

**2013 SENATE INDUSTRY, BUSINESS AND LABOR**

**SB 2335**

# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee  
Roosevelt Park Room, State Capitol

SB 2335  
February 18, 2013  
Job Number 19097

Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to portable electronic insurance

## Minutes:

Testimony Attached

Chairman Klein: Opened the hearing.

Senator Sorvaag: Introduced the bill. The purpose of the bill is to address insurance protection on portable electronic devices. The bill is trying to set up some guidelines that would be like the rental car industry, so the people at the counter could sell the insurance even though they are not licensed insurance agents. The license would be the carriers or other insurers representing the carrier whose license they sell under. It is consistent with laws in 43 other states.

Stephen McDaniel, Asurion Insurance Services: They are the largest provider of wireless protection device in the country. This is similar to legislation that has been enacted in 43 other states. It creates a streamline licensing framework for retailers and wireless carriers that offer portable electronic devices to their customers. It creates a business entity level license which would allow Verizon, to allow their sale personal to offer this device protection. It requires disclosures and marketing materials to be made available at the point of sale to inform consumers what they are purchasing. It sets up a billing mechanism for the wireless carriers as the insurance protection is billed on the consumers' monthly wireless bill. It also requires training of the individual sale personnel on the floor of a retailer wireless carrier. The amendment before you is language we worked on with the department and continue to work on with them. There are three issues they are working through; one is the new definition of authorized representative. Two is the definition itself of portable electronic insurance. Three is the billing mechanism. (2:30-5:38) Amendment Attached (1)

Chairman Klein: Asked what bill or amendment the other 43 states actually supported.

Stephen: Said that's what this does, the amendment, it removes section two, which is the notice provided to the consumers when changes are made to a policy. Nothing in the amendment being proposed today is not in the other 43 state laws. This is a trimmed down version of the other states laws.

Chairman Klein: Stated that NAIC, National Association of Insurance Commissioners had not adopted any model legislation that they would have proposed throughout the country to use as it relates to the portable electronic devices.

Stephen: Said that was correct.

Senator Murphy: Asked for him to explain the difference between a cell phone warranty and the insurance you are talking about.

Stephen: Said the cell phone warranty is an extended warranty or service contract. That is a warranty offered by the manufacturer of the device which covers defects and material and workmanship. Extended warranties and service contracts cover similar perils, accidental damage from handling. What they can't cover is loss and theft. Once you start covering those types of perils you are in the insurance world. That is what this particular product adds to the protection that is provided to the consumers.

Chairman Klein: Asked if people actually buy insurance in case they lose their phone.

Stephen: Said yes when you are talking about an eight hundred dollar phone.

Senator Andrist: Asked if insurance providers, agents and companies provide exclusive policies on cell phones or is part of umbrella protections that they get.

Stephen: Said to his knowledge an insurance agent would not typically sell an individual policy to a consumer because we are talking about a 4.99 to 6.99 a month premium. On a homeowners policy the deductible would eclipse the cost of the phone pretty quickly. The program is structured as to where there is a master policy, to your point, issued to Verizon wireless and then their individual customers can enroll under the group policy. It is sort of a group umbrella structure.

Senator Andrist: Asked if the guy I buy the insurance from is covering the loss, why would I also buy it from someone else?

Stephen: Said that is one of the important protections they think is in the bill. Marketing materials are required to provide that, it may provide a duplication of coverage that you already purchased. It is likely that it wouldn't be covered because of the deductible. The deductibles on this are much smaller than they would be on your homeowner's policy.

Senator Sorvaag: Commented that when he bought his cell phones he just checked a box stating he wanted the insurance and asked what would be different with this.

Stephen: Said not much, this codifies existing practice.

Paul Fassbender, Director of Public Policy and Economic Development for Asurion: Written Testimony (2). (12:12-15:20)

Senator Andrist: Said he thought this was about cell phones and if wireless devices includes everything from laptops to ipads?

Paul: Said yes, the definition is broad and broad for a reason because of the rapid change in technology.

Senator Andrist: Asked if the insurance policy he normally sells is comprehensive to that degree or is it limited to cell phones.

Paul: Said it is device to device and would depend on the client they are talking about. It is not a universal policy.

Patrick Ward, Property and Casualty Insurance Association of America: In support of the bill.

### Opposition

Rebecca L. Ternes, Deputy Commissioner North Dakota Insurance Department: Written Testimony (3) and Amendment (4). (19:00-37:34)

Chairman Klein: Asked what was done in the other 43 states.

Rebecca: Said it isn't all the same, each state has tweaked different areas that are a concern to them.

Chairman Klein: Said what we are trying to develop is what will work in North Dakota for North Dakota consumers.

Rebecca: Said that is correct and in the end the policy decision is up to you, if you think it is something that needs to be sold here.

Steve Becher, Executive Director of Professional Insurance Agents of North Dakota: Written Testimony (5). (38:35-43:30)

Senator Murphy: Said this is about making money. How do you answer the convenience argument, that is the real deal isn't it?

Steve: Said he understands what he is saying and good agents should be making their clients aware that these types of products are out there. This is trying to fix a problem that isn't there. There is already coverage that is well available in the market and inexpensive and they would just be opening it up to someone who is inexperienced and not licensed.

Senator Laffen: Asked if you are someone who has no renters or homeowners insurance can they just buy that kind of scheduled insurance.

Steve: Said that there are standalone inland marine policies out there.

Chairman Klein: Asked if the bill went just for cell phones, would he support it.

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Steve: Said if it was just cell phones, his opposition would be much less and maybe supportive depending on how it was written.

Evan Mandigo, State Executive of the North Dakota Association of Independent Insurance Agents: Written Testimony (6). (49:41-57)

Chairman Klein: Closed the hearing.

Cheryl Riley, Director of External Affairs for AT& T: Written Testimony (7).

# 2013 SENATE STANDING COMMITTEE MINUTES

## Senate Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

SB 2335  
February 20, 2013  
Job Number 19261

Conference Committee

Committee Clerk Signature

*Erin Lubelt*

### Explanation or reason for introduction of bill/resolution:

Relating to portable electronics

### Minutes:

Amendment and Discussion

Chairman Klein: We have folks from both sides here that maybe can answer some of our questions. Things are not getting worked out to everyone's satisfaction. Amendment Attached (1).

Rebecca L. Ternes, Deputy Commissioner of the North Dakota Insurance Department: Said this issue of limiting was the agencies issue (insurance agency) and didn't know if the amendment has their last change in it. They had offered a broader definition in their first amendment so this narrows it down. It doesn't just narrow it to sell phones; it obviously would be anything up to five thousand dollars that would be considered a portable electronic. It isn't their issue as much as it is the agencies issue.

Chairman Klein: Said the issues that centered around this bill initially mostly have been resolved, I sense you still have some concerns?

Rebecca: Said she didn't think the department had ever been supportive of the bill or excited about the bill. They offered to come with a compromise with it being similar to the auto rental and that is where they still sit. This mostly does that but a little broader and the definition cannot be as defined as auto rental insurance.

Chairman Klein: Said he thought the agents were looking for the words, cell phone and that would certainly handcuff even the current practice of selling cell phone insurance.

Rebecca: Said the issue is the licenser that people without license would be selling and that would still be allowed in this version.

Senator Laffen: Asked if cell phone providers could provide coverage for the loss now or are they strictly limited to damage and repair.

Rebecca: Said the company mentioned the enrollee's exception as being the way they are selling this coverage right now. The department is looking at that and looking at the

legislative intent of that and to make sure that is the way the enrollee exception is supposed to work.

Senator Laffen: Said the cell phone retailers can sell insurance now, at least you are looking at it to make sure it is legitimate, are they selling for theft and loss now?

Rebecca: Said they are and that is what they are currently looking at.

Senator Laffen: Said that they would like this bill to extend that even further?

Rebecca: Said yes.

Senator Andrist: Asked about subsection b and if they were talking about devices that cost less than five thousand dollars individually or in the aggregate?

Levi Andrist, Lobbyist on behalf of Asurion Insurance Services: Said that there are two changes to this amendment; the first is it adds a five thousand dollar cap on any portable electronic device. The second piece is in section 2b, this is per portable electronic device. If this law would pass that item would have to be less than five thousand dollars and offered in connection with a wireless or data service.

Senator Murphy: Asked if the five thousand was arrived at mutually between the two parties.

Levi: Said no, they haven't had direct communication with the agents since last night and haven't directly talked about that number. That number is the lowest number of the other states that have enacted this legislation.

Chairman Klein: Said they will pick this up this afternoon.

# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee  
Roosevelt Park Room, State Capitol

SB 2335  
February 20, 2013  
Job Number 19269

Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to portable electronics

## Minutes:

Amendment and Vote

Chairman Klein: Said he handed out an amendment.

Senator Sinner: Made a motion to adopt the amendment, 13.0836.01001

Senator Sorvaag: Seconded the motion.

Roll Call Vote: Yes - 7 No - 0

Senator Sorvaag: Moved a do pass as amended.

Senator Unruh: Seconded the motion.

Roll Call Vote: Yes - 7 No - 0 Absent - 0

Floor Assignment: Senator Sorvaag

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/29/2013**

Amendment to: SB 2335

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The bill creates a new chapter in 26.1 to provide the definition of portable electronics insurance and the laws governing the issuance of portable electronics insurance.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The bill has no fiscal impact.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The bill has no fiscal impact.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The bill has no fiscal impact.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The bill has no fiscal impact.

**Name:** Aimee Delzer  
**Agency:** ND Insurance Department  
**Telephone:** 701-328-2930  
**Date Prepared:** 01/31/2013

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/29/2013**

Bill/Resolution No.: SB 2335

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
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The bill has no fiscal impact.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The bill has no fiscal impact.

**Name:** Aimee Delzer  
**Agency:** ND Insurance Department  
**Telephone:** 701-328-2930  
**Date Prepared:** 01/31/2013

13.0836.01001  
Title.02000

Prepared by the Legislative Council staff for  
Senator Klein

February 20, 2013



Handwritten signature and date: 2-20-13

**PROPOSED AMENDMENTS TO SENATE BILL NO. 2335**

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study of the sale of portable electronics insurance."

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. PORTABLE ELECTRONICS INSURANCE - LEGISLATIVE MANAGEMENT STUDY.** During the 2013-14 interim, the legislative management shall consider studying the feasibility and desirability of regulating the sale of portable electronics insurance. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly."

Renumber accordingly

**2013 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2335**

Senate Industry, Business, and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.0836.01001

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Senator Sinner Seconded By Senator Sorvaag

Senators	Yes	No	Senator	Yes	No
Chairman Klein	x		Senator Murphy	x	
Vice Chairman Laffen	x		Senator Sinner	x	
Senator Andrist	x				
Senator Sorvaag	x				
Senator Unruh	x				

Total (Yes) 7 No 0

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

**2013 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2335**

Senate Industry, Business, and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Senator Sorvaag Seconded By Senator Unruh

Senators	Yes	No	Senator	Yes	No
Chairman Klein	x		Senator Murphy	x	
Vice Chairman Laffen	x		Senator Sinner	x	
Senator Andrist	x				
Senator Sorvaag	x				
Senator Unruh	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Sorvaag

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2335: Industry, Business and Labor Committee (Sen. Klein, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2335 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study of the sale of portable electronics insurance.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. PORTABLE ELECTRONICS INSURANCE - LEGISLATIVE MANAGEMENT STUDY.** During the 2013-14 interim, the legislative management shall consider studying the feasibility and desirability of regulating the sale of portable electronics insurance. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly."

Renumber accordingly

**2013 TESTIMONY**

**SB 2335**

PROPOSED AMENDMENTS TO SENATE BILL NO. 2335

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact section 26.1-26-54 of the North Dakota Century Code, relating to portable electronics insurance.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1.** Section 26.1-26-54 of the North Dakota Century Code is created and enacted as follows:

**26.1-26-54. Insurance license for portable electronics vendors – Exception.**

- 1. As used in this section, unless the context otherwise requires:
  - a. "authorized representative" means a person that is authorized by contract to offer a portable electronics vendor's products or services.
  - b. "portable electronics" means personal, self-contained, easily carried by an individual, battery-operated electronic communication, viewing, listening, recording, gaming, computing or global positioning devices, including cell or satellite phones, papers, personal global positioning satellite units, portable computers, portable audio listening devices, video viewing or recording devices, digital cameras, video camcorders, portable gaming systems, docking stations, automatic answering devices and other similar devices and the devices' accessories.
  - c. "portable electronics insurance" means insurance which may be offered on a month to month or other periodic basis as an individual policy or as a group or master commercial inland marine policy issued to a vendor for its enrolled customers that provides coverage for the repair or replacement of portable electronics which may provide coverage for portable electronics against any one or more of the following causes of loss: loss, theft, inoperability due to mechanical failure, malfunction, damage or other similar causes of loss. "Portable Electronics Insurance" does not include a service contract or extended warranty providing coverage limited to the repair, replacement or maintenance of property for the operational or structural failure of property due to a defect in materials, workmanship, accidental damage from handling, power surges, or normal wear and tear.

2. A license as an insurance producer is not required for the counter sales personnel or authorized representatives of a portable electronics vendor if:

a. The vendor is appropriately licensed in this state under subsection 2 of section 26.1-26-13.3 or is affiliated with an appropriately licensed North Dakota insurance producer except:

b. The coverage offered by the counter sales personnel or authorized representatives is limited to portable electronics insurance.

c. The portable electronics vendor files an acknowledgment with the commissioner that its counter sales personnel and authorized representatives act on its behalf and that it is responsible for any representations made by the counter sales personnel or authorized representatives relating to insurance products offered through the vendor. The acknowledgment must state that the commissioner has the right to take any administrative action contemplated in this title, including revocation or suspension of the license required under subsection 1.

d. The portable electronics vendor provides basic training to counter sales personnel and authorized representatives in the insurance products offered under this section. The training must require counter sales personnel and authorized representatives to refer all customers with questions regarding the insurance products offered under this section to appropriately licensed insurance producers employed by or affiliated with the portable electronics vendor or to written brochures or other materials that:

(1) Summarize the material terms of the coverage, including the identity of the insurer;

(2) Disclose that the policy offered by the portable electronics vendor may duplicate coverage already provided by other insurance the customer may have;

(3) State that the purchase of insurance is not required to purchase or lease the portable electronics device; and

(4) Describe the process of filing a claim.

e. The counter sales personnel or authorized representatives are not directly paid by an insurance company, a commission, or any other compensation for the sale of insurance. Nothing in this section prevents the portable electronics vendor from including the

insurance products in an overall employee performance  
compensation incentive program.

3. If a vendor bills a customer for portable electronics insurance any charge to the customer that is not included in the cost associated with the purchase or lease of portable electronics or related services shall be separately itemized on the customer's bill. However, if portable electronics insurance is included with the purchase or lease of portable electronics or related services the vendor shall clearly and conspicuously disclose that the coverage is included with the portable electronics or related services, and the stand-alone cost of the premium for the same or similar insurance must be made on the customer's bill and in any marketing materials made available at the point of sale. Vendors billing and collecting such charges shall not be required to maintain such funds in a segregated account provided that the vendor is authorized by the insurer to hold such funds in an alternative manner and remits such amounts to the insurer within sixty (60) days of receipt. All funds received by a vendor from a customer for the sale of portable electronics insurance shall be considered funds held in trust by the vendor in a fiduciary capacity for the benefit of the insurer.

Renumber accordingly



The Technology Protection Company

(2)

Hearing on Senate Bill No. 2335  
Senate Industry, Business and Labor Committee  
February 18, 2013

My name is Paul Fassbender, Director of Public Policy and Economic Development for Asurion. I am submitting this written testimony on behalf of my company in support of Senate Bill 2335. Asurion is the leading provider of handset protection programs in the country and has joined forces with leading wireless carriers throughout the world to bring this valuable product to consumers. The product that is at the heart of this bill is an insurance program that protects a consumer's investment in their wireless communications device by insuring it against loss, theft, damage, and internal malfunction of the device. The bill provides for an entity level license to vendors offering portable electronics insurance and provides for key consumer protections related to such coverage.

As wireless devices have become an integral part of our everyday lives their functionalities have expanded exponentially and with these developments the cost of these devices has also risen. Portable electronics insurance not only ensures that a consumer's investment in such a device is protected, but also ensures that a consumer has very little down time when a problem does occur by getting a pre-programmed phone or other portable electronics device in the consumer's hands often times the very next day after a claim has been made. Staying connected in today's world is crucial and Asurion's products ensure that its customers stay connected.

Senate Bill 2335 is a bill that creates a licensing framework applicable to the sale of portable electronics insurance in North Dakota. Currently, there is no statutory regulatory structure that exists for the sale of this product in North Dakota. The instant legislation would provide such a structure and provide for a limited lines producer license to sell this type of insurance product. The approach set forth in this important piece of legislation ensures a balanced regulatory structure that would avoid the need to license every individual on the floor of every retailer in North Dakota that offers this insurance to consumers while also providing crucial consumer protection and disclosures. As you can imagine, licensing of every sales floor representative of a large retailer would be impractical and overly burdensome on both the Department and businesses. There is no state in the country that currently requires such a licensing scenario.

Senate Bill 2335 creates a regulatory scheme governing the sale of this product by creating a licensing framework under which the retailer itself holds the license authorizing its employees to sell this insurance product on their behalf in order to avoid the retailer from having to license every individual salesperson on the floor of its stores. This model is consistent with the national trend with respect to the regulation of this product as it creates an efficient and fair licensing framework for the entities offering this product to consumers and gives regulators the authority they need to effectively oversee these activities. Laws similar to Senate Bill 2335 have been enacted into law in forty-

three (43) other states, including Minnesota, Maryland, Nevada, New York, Oklahoma, California, Texas, South Dakota, Idaho, Florida, Washington, Georgia, and Virginia among other states.

In addition to the licensing framework created by this bill, the bill also provides significant consumer protection measures in the form of required disclosures to consumers regarding the insurance coverage that is being sold as well as required training for those individual salespeople acting under the retailer's license.

So in summary, this bill is a good bill not only for the retailers of North Dakota but also for the consumers of North Dakota in that the bill creates a regulatory structure for this product that ensures full disclosure to the consumer of the terms and conditions of this insurance coverage while also providing the Department of Insurance with the regulatory authority to ensure that the product is sold to North Dakota consumers in the right way. This bill strikes an effective balance between the interests of consumers and industry and we would ask that you vote favorably to move this bill from your Committee today.

**SENATE BILL NO. 2335**

**Presented by:** Rebecca L. Ternes  
Deputy Commissioner  
North Dakota Insurance Department

**Before:** Senate Industry, Business and Labor Committee  
Senator Jerry Klein, Chairman

**Date:** February 18, 2013

**TESTIMONY**

Good morning, Chairman Klein and committee members. My name is Rebecca Ternes and I am Deputy Commissioner at the North Dakota Insurance Department. I appear before you in opposition of Senate Bill No. 2335.

The Insurance Department has four areas of concerns with the bill—the definition of portable electronics, producer licensing requirements, policyholder notification procedures and contract termination requirements. This bill erodes consumer protections, complicates compliance for agents and companies, and creates a slippery slope for others to ask for carve-outs from the known regulatory structure that do not help consumers. It also sets the stage for other types of products to enter the market asking for their own producer licensing and product filing requirements.

**Definition of Portable Electronics**

The current definition in the bill is very broad. Instead, it should specify the different types of portable electronics that would be covered under this type of insurance. Appropriate alternative language is available from bills in other states. For example, Nebraska and Colorado use the definition that portable electronics means a device that is personal, self-contained, easily carried by an individual and battery-operated, and includes devices used for electronic communication, viewing, listening, recording, computing or global positioning. The Department would be leery of a broader definition given one premise supporters of this type of legislation use is that it is inexpensive insurance. A broad definition may result

in confusion as to what items can be insured. The intent at this time may be to only insure cell phones, but down the road more expensive items could be insured under this type of policy, creating confusion among insurers and disputes with the Department.

**Producer Licensing**

The bill language calls for special treatment for the sale of insurance associated with the sale of portable electronic devices. The insurance being sold under this bill is a type known as property/casualty coverage. For most property and casualty (P/C) insurance, North Dakota requires sellers to be licensed as insurance producers. This bill allows for retail sales personnel to potentially answer insurance-related questions they are not qualified to answer. Also, the language is silent as to who is ultimately responsible for representations made by sales personnel. In fact, the bill on page 2, lines 17-19, would allow an unrelated third party to be responsible.

When Asurion, the company bringing this bill forward, first discussed this language with the Department, we made it clear that most important to the Department was to ensure a Designated Responsible Licensed Producer, or DRLP, was involved in oversight of the retail sales personnel actually selling the insurance. This is the manner in which car rental insurance is sold (N.D.C.C. § 26.1-26-52). We agreed to not require each sales person to be licensed if the bill replicated the provisions in the car rental section. It does not.

Similarities exist between portable electronics insurance and car rental insurance because both entities want to sell insurance without requiring every sales person to be licensed as an insurance agent. This bill differs in several ways from current car rental statutes.

**Method and Timing of Notifications to Consumers**

Current P/C insurance statutes require policyholder correspondence regarding intended cancellation to be sent via U.S. Postal Service mail. This bill would allow communication either by mail or by electronic means. Given the unpredictable nature of electronic communications, the Department is concerned notification of policy cancellation may not be delivered or received by the consumer. Given the difficulty in verifying whether or not the notification was sent or was received, the Department may not be able to determine

whether the insurance company or the agent complied with the law after a complaint or in a market conduct examination. Today, “a written notice of cancellation must be mailed or delivered to the named insured...” and “A postal service certificate of mailing to the named insured at the insured’s last-known address is conclusive proof of mailing and receipt...” (N.D.C.C. § 26.1-39-13(2))

On page 5, lines 4 and 5, the bill provides a 15-day time period for notifying policyholders of a cancellation due to fraud or material misrepresentation. The current statute allows 30 days. The bill thus cuts in half a consumer’s time in which to respond to a cancellation notice for these reasons.

The current P/C insurance statute requires that policyholders receive a 10-day advance notice if the insurer intends to cancel their coverage for nonpayment of premium. N.D.C.C. § 26.1-39-13. This current P/C statute offers consumers protection from being immediately dropped by an insurer for nonpayment of a premium. This bill would allow an insurer to immediately terminate a policyholder without prior notice for nonpayment of a premium, differing from all current P/C statutes.

	<b>SB 2335</b>	<b>Current statute</b>
Notification procedures	Mail or electronic means	Mail only
Notice of cancellation for fraud/material misrepresentation	15 days	30 days
Notice of cancellation for nonpayment of premium	0 days	10 days

The Insurance Department has received and approved similar products by at least four other carriers. Those carriers currently comply with North Dakota’s P/C requirements regarding cancellation notice procedures for inland marine business in the state. Inland marine refers to property that can be transported. Examples include jewelry, musical instruments and cell phones. By introducing this as a different type of coverage for the same inland marine category, consumers insuring a portable electronic would be treated

differently than consumers insuring a piece of jewelry, when in fact, by definition, both fall under the inland marine line of authority.

Another area where this bill deviates from current statute is on page 4, line 13, where it says that if the cost of insurance is included with the purchase price, the vendor need only disclose the fact that it is included in the purchase price. N.D.C.C. § 26.1-30-01, however, requires insurers to disclose the actual cost of insurance to the insured.

This insurance is not so different from other P/C insurance as to require a different notification method, a shorter notice period of intent to cancel for nonpayment of premium, and no requirement to disclose actual costs.

The legislation was brought in by one company. No other companies have asked for this type of exception to producer licensing or product filing requirements.

In an effort to reach a compromise on the bill the Department will offer the attached amendment but does so reluctantly. Even with the amendment, the Department is unsure how it would monitor the sale of this product or enforce the provisions regulating it. Given the types of products we are discussing, there could be any type of businesses selling—cell phone retailers, big box stores, truck stops, small businesses, etc.

The amendment more clearly defines a portable electronic device, mimics the auto rental exception for producer licensing and deletes any carve-outs for product filing requirements.

Thank you. I would be happy to answer any questions.

February 18, 2013

**PROPOSED AMENDMENTS TO SENATE BILL NO. 2335**

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact section 26.1-26-54 of the North Dakota Century Code, relating to portable electronics insurance.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1.** Section 26.1-26-54 of the North Dakota Century Code is created and enacted as follows:

**26.1-26-54. Insurance license for portable electronics vendors – Exception.**

1. As used in this section, unless the context otherwise requires, "portable electronics" means personal, self-contained, easily carried by an individual, battery-operated electronic communication, viewing, listening, recording, gaming, computing or global positioning devices, including cell or satellite phones, papers, personal global positioning satellite units, portable computers, portable audio listening devices, video viewing or recording devices, digital cameras, video camcorders, portable gaming systems, docking stations, automatic answering devices and other similar devices and the devices' accessories.
  
2. A license as an insurance producer is not required for the counter sales personnel of a portable electronics vendor if:
  - a. The vendor is appropriately licensed in this state under subsection 2 of section 26.1-26-13.3 or is affiliated with an appropriately licensed North Dakota insurance producer.
  
  - b. The coverage offered by the counter sales personnel is limited to property insurance on portable electronics.
  
  - c. The portable electronics vendor files an acknowledgment with the commissioner that its counter sales personnel act on its behalf and that it is responsible for any representations made by the counter sales personnel relating to insurance products offered through the vendor. The acknowledgment must state that the commissioner has the right to take any administrative action contemplated in this title, including

revocation or suspension of the license required under subsection 1.

d. The portable electronics vendor provides basic training to counter sales personnel in the insurance products offered under this section. The training must require counter sales personnel to refer all customers with questions regarding the insurance products offered under this section to appropriately licensed insurance producers employed by or affiliated with the portable electronics vendor or to written brochures or other materials that:

- (1) Summarize the material terms of the coverage, including the identity of the insurer;
- (2) Disclose that the policy offered by the portable electronics vendor may duplicate coverage already provided by other insurance the customer may have;
- (3) State that the purchase of insurance is not required to purchase or lease the portable electronics device; and
- (4) Describe the process of filing a claim.

e. The counter sales personnel are not directly paid by an insurance company, a commission, or any other compensation for the sale of insurance. Nothing in this section prevents the portable electronics vendor from including the insurance products in an overall employee performance compensation incentive program.

Renumber accordingly

## Testimony for Senate Bill 2335 – Senate IBL Committee

Chairman Klein and members of the Senate Industry, Business, and Labor Committee my name is Steve Becher, Executive Director of Professional Insurance Agents of North Dakota (PIAND) and I am here today in opposition to Senate Bill 2335. PIAND is a trade association representing 305 main street insurance agencies across the state of North Dakota with over 1,000 independent insurance agents.

While I think I understand the intent of this bill, I feel that there are some issues with the bill that need to be discussed. The first issue with this bill is the definition of “portable electronics” on page 1 of the bill. I believe it is most likely the intent of the bill to be able to get cell phone insurance from the provider when you purchase a phone. The problem is that the definition in the bill is so broad that it encompasses any type of portable electronic equipment. Does this mean that you could purchase insurance from the John Deere dealer on the removable GPS system in your combine? Could you buy insurance from the Walmart cashier when you buy an Ipod there? Some of the items that may be considered portable electronics would be a cell phone, Ipod, dvd player, e-reader, television, clock radio, laptop, tablet, gaming system, and the list goes on and on. Does this bill mean that anyone that sells these types of products would be allowed to sell insurance without a license?

The second issue is that this bill exempts those individuals that are selling portable electronic insurance from insurance agent licensing laws. Insurance agent licensing is required to help the Insurance Department monitor the activities of those selling insurance and make sure that the agent complies with the state laws and regulations governing their activities. The Insurance Department oversees agent activity to protect insurance consumer interests in the insurance transaction. Without a license requirement, I don't believe that the Insurance Department would have much, if any, regulatory control over the individual selling the portable electronics insurance. Since they are not licensed, these individuals would not be subject to any of the continuing education requirements or prohibited practices statutes that govern the activities of

SB 2335 Testimony – Steve Becher (page2)

insurance agents such as rebating, coercion, unfair methods of competition, misrepresentation in an insurance application, sharing of commissions, etc. These individuals would also most likely not carry any type of errors and omissions insurance in case they made a mistake that would impact their customer financially. The licensing, continuing education, prohibited practices, and errors and omissions issues are all matters of consumer protection and this bill does not address any of these issues.

The final issue that we have with this bill is a matter of fairness and a level playing field. Inland marine insurance for portable electronic devices is already readily available in the insurance market through licensed insurance agents. It is not an expensive coverage and can be added as an endorsement to a home, farm, renters, or business policy or can be written as a stand-alone policy. The agents that sell these policies presently are licensed, educated, regulated, and well versed in insurance coverage. This bill would place agents at the disadvantage of competing with store employees who do not have to follow the same rules, do not have to be insurance educated, and would not be regulated in their activities which is not what the consumer deserves.

For these reasons I would ask for a “Do Not Pass” recommendation on SB2335 and would be happy to answer any questions that you may have.

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TESTIMONY ON HB 2335  
SENATE IBL COMMITTEE  
SENATOR KLEIN, CHAIRMAN  
FEBRUARY 18, 2013

Good morning Mr. Chairman and members of the Senate IBL Committee. My name is Evan Mandigo and I am the State Executive of the ND Association of Independent Insurance Agents. I am here today to testify in opposition to SB 2335.

SB 2335 would create a new chapter to title 26.1 of the ND Century Code allowing employees of vendors to sell portable electronic insurance without the bother of being licensed or regulated by the ND Insurance Department. Portable electronics as defined by the sponsors includes virtually every type of electronic device that exists. I suspect the idea is to allow sales of protection for cell phones, but the language goes far beyond that.

Make no mistake about it, the vendor pushing this legislation wants to sell insurance to the general public regardless of how it is packaged as limited or unique using employees as an agent of the insurance company or financial entity backing the product. The old analogy of looking, walking and talking like a duck applies here. The vendor employees would be acting as an insurance agent – a role legislators have regulated for good reason. Now the sponsors of this legislation want this assembly to ignore decades of licensing regulation for this “special” group of people.

Insurance agents are licensed and regulated for a very simple reason. They help their clients protect important assets and make provisions for future events with potential adverse financial impact. The professionally qualified agents I represent are required to undergo a background check and pass rigorous exams on product knowledge before being granted a license. In order to maintain their license, they are required to complete a certain number of hours of continuing education each year including 3 hours of ethical training.

This bill would ignore those inconvenient requirements and allow sales staff at Best Buy, K-Mart, Target, or Wall Mart to name a few purveyors of portable electronics, to sell insurance to an unsuspecting customer who could rightly assume these sales people were qualified to do so by ND law. Imagine the customer surprise if they learn the sales people have no background, training, nor continuing education equipping them to explain what the insurance they sell does or does not do. The only background and training they might have is meeting the minimum hiring requirements of the store and certainly would have no continuing education requirement.

The independent insurance agents I represent devote their livelihood and professional reputation to serving their clients' needs on a daily basis. The state has determined and we agree that insurance agents should be licensed to ensure a baseline level of competency and protection of the public. They are subject to administrative sanctions by the Commissioner up to and including loss of the license for misbehavior. This bill stands that concept on its head exempting those whose only qualification is they sell portable electronic devices.

We believe SB 2335 is a solution looking for a problem that does not exist. It also begs the question of why does this or any Legislature want to start down what we believe is a very slippery slope of exempting people who sell insurance based solely on the products in their employer's store? My members and I have to be licensed to speak with the public about buying insurance. Why should a sales person at an electronics store be any different? They are selling insurance.

For the reasons outlined above, we recommend this committee vote this bill out with a Do Not Pass and I would be pleased to answer any of your questions.



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February 18, 2013

Chairman Jerry Klein and Members of Senate Industry, Business and Labor Committee

Dear Chairman Klein and Committee Members:

AT&T supports SB 2335 to seek entity level limited licenses to offer handset insurance. AT&T and its employees facilitate the enrollment of subscribers to the Wireless Phone Insurance ("WPI") program and provide billing, collection and fulfillment services.

AT&T does not "sell" the insurance and therefore, AT&T need not be licensed as an agency to provide these services and its employees need not be licensed as brokers.

However, AT&T's enrollment facilitation in store and through customer care centers is neither specifically supported nor prohibited in North Dakota. If AT&T were required to license all sales representatives and customer care representatives, the burden of doing so may force AT&T to discontinue offering Wireless Handset Insurance to its customers in North Dakota.

AT&T is presently unable to specifically compensate employees in North Dakota because the State does not have this limited lines licensure for facilitating enrollment

AT&T offers its support to SB 2235.

Sincerely,

Cheryl Riley  
Director of External Affairs  
AT&T

February 20, 2013

**PROPOSED AMENDMENTS TO SENATE BILL NO. 2335**

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact section 26.1-26-54 of the North Dakota Century Code, relating to portable electronics insurance.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1.** Section 26.1-26-54 of the North Dakota Century Code is created and enacted as follows:

**26.1-26-54. Insurance license for portable electronics vendors – Exception.**

- 1. As used in this section, unless the context otherwise requires:
  - a. "authorized representative" means a person that is authorized by contract to offer a portable electronics vendor's products or services.
  - b. "portable electronics" means personal, self-contained, easily carried by an individual, battery-operated electronic devices that send or receive wireless communications signals which have an insured value of less than \$5,000 and the device's accessories.
  - c. "portable electronics insurance" means insurance which may be offered on a month to month or other periodic basis as an individual policy or as a group or master commercial inland marine policy issued to a vendor for its enrolled customers that provides coverage for the repair or replacement of portable electronics which may provide coverage for portable electronics against any one or more of the following causes of loss: loss, theft, inoperability due to mechanical failure, malfunction, damage or other similar causes of loss. "Portable Electronics Insurance" does not include a service contract or extended warranty providing coverage limited to the repair, replacement or maintenance of property for the operational or structural failure of property due to a defect in materials, workmanship, accidental damage from handling, power surges, or normal wear and tear.

2. A license as an insurance producer is not required for the counter sales personnel or authorized representatives of a portable electronics vendor if:
- a. The vendor is appropriately licensed in this state under subsection 2 of section 26.1-26-13.3 or is affiliated with an appropriately licensed North Dakota insurance producer.
  - b. The coverage offered by the counter sales personnel or authorized representatives is limited to portable electronics insurance that is offered in connection with or incidental to the sale of a wireless communication service that is related to the use of portable electronics.
  - c. The portable electronics vendor files an acknowledgment with the commissioner that its counter sales personnel and authorized representatives act on its behalf and that it is responsible for any representations made by the counter sales personnel or authorized representatives relating to insurance products offered through the vendor. The acknowledgment must state that the commissioner has the right to take any administrative action contemplated in this title.
  - d. The portable electronics vendor provides basic training to counter sales personnel and authorized representatives in the insurance products offered under this section. The training must require counter sales personnel and authorized representatives to refer all customers with questions regarding the insurance products offered under this section to appropriately licensed insurance producers employed by or affiliated with the portable electronics vendor or to written brochures or other materials that:
    - (1) Summarize the material terms of the coverage, including the identity of the insurer;
    - (2) Disclose that the policy offered by the portable electronics vendor may duplicate coverage already provided by other insurance the customer may have;
    - (3) State that the purchase of insurance is not required to purchase or lease the portable electronics device; and
    - (4) Describe the process of filing a claim.

- /
- e. The counter sales personnel or authorized representatives are not directly paid by an insurance company, a commission, or any other compensation for the sale of insurance. Nothing in this section prevents the portable electronics vendor from including the insurance products in an overall employee performance compensation incentive program.
  
  - 3. If a vendor bills a customer for portable electronics insurance any premium charged to the customer shall be separately itemized on the customer's bill. Vendors billing and collecting such charges shall not be required to maintain such funds in a segregated account provided that the vendor is authorized by the insurer to hold such funds in an alternative manner and remits such amounts to the insurer within sixty (60) days of receipt. All funds received by a vendor from a customer for the sale of portable electronics insurance shall be considered funds held in trust by the vendor in a fiduciary capacity for the benefit of the insurer.

Renumber accordingly

13.0836.01001  
Title.

Prepared by the Legislative Council staff for  
Senator Klein

February 20, 2013

PROPOSED AMENDMENTS TO SENATE BILL NO. 2335

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study of the sale of portable electronics insurance.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. PORTABLE ELECTRONICS INSURANCE - LEGISLATIVE MANAGEMENT STUDY.** During the 2013-14 interim, the legislative management shall consider studying the feasibility and desirability of regulating the sale of portable electronics insurance. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly."

Renumber accordingly