

Traditionally, most wireless carriers have sold phones on a cash or non-credit basis to consumers, with consumers agreeing to a wireless service contract. Now, many wireless carriers are switching to a "credit sale" model, where the carrier, or an affiliate of the carrier, will sell the phone on a retail installment basis to the consumer. This model will permit consumers to "trade-in" their existing phones more frequently, thus providing consumers more up-to-date phones.

Two years ago the [Portable Electronic Insurance Act] was adopted in the State of Wisconsin. This law provides statutory guidelines for the sale of portable electronic insurance as well as important consumer protections that govern the sale of this product. When this legislation was considered the sales of phones in the above manner were not occurring. Given the ever changing nature of technology and the methods in which products are offered to consumers an unintentional conflict has arisen between this and the Wisconsin Consumer Act, a conflict that limits the scope of protections a consumer may purchase. The legislation you are considering today is a simple technical correction to address this conflict.

Currently the Wisconsin Consumer Act would not allow a customer of a "portable electronic" device, as defined by 632.975, to even have the option to purchase insurance on their device because it was purchased on an installment plan subject to the Wisconsin Consumer Act. This act prohibits or restricts a "creditor" from charging certain fees (including insurance fees) "in connection with" a consumer credit transaction, such as a retail installment sale. Specifically, Wis. Stat. § 424.301(3) provides that:

"A creditor may not contract for or receive a separate charge for insurance against loss of or damage to property unless the amount financed exclusive of charges for the insurance is \$800 or more, and the value of the property is \$800 or more."

Almost all mobile phones cost less than \$800. As such, the above statute prohibits the sale of property damage insurance for virtually all phones sold on credit to a consumer. This statute, which was drafted long before the mobile phone era, seems to conflict, from a policy perspective, with the Wisconsin Portable Electronic Insurance Act which generally permit

retailers to sell property damage insurance on "portable electronic devices" such as mobile phones.

Under Wisconsin law, as well as the law in all states, portable electronic insurance is completely optional and the consumer generally elects to purchase this insurance upon purchase of the device. The insurance coverage and fees are governed by the Department of Insurance and are exactly the same no matter how the device is purchased. Additionally, the consumer can cancel the insurance coverage at any time without penalty and the insurance sold will protect only the *consumer's* interest in the phone. Neither the carrier nor the carrier's affiliate that sells the phone on credit will have a security interest or other lien on the phone. Accordingly, the insurance sold does not protect any vendor or creditor of the consumer. Again, the insurance is solely for the consumer's benefit.

The legislation in front of you is narrowly tailored and provides for only two corrections. First, this legislation exempts the Portable Electronics Insurance Act from the property insurance restrictions of the Wisconsin Consumer Act. As mentioned above, this provision would not harm the consumer but allow the consumer more options under the Portable Electronics Insurance Act. The purchase of this insurance product under the act is voluntary, not mandatory, the insurance can be cancelled by the consumer at any time without penalty, and the insurance coverage and related fees are the same whether the device is sold for cash or on credit.

Second, this legislation exempts the Portable Electronics Insurance Act from the cancellation provisions of the Wisconsin Consumer Act. Under 424.401 the "creditor" is required to (among other things) mail to the consumer the right to cancel. The right to cancel under the WCA provides for a "creditor" who finances insurance. In the context of portable electronics insurance this provision does not make sense, because the "creditor," as defined under the WCA does not finance the insurance – it is the consumer's choice to have the insurance and the consumer can cancel the insurance at any time and is not "locked in" to the insurance product, which is the situation the WCA guards against. Additionally, under the Portable Electronics Act, there are numerous disclosure requirements when the sale of the product is made, this additional requirement would be burdensome and not applicable to the current portable electronics insurance law in Wisconsin.