims under insurance
12 contracts, such experience, education and training to be of
13 such nature and extent as to demonstrate the applicant's
14 competence to fulfill the responsibilities of an adjuster;
15 and

16 (5) has filed the bond required under
17 Section [~~233 of this article~~] 59A-13-5 NMSA 1978.

18 B. Paragraphs (2) and (5) [~~above~~] of Subsection A
19 of this section shall not apply as to staff adjusters.

20 C. Individuals holding licenses as adjusters on
21 the effective date of the Insurance Code shall be deemed to
22 meet the qualifications for the license except as provided in
23 [~~Article 11 (licensing procedures) of the Insurance Code and~~
24 ~~in this article hereinafter provided~~] Chapter 59A, Articles
25 11 and 13 NMSA 1978.

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1 D. A business entity applying for an independent
2 adjuster license for the purposes of portable electronics
3 insurance in New Mexico shall submit the names, addresses,
4 social security numbers, criminal and administrative
5 histories, background checks, biographical statements and
6 fingerprints of all executive officers and directors of the
7 applicant and of all executive officers and directors of
8 entities owning and any individuals owning, directly or
9 indirectly, fifty-one percent or more of the outstanding
10 voting securities of the applicant. Any nonresident business
11 entity applicant whose resident state has enacted into law
12 provisions that are substantively duplicative of the
13 provisions of this subsection shall not be required to submit
14 criminal histories, background checks, biographical
15 statements and fingerprints for its executive officers,
16 directors and owners of outstanding voting securities."

17 **SECTION 12. EFFECTIVE DATE.**--The effective date of the
18 provisions of this act is July 1, 2013.