

# **HOUSE . . . . . No. 4351**

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## The Commonwealth of Massachusetts

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HOUSE OF REPRESENTATIVES, July 30, 2012.

The committee on Ways and Means, to whom was referred the Bill regulating portable electronics insurance (House, No. 3954), reports recommending that the same ought to pass with an amendment substituting therefor the accompanying bill (House, No. 4351).

For the committee,

BRIAN S. DEMPSEY.

# HOUSE . . . . . No. 4351

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## The Commonwealth of Massachusetts

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In the Year Two Thousand Twelve  
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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, is  
2 hereby amended by inserting after section 162X the following new section:-

3 Section 162Y. (a) As used in this section, the following words shall, unless the context requires  
4 otherwise, have the following meanings:-

5 “Customer”, a person who purchases portable electronics or services.

6 “Enrolled customer”, a customer who elects coverage under a portable electronics insurance  
7 policy issued to a vendor of portable electronics.

8 “Location”, any physical location in the commonwealth or any website, call center site or similar  
9 location directed to residents of the commonwealth.

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

12 “Portable electronics insurance”, insurance providing coverage for the repair or replacement of  
13 portable electronics which may provide coverage for portable electronics against any one or  
14 more of the following causes of loss: theft, inoperability due to mechanical failure, malfunction,  
15 damage or other similar causes of loss. The term “Portable electronics insurance”, shall not  
16 include: (i) a service contract governed by sections 149M to 149X, inclusive, of chapter 175; (ii)  
17 a policy of insurance covering a seller’s or a manufacturer’s obligations under a warranty; or (iii)  
18 a homeowner’s, renter’s, private passenger automobile, commercial multi-peril, or similar  
19 policy.

20 “Portable electronics transaction”, (a) the sale or lease of portable electronics by a vendor to a  
21 customer; or (b) the sale of a service related to the use of portable electronics by a vendor to a  
22 customer.

23 “Supervising entity”, a business entity that is a licensed insurer or insurance producer that is  
24 authorized by an insurer to supervise the administration of a portable electronics insurance  
25 program.

26 “Vendor”, a person in the business of engaging in portable electronics transactions directly or  
27 indirectly.

28 (b) A vendor shall be required to hold a limited lines license to sell or offer coverage under a  
29 policy of portable electronics insurance.

30 (c) A limited lines license issued under this section shall authorize any employee or authorized  
31 representative of the vendor to sell or offer coverage under a policy of portable electronics  
32 insurance to a customer at each location at which the vendor engages in portable electronics  
33 transactions.

34 (d) The supervising entity shall maintain a registry of vendor locations which are authorized to  
35 sell or solicit portable electronics insurance coverage in the commonwealth. Upon request by the  
36 commissioner and with 10 days notice to the supervising entity, the registry shall be open to  
37 inspection and examination by the commissioner during regular business hours of the  
38 supervising entity.

39 (e) Notwithstanding any general or special law or rule or regulation to the contrary, a license  
40 issued pursuant to this section shall authorize the licensee and its employees or authorized  
41 representatives to engage in those activities that are permitted in this section.

42 (f) At every location where portable electronics insurance is offered to customers, brochures or  
43 other written materials shall be made available to a prospective customer which:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

103 (2) impose other penalties that the commissioner deems necessary and reasonable to carry out the  
104 purpose of this section, including: (i) suspending the privilege of transacting portable electronics  
105 insurance pursuant to this section at specific business locations where violations have occurred;  
106 and (ii) suspending or revoking the ability of individual employees or authorized representatives  
107 to act under the license.

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

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

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

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

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

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

122 (1) for nonpayment of premium;

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

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

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

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

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

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

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

157 (s) The application shall:

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

161 vendor derives more than 50 per cent of its revenue from the sale of portable electronics  
162 insurance the information noted above shall be provided for all officers, directors, and  
163 shareholder of record having beneficial ownership of 10 per cent or more of any class of  
164 securities registered under the federal securities law; and

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

166

167 (t) Initial licenses issued pursuant to this section shall be valid for a period of 24 months and  
168 shall expire 24 months from the date of issue, unless sooner revoked or suspended as provided  
169 herein.

170 (u) A vendor of portable electronics licensed under this section shall pay to the commissioner of  
171 insurance a fee as prescribed by the commissioner of insurance not to exceed \$1,000 for an  
172 initial portable electronics limited lines license and \$500 for each renewal thereof. .

173 (v) Notwithstanding any general or special law to the contrary, the provisions of chapter 176D  
174 shall apply to any person engaged in the business of portable electronics insurance as defined by  
175 this section.

176 SECTION 2. A vendor engaging in portable electronics insurance transactions on or before the  
177 effective date of this act shall apply for licensure within 90 days of the application being made  
178 available by the commissioner of insurance. Any applicant commencing operations after the  
179 effective date of this act shall obtain a license prior to offering portable electronics insurance.