

1 State of Arkansas  
2 88th General Assembly  
3 Regular Session, 2011  
4

As Engrossed: S3/23/11

# A Bill

SENATE BILL 938

5 By: Senator Teague  
6

## For An Act To Be Entitled

8 *AN ACT TO EXPAND THE AVAILABILITY OF INSURANCE ON*  
9 *PORTABLE ELECTRONICS; AND FOR OTHER PURPOSES.*

### Subtitle

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11  
12 *TO ESTABLISH A REGULATORY SCHEDULE FOR*  
13 *THE SALE OF INSURANCE ON PORTABLE*  
14 *ELECTRONICS.*  
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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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20 SECTION 1. Arkansas Code Title 23, Chapter 88 is amended to add an  
21 additional subchapter to read as follows:

22 Subchapter 5 - Portable Electronics Insurance

23 23-88-501. Definitions.

24 As used in this subchapter:

25 (1) "Customer" means a person who purchases portable electronics  
26 or services;

27 (2) "Enrolled customer" means a customer who elects to have  
28 coverage under a portable electronics insurance policy issued by a vendor;

29 (3) "Location" means, as directed to residents of the state of  
30 Arkansas:

31 (A) A physical location in this state;

32 (B) A website; or

33 (C) A call center site or similar location;

34 (4) "Portable electronics" means electronic devices that are  
35 portable in nature, including the accessories and services related to the use  
36 of the electronic device;



1           (5)(A) “Portable electronics insurance” means insurance for the  
2 repair or replacement of portable electronics that includes the following  
3 causes of loss:

4                   (i) Loss;

5                   (ii) Theft; and

6                   (iii) Inoperability due to mechanical failure,  
7 malfunction, damage, or other similar causes of loss.

8           (B) “Portable electronics insurance” does not include a  
9 service contract governed by the Service Contracts Act, § 4-114-101 et seq.;

10          (6) “Portable electronics transaction” means:

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

13                   (B) The sale of a service related to the use of portable  
14 electronics to a customer by a vendor;

15          (7) “Supervising entity” means a business entity that is an  
16 insurer or insurance producer licensed under the insurance laws of this  
17 state; and

18          (8) “Vendor” means a person that engages in the business of  
19 portable electronics transactions.

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21          23-88-502. Licensure of vendors.

22                   (a) A vendor is required to hold a limited lines license to sell or  
23 offer coverage under a portable electronics insurance policy.

24                   (b) A limited lines license issued under this subchapter shall  
25 authorize an employee or authorized representative of the licensee to sell or  
26 offer coverage under a policy of portable electronics insurance to a customer  
27 at locations the vendor engages in the business of portable electronics  
28 transactions.

29                   (c) Upon application for a limited lines license, the vendor shall  
30 provide a list to the Insurance Commissioner of the locations in this state  
31 where it offers coverage for portable electronics and at each calendar  
32 quarter thereafter.

33                   (d) A license issued under this subchapter authorizes the licensee and  
34 its employees or authorized representatives to engage in the activities  
35 authorized by this subchapter.

36

1 23-88-503. Requirements for sale of portable electronics insurance.

2 (a) At a location where portable electronics insurance coverage is  
3 offered to customers, a prospective customer shall receive written disclosure  
4 that states:

5 (1) Portable electronics insurance may provide duplication of  
6 coverage provided by a customer's homeowner's insurance policy, renter's  
7 insurance policy, or other source of coverage;

8 (2) The enrollment by the customer for portable electronics  
9 insurance coverage is not required in order to purchase or lease portable  
10 electronics devices or services;

11 (3) The material terms of the insurance coverage, to include:

12 (A) The identity of the insurer;

13 (B) The identity of the supervising entity;

14 (C) The amount of an applicable deductible;

15 (D) An explanation of the individual that is responsible  
16 for the applicable deductible;

17 (E) Benefits of the coverage; and

18 (F) Key terms and conditions of coverage, including  
19 without limitation whether or not portable electronics may be repaired or  
20 replaced with similar make and model reconditioned or nonoriginal  
21 manufacturer parts or equipment;

22 (4) The process for filing a claim, including:

23 (A) A description of how to return portable electronics;  
24 and

25 (B) The maximum fee if the customer fails to comply with  
26 requirements for returning the portable electronics; and

27 (5)(A) An enrolled customer may cancel a portable electronics  
28 insurance policy at any time.

29 (B) The person paying the premium shall receive a refund  
30 of the unearned premium.

31 (b) A vendor that has been issued a group or master commercial inland  
32 marine policy may offer portable electronics insurance on a month-to-month or  
33 other periodic basis for its enrolled customers.

34 (c) Eligibility and underwriting standards for customers to enroll in  
35 coverage are to be established by the supervising entity for a portable  
36 electronics insurance policy before offering the portable electronics

1 insurance to a customer.

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3 23-88-504. Authority of vendors to sell or offer portable electronics  
4 insurance.

5 (a)(1) Employees and authorized representatives of vendors may sell or  
6 offer portable electronics insurance to customers without a license as an  
7 insurance producer if:

8 (A) The vendor obtains a limited lines license; and

9 (B)(i) The insurer issuing the portable electronics  
10 insurance supervises or appoints a supervising entity to supervise the  
11 insurance coverage policies, including development of a training program for  
12 vendors.

13 (ii) The training program for vendors shall:

14 (a) Be delivered to employees and authorized  
15 representatives of a vendor who are directly engaged in the activity of  
16 selling or offering portable electronics insurance; and

17 (b) Provide basic instruction about the  
18 portable electronics insurance offered to customers and the written  
19 disclosures required under § 23-88-503.

20 (iii)(a) The training program for vendors may be  
21 provided in an electronic format.

22 (b) If the training program for vendors is  
23 provided in an electronic format, the supervising entity shall implement a  
24 supplemental education program regarding the portable electronics insurance  
25 coverage that is supervised by licensed employees of the supervising entity.

26 (2) An employee or authorized representative of a vendor shall  
27 not:

28 (A) Advertise, represent, or otherwise hold himself or  
29 herself out as a licensed nonlimited lines insurance producer; or

30 (B)(i) Be compensated based primarily on the number of  
31 customers enrolled for portable electronics insurance coverage.

32 (ii) An employee or authorized representative of a  
33 vendor may receive compensation for activities under a limited lines license  
34 that is incidental to his or her overall compensation.

35 (b)(1)(A) Charges for portable electronics insurance may be billed and  
36 collected by the vendor.

1                   (B) A charge that is not included in the cost associated  
2 with the purchase or lease of portable electronics or related services shall  
3 be itemized separately on the enrolled customer's bill.

4                   (C) If portable electronics insurance is included with the  
5 purchase or lease of portable electronics or related services, the vendor  
6 shall clearly and conspicuously disclose to the enrolled customer that the  
7 portable electronics insurance is included.

8                   (2)(A) Vendors billing and collecting charges for portable  
9 electronics insurance shall not be required to maintain the funds in a  
10 segregated account if the vendor:

11                   (i) Is authorized by the insurer to hold the funds  
12 in an alternative manner; and

13                   (ii) Remits the amount to the supervising entity  
14 within sixty (60) days of receipt by the vendor.

15                   (B) The funds received by a vendor from an enrolled  
16 customer for the sale of portable electronics insurance shall be considered  
17 funds held in trust by the vendor acting in a fiduciary capacity for the  
18 benefit of the insurer.

19                   (C) Vendors may receive compensation from the insurer for  
20 billing and collection services authorized under this section.

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22                   23-88-505. Suspension or revocation of license.

23                   If a vendor, its employee, or its authorized representative violates a  
24 provision of this subchapter, the Insurance Commissioner may after notice and  
25 a hearing impose on the vendor:

26                   (1) Fines not to exceed five hundred dollars (\$500) per  
27 violation or five thousand dollars (\$5,000) in the aggregate; and

28                   (2) Other penalties that the commissioner deems necessary and  
29 reasonable to carry out the purpose of this subchapter, including without  
30 limitation:

31                   (A) Suspending the privilege of transacting portable  
32 electronics insurance at specific business locations where violations have  
33 occurred; and

34                   (B) Suspending or revoking the ability of individual  
35 employees or authorized representatives of the vendor to act under a license  
36 issued under this subchapter.

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2 23-88-506. Termination of portable electronics insurance.

3 (a) Notwithstanding any other law:

4 (1) An insurer may terminate or otherwise change the terms and  
5 conditions of a portable electronics insurance policy only if the  
6 policyholder and enrolled customer are provided with at least thirty (30)  
7 days' notice; and

8 (2) If the insurer changes the terms and conditions of a  
9 portable electronics insurance policy, the insurer shall provide the vendor  
10 and enrolled customer with:

11 (A) A revised policy or endorsement;

12 (B) A revised certificate or endorsement;

13 (C) An updated written disclosure brochure or other  
14 evidence indicating a change in the terms and conditions; and

15 (D) A summary of material changes to the portable  
16 electronics insurance policy coverage.

17 (b) Notwithstanding subsection (a) of this section, an insurer may  
18 terminate an enrolled customer's coverage under a portable electronics  
19 insurance policy on fifteen (15) days' notice if the insurer discovers that  
20 fraud or material misrepresentation was used in obtaining coverage or in the  
21 presentation of a claim under the portable electronics insurance policy.

22 (c) Notwithstanding subsection (a) of this section, an insurer may  
23 immediately terminate an enrolled customer's enrollment under a portable  
24 electronics insurance policy:

25 (1) For nonpayment of premium;

26 (2) If an enrolled customer ceases to have an active service  
27 with the vendor; or

28 (3)(A) If an enrolled customer exhausts the aggregate limit of  
29 liability, if any, under the terms of the portable electronics insurance  
30 policy and the insurer sends notice of termination to the enrolled customer  
31 within thirty (30) calendar days after exhaustion of the limit.

32 (B) If notice to the enrolled customer is not timely sent  
33 by the insurer, enrollment and coverage shall continue notwithstanding the  
34 aggregate limit of liability until the insurer sends notice of termination to  
35 the enrolled customer.

36 (d)(1) If a portable electronics insurance policy is terminated by a

1 policyholder, the policyholder shall mail or deliver written notice to the  
2 enrolled customer to advise the enrolled customer of the termination of the  
3 portable electronics insurance coverage and the effective date of  
4 termination.

5 (2) The written notice shall be mailed or delivered to the  
6 enrolled customer at least thirty (30) days before the termination by the  
7 policyholder.

8 (e)(1) When notice is required under this subchapter, the notice shall  
9 be in writing and may be mailed or delivered by registered mail to:

10 (A) The vendor at the vendor's last known mailing address;  
11 and

12 (B) The vendor's affected enrolled customers' last known  
13 mailing addresses on file with the insurer.

14 (2)(A) If notice is completed through the mail, the person  
15 providing notice shall maintain proof of mailing.

16 (B) An insurer may comply with a notice requirement under  
17 this subchapter by providing electronic notice to a vendor or its affected  
18 enrolled customers through electronic means.

19 (C) If notice is completed through electronic means, the  
20 insurer shall maintain proof that the notice was sent.

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22 23-88-507. Application for license and fees.

23 (a)(1) An application for licensure under this subchapter shall be  
24 made to and filed with the Insurance Commissioner on forms prescribed and  
25 furnished by the State Insurance Department.

26 (2) The application for licensure under this subchapter shall:

27 (A)(i) Provide the name, residence address, and other  
28 information required by the commissioner for an employee or authorized  
29 representative of the vendor designated by the applicant as the person  
30 responsible for the vendor's compliance with the requirements of this  
31 subchapter.

32 (ii) If the vendor derives more than fifty percent  
33 (50%) of its revenue from the sale of portable electronics insurance, the  
34 information required in subdivision (a)(2)(A) of this section shall be  
35 provided for all officers, directors, and shareholders of record that have  
36 beneficial ownership of ten percent (10%) or more of any class of securities

1 registered under the federal securities law;

2 (B)(i) Appoint the commissioner as authorized to receive  
3 service on behalf of the applicant for any legal process issued against it in  
4 a civil action or proceeding in this state brought in connection with  
5 portable electronics insurance coverage and agree that process of the  
6 commissioner shall be valid and binding against the applicant.

7 (ii) The appointment under subdivision (a)(2)(B)(i)  
8 of this section shall:

9 (a) Be irrevocable;

10 (b) Bind the applicant and any successor in  
11 interest as to the assets or liabilities of the applicant; and

12 (c) Remain in effect as long as the  
13 applicant's licensure remains in force in this state; and

14 (C) Provide the location of the applicant's principle  
15 place of business or home office.

16 (b) Applications for licensure under this subchapter shall be  
17 submitted within ninety (90) days of the application forms being made  
18 available by the commissioner.

19 (c) An initial license issued under this subchapter shall be valid for  
20 a period of twenty-four (24) months.

21 (d)(1) A vendor of portable electronics applying for a limited lines  
22 license under this subchapter shall pay to the commissioner:

23 (A) A nonrefundable application and license fee of one  
24 thousand dollars (\$1,000); and

25 (B) A renewal license fee of five hundred dollars (\$500).

26 (2) However, a vendor that is engaged in portable electronics  
27 transactions at ten (10) or fewer locations in the state applying for a  
28 limited lines license under this subchapter shall pay to the commissioner:

29 (A) A nonrefundable application and license fee not to  
30 exceed one hundred dollars (\$100); and

31 (B) A renewal license fee not to exceed one hundred  
32 dollars (\$100).

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34 */s/Teague*

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36 **APPROVED: 04/01/2011**