

VIRGINIA ACTS OF ASSEMBLY -- 2006 SESSION

CHAPTER 634

An Act to amend and reenact §§ 38.2-2600, 38.2-2601, 38.2-2602, 38.2-2604, 38.2-2605, 38.2-2613, and 38.2-2615 of the Code of Virginia, and to amend the Code of Virginia by adding in Chapter 26 of Title 38.2 an article numbered 2, consisting of sections numbered 38.2-2617 through 38.2-2628, relating to home service contract providers.

[H 383]

Approved April 5, 2006

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-2600, 38.2-2601, 38.2-2602, 38.2-2604, 38.2-2605, 38.2-2613, and 38.2-2615 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Chapter 26 of Title 38.2 an article numbered 2, consisting of sections numbered 38.2-2617 through 38.2-2628, as follows:

CHAPTER 26.

HOME PROTECTION COMPANIES AND HOME SERVICE CONTRACT PROVIDERS.

Article 1.

Home Protection Companies.

§ 38.2-2600. Definitions.

As used in this ~~chapter~~ article:

"Fronting company" means a licensed insurer or licensed home protection company which generally transfers to one or more unlicensed insurers or unlicensed home protection companies by reinsurance or otherwise all or substantially all of the risk of loss under all of the home protection contracts written by it in this Commonwealth.

"Home protection company" means any person who performs, or arranges to perform, services pursuant to a home protection insurance contract.

"Home protection insurance contract" or "contract" means any insurance contract or agreement whereby a person undertakes for a specified period of time and for a predetermined fee to furnish, arrange for or indemnify for service, repair, or replacement of any and all of the structural components, parts, appliances, or systems of any covered residential dwelling necessitated by wear and tear, deterioration, inherent defect, or by the failure of an inspection to detect the likelihood of failure.

The contract shall provide for a system to effect repair or replacement if the contract undertakes to provide for repair or replacement services. The contract shall not include protection against consequential damage from the failure of any structural component, part, appliance or system.

"Structural component" means the roof, foundation, basement, walls, ceilings, or floors of a home.

§ 38.2-2601. Exemptions.

This ~~chapter~~ article shall not apply to:

1. Performance guarantees given by either (i) the builder of a home or (ii) the manufacturer, seller, or lessor of the property that is the subject of the contract if no identifiable charge is made for the guarantee.

2. Any service contract, guarantee, or warranty intending to guarantee or warrant the repairs or service of a home appliance, component, part, or system that is issued (i) by a person who has sold, serviced, repaired, or provided replacement of the appliance, component, part, or system at the time of or prior to issuance of the service contract, guarantee or warranty if such person does not engage in the business of a home protection company or (ii) by a home protection company which sells such service contracts, guarantees or warranties in the Commonwealth of Virginia and which has net worth in excess of \$100 million.

§ 38.2-2602. Limited applicability to certain insurers.

A property and casualty insurer may be licensed to transact home protection insurance as defined in § 38.2-129. An insurer licensed in this Commonwealth to transact the class of insurance defined by § 38.2-111 on July 1, 1986, may also transact home protection insurance without additional authority. No other provision of this ~~chapter~~ article, except § 38.2-2606 and §§ 38.2-2608 through 38.2-2614, shall be applicable to the insurers, their businesses, or their home protection contracts.

§ 38.2-2604. Qualification for license; net worth; deposit of securities with State Treasurer.

A. No license shall be issued to any home protection company unless the applicant:

1. Is a Virginia corporation formed under the provisions of Article 3 (§ 13.1-618 et seq.) of Chapter 9 of Title 13.1, or Article 3 (§ 13.1-818 et seq.) of Chapter 10 of Title 13.1; or

2. Is a foreign corporation subject to regulation and licensing under the laws of its domiciliary jurisdiction which are substantially similar to those provided in this ~~chapter~~ article, and has obtained a certificate of authority to transact business in this Commonwealth;

3. Furnishes the Commission with evidence satisfactory to it that the management of the home protection company is competent and trustworthy, and can be reasonably expected to successfully manage the company's affairs in compliance with law;

4. Establishes to the satisfaction of the Commission that it (i) maintains employees or has contractual arrangements sufficient to provide the services or indemnity undertaken by it, and (ii) agrees to accept requests for heating, electrical and plumbing services contracted for twenty-four hours per day, seven days per week;

5. Makes the deposit of bonds or other securities required by this section;

6. Is otherwise in compliance with this ~~chapter~~ article;

7. Has filed the required application and paid the required fee;

8. Has paid all fees, taxes, and charges required by law;

9. Has the minimum net worth prescribed by this section;

10. Has filed any financial statement and any reports, certificates, or other documents as the Commission deems necessary to secure a full and accurate knowledge of its affairs and financial condition; and

11. Keeps adequate, correct and complete books and records of accounts and maintains proper accounting controls.

B. The Commission shall not issue a license to or renew the license of a home protection company unless it is satisfied that the financial condition, the method of operation, and the manner of doing business enable the home protection company to meet its obligations to all contract holders and that the home protection company has otherwise complied with all the requirements of law.

C. A home protection company shall maintain a net worth in an amount not less than 20% of the premiums charged on its contracts currently in force; however, the minimum required net worth shall be not less than \$100,000, and the maximum required net worth shall be that amount required of insurers under the provisions of Article 5 (§ 38.2-1024 et seq.) of Chapter 10 of this title.

D. No license shall be granted to any home protection company until it presents to the Commission a certificate of the State Treasurer that bonds or other securities have been deposited with him to be held in accordance with the provisions of and upon the terms and conditions and in the amount as provided in Article 7 (§ 38.2-1045 et seq.) of Chapter 10 of this title.

§ 38.2-2605. Expiration and renewal of license.

Every home protection company licensed under this ~~chapter~~ article shall obtain a renewal of its license annually from the Commission. Every license issued under this ~~chapter~~ article shall expire at midnight on June 30 immediately following the date of issuance. No renewal license shall be issued unless the home protection company has paid all taxes, fees, assessments and other charges imposed upon it, and has complied with all the other requirements of law. The Commission shall not fail or refuse to renew the license of any home protection company without giving the home protection company ten days' notice of the failure or refusal to renew and providing it an opportunity to be heard and to introduce evidence in its behalf. Any such hearing may be informal, and the required notice may be waived by the Commission and the home protection company.

§ 38.2-2613. Application of insurance laws.

Except as otherwise specifically provided in this ~~chapter~~ article or where the context requires otherwise, all of the provisions of this title that apply to property and casualty insurers shall apply in every respect to home protection companies licensed under this ~~chapter~~ article. In addition, Article 1 (§ 58.1-2500 et seq.) and Article 2 (§ 58.1-2520 et seq.) of Chapter 25 of Title 58.1 shall apply to the operation of a home protection company.

§ 38.2-2615. Other insurance transactions prohibited.

A. A home protection company that engages in any business other than the business of a home protection company is not eligible for the issuance or renewal of a license in this Commonwealth.

B. Nothing in this ~~chapter~~ article shall be deemed to authorize any home protection company to transact any business other than that of a home protection company or to transact any other business of insurance, unless the company is authorized by a license issued by the Commission.

Article 2.

Home Service Contract Providers.

§ 38.2-2617. Definitions.

As used in this article:

"Administrator" means the person who is responsible for the administration of the home service contracts or the home service contracts plan or who is responsible for any submission required by this article.

"Home service contract" means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of property or indemnification for repair, replacement, or maintenance, for the operational failure of any components, parts, appliances, or systems of any covered residential dwelling due to a defect in materials, workmanship, inherent defect, or normal wear and tear, with or without additional provisions for incidental payment of indemnity under limited circumstances. Home service contracts may provide for the repair, replacement, or

maintenance of property for damage resulting from power surges or interruption and accidental damage from handling and may provide roof leak coverage. Home service contracts are not insurance in the Commonwealth and shall not be subject to the provisions of this title except as specifically provided in this article.

"Home service contract holder" or "contract holder" means the purchaser or holder of a home service contract.

"Maintenance agreement" means a contract of limited duration that provides for scheduled maintenance only and does not include repair or replacement.

"Person" means an individual, partnership, corporation, incorporated or unincorporated association, joint stock company, reciprocal, syndicate or any similar entity or combination of entities acting in concert.

"Premium" means the consideration paid to an insurer for a reimbursement insurance policy.

"Provider" means a person who is contractually obligated to the home service contract holder under the terms of the home service contract.

"Provider fee" means the consideration paid for a home service contract.

"Reimbursement insurance policy" means a policy of insurance issued to a provider to provide reimbursement to the provider under the terms of the insured home service contracts issued or sold by the provider and, in the event of the provider's nonperformance, to pay on behalf of the provider all covered contractual obligations incurred by the provider under the terms of the insured home service contracts issued or sold by the provider.

§ 38.2-2618. Exemptions.

A. The following are exempt from this article:

- 1. Warranties;*
- 2. Maintenance agreements; and*
- 3. Warranties, service contracts, or maintenance agreements offered by public utilities on their transmission devices to the extent they are regulated by the Commission.*

B. Any person in compliance with Article 1 (§ 38.2-2600 et seq.) of this chapter shall be exempt from this article.

C. Home service contract providers licensed under this article shall not be subject to the provisions of the Virginia Consumer Protection Act (§ 59.1-196 et seq.).

§ 38.2-2619. Requirements for doing business.

A. A provider may, but is not required to, appoint an administrator or other designee to be responsible for any or all of the administration of home service contracts and compliance with this article.

B. Home service contracts shall not be issued, sold, or offered for sale in this Commonwealth unless the provider has:

- 1. Provided a receipt for, or other written evidence of, the purchase of the home service contract to the contract holder; and*
- 2. Provided a copy of the home service contract to the home service contract holder within a reasonable period of time from the date of purchase.*

C. Each provider of home service contracts sold in this Commonwealth shall first obtain a license by filing with the Commission their name, full corporate address, telephone number, and contact person and designate a person in this Commonwealth for service of process. Each provider shall pay to the Commission a fee in the amount of \$1,000 upon initial licensure and every two years thereafter. Said filing need only be updated by written notification to the Commission if material changes occur in the information on file. All fees paid into the State Treasury pursuant to this subsection shall be deposited in accordance with subsection B of § 38.2-400.

D. No license shall be issued to any home service contract provider unless the applicant:

1. If a resident partnership, limited liability company, or corporation, has recorded the existence of the partnership, limited liability company or corporation pursuant to law, or if a nonresident partnership, limited liability company or corporation, has furnished proof of its authority to transact business in Virginia;

2. Maintains a net worth in an amount not less than 20% of the premiums charged on its contracts currently in force; however, the minimum required net worth shall be not less than \$100,000, and the maximum required net worth shall be that amount required of insurers under the provisions of Article 5 (§ 38.2-1024 et seq.) of Chapter 10 of Title 38.2;

3. Places on deposit with the State Treasurer a financial security deposit of the type allowed pursuant to Chapter 45 (§ 2.2-4500 et seq.) of Title 2.2. The deposit shall have a value of at least 5% of the gross consideration received on the sale of the home service contract for all home service contracts issued and in force, but not less than \$25,000 or more than \$250,000. The Treasurer is authorized to defray expenses associated with the deposit in accordance with § 38.2-1057; and

4. Has filed any financial statement and any reports, certificates, or other documents as the Commission deems necessary to secure a full and accurate knowledge of its affairs and financial condition.

E. In order to assure the faithful performance of a provider's obligations to its contract holders, each provider shall be responsible for complying with any one of the following requirements:

1. Insure all home service contracts under a reimbursement insurance policy issued by an insurer licensed, registered, or otherwise authorized to do business in the Commonwealth, and either:

a. At the time the reimbursement insurance policy is filed with the Commission, and continuously thereafter, (i) maintain surplus as to policyholders of at least \$15 million and (ii) annually file copies of the insurer's audited financial statements, its National Association of Insurance Commissioners Annual Statement, and the actuarial certification required by and filed in the insurer's state of domicile; or

b. At the time the reimbursement insurance policy is filed with the Commission, and continuously thereafter, (i) maintain surplus as to policyholders of less than \$15 million but at least equal to \$10 million, (ii) demonstrate to the satisfaction of the Commission that the company maintains a ratio of net written premiums, wherever written, to surplus as to policyholders of not greater than 3 to 1, and (iii) annually files copies of the insurer's audited financial statements, its National Association of Insurance Commissioners Annual Statement, and the actuarial certification required by and filed in the insurer's state of domicile;

2. Maintain a funded reserve account sufficient to provide for its obligations under its contracts issued and outstanding in this Commonwealth. The reserves shall not be less than 40% of gross consideration received, less claims paid, on the sale of the home service contract for all in-force contracts. This reserve account shall be certified by the company along with reasonable documentation thereof. The reserve account shall be subject to examination and review by the Commission; or

3. Maintain, or together with its parent company maintain, a net worth or stockholders' equity of at least \$100 million and upon request, provide the Commission with a copy of the provider's or the provider's parent company's most recent Form 10-K or similar document filed with the federal Securities and Exchange Commission within the last calendar year, or if the company does not file with the federal Securities and Exchange Commission, a copy of the company's audited financial statements, which shows a net worth of the provider or its parent company of at least \$100 million. If the provider's parent company's federal Securities and Exchange Commission filing or financial statements are filed to meet the provider's financial stability requirement, then the parent company shall agree to guarantee the obligations of the provider relating to home service contracts sold by the provider in this Commonwealth.

F. Except for the requirements specified in subsections D and E above, no other financial security requirements shall be required by the Commission for home service contract providers.

G. Home service contracts shall require the provider to permit the home service contract holder to return the home service contract within 20 days of the date the home service contract was mailed to the home service contract holder or within 10 days of delivery if the home service contract is delivered to the home service contract holder at the time of sale or within a longer time period permitted under the home service contract. Upon return of the home service contract to the provider within the applicable time period, if no claim has been made under the home service contract prior to its return to the provider, the home service contract is void and the provider shall refund to the home service contract holder, or credit the account of the home service contract holder, with the full purchase price of the home service contract. The right to void the home service contract provided in this subsection is not transferable and shall apply only to the original home service contract purchaser and only if no claim has been made prior to its return to the provider. A 10% penalty per month shall be added to a refund that is not paid or credited within 45 days after return of the home service contract to the provider.

H. Providers shall be subject to the provisions of Chapter 25 (§ 58.1-2500 et seq.) of Title 58.1. Provider fees collected on home service contracts shall be subject to premium taxes of two and one-fourth percent of such provider fees. The premium taxes paid by providers pursuant to this subsection shall be in lieu of all other state and local license fees or license taxes and state income taxes of the provider. Premiums for reimbursement insurance policies shall be subject to applicable premium taxes.

I. Except for the licensing requirements in subsection C, providers and related home service contract sellers, administrators, and other persons marketing, selling, or offering to sell home service contracts are exempt from any licensing requirements of the Commonwealth.

J. The marketing, sale, offering for sale, issuance, making, proposing to make and administration of home service contracts by providers and related home service contract sellers, administrators, and other persons shall be exempt from all other provisions of this title.

§ 38.2-2620. Required disclosures regarding reimbursement insurance policies.

A. Reimbursement insurance policies insuring home service contracts issued, sold, or offered for sale in this Commonwealth shall state that the insurer that issued the reimbursement insurance policy shall reimburse or pay on behalf of the provider any covered sums the provider is legally obligated to pay and, in the event of the provider's nonperformance, shall provide the service that the provider is legally obligated to perform according to the provider's contractual obligations under the home service contracts issued or sold by the provider.

B. In the event covered service is not provided by the home service contract provider within 60 days

of proof of loss by the home service contract holder, the contract holder is entitled to apply directly to the reimbursement insurance company.

§ 38.2-2621. Required disclosures regarding home service contracts.

A. Home service contracts marketed, sold, offered for sale, issued, made, proposed to be made, or administered in the Commonwealth shall be written, printed, or typed in clear, understandable language that is easy to read, and shall disclose the requirements set forth in this section, as applicable.

B. Home service contracts insured under a reimbursement insurance policy pursuant to subdivision E 1 of § 38.2-2619 shall contain a statement in substantially the following form: "Obligations of the provider under this home service contract are insured under a home service contract reimbursement insurance policy." The home service contract shall also state the name and address of the insurer.

C. Home service contracts not insured under a reimbursement insurance policy pursuant to subdivision E 1 of § 38.2-2619 shall contain a statement in substantially the following form: "Obligations of the provider under this home service contract are backed by the full faith and credit of the provider."

D. Home service contracts shall state the name, telephone number, and address of the provider, and shall identify any administrator if different from the provider, the home service contract seller, and the home service contract holder to the extent that the name of the home service contract holder has been furnished by the home service contract holder. The identities of such parties are not required to be preprinted on the home service contract and may be added to the home service contract at the time of sale.

E. Home service contract providers shall provide a written notice to the contract holder advising that if he is unable to contact or obtain satisfaction from the home service contract provider that he may contact the Commission and shall provide the appropriate address and toll-free telephone number.

F. Home service contracts shall state the total purchase price and the terms under which the home service contract is sold. The purchase price is not required to be pre-printed on the home service contract.

G. Home service contracts shall state the existence of any trade service fee, if applicable.

H. Home service contracts shall specify the merchandise and services to be provided and any limitations, exceptions, or exclusions.

I. Home service contracts shall state any restrictions governing the transferability of the home service contract, if applicable.

J. 1. Home service contracts shall state the terms, restrictions or conditions governing cancellation of the home service contract prior to the termination or expiration date of the home service contract by either the provider or the home service contract holder. However, no home service contract provider shall cancel a home service contract during the initial term of the contract except for (i) nonpayment of provider fees, (ii) fraud or misrepresentation of material facts, or (iii) in the case of contracts providing coverage prior to the time the residential property is purchased, should the purchase of the property not occur.

2. If the home service contract is cancelled by the provider, the provider shall mail a written notice to the contract holder at the last known address of the home service contract holder contained in the records of the provider at least five days prior to cancellation. Notice of cancellation shall be in writing and shall state the effective date of the cancellation and the reason for the cancellation. Prior notice is not required if the reason for cancellation is nonpayment of the provider fee, material misrepresentation by the home service contract holder to the provider, or a substantial breach of duties by the home service contract holder relating to the covered item or its use.

K. Home service contracts shall set forth all of the obligations and duties of the home service contract holder, such as the duty to protect against any further damage and any requirement to follow the owner's manual.

L. Home service contracts shall state whether or not the home service contract provides for or excludes consequential damages or pre-existing conditions, if applicable. Home service contracts may, but are not required to, cover damage resulting from rust, corrosion, or damage caused by a noncovered part or system.

M. If prior approval of repair work is required, a home service contract shall state the procedure for obtaining prior approval and for making a claim, including a toll-free telephone number for claim service and if offered, a procedure for obtaining emergency repairs performed outside of normal business hours.

N. Home service contracts shall include a provision stating that a response and a plan for covered services contracted for by or under the direction of a home service contract provider shall occur within 72 hours of the request for the service by the contract holder.

§ 38.2-2622. Financial statements.

On or before March 1 of each year, each home service contract provider shall file with the Commission its annual financial statement, in the form prescribed by the Commission. On or before June 1 of each year, each home service contract provider shall file with the Commission audited financial statements in a manner prescribed by the Commission. The Commission may request

supplemental financial information to ensure a home service contract provider's financial stability.

Investments shall be subject to the provisions of Chapter 14 (§ 38.2-1400 et seq.) of this title.

§ 38.2-2623. Prohibited acts.

A. A provider shall not use in its name the words insurance, casualty, surety, mutual or any other words descriptive of the insurance, casualty or surety business or a name deceptively similar to the name or description of any insurance or surety corporation, or to the name of any other provider. The word "guaranty" or similar word may be used by a provider. This section shall not apply to a company that was using any of the prohibited language in its name prior to the effective date of this article. However, a company using the prohibited language in its name shall include in its home service contracts a clear statement in substantially the following form: "This agreement is not an insurance contract."

B. A provider or its representative shall not in its home service contracts or literature make, permit or cause to be made any false or misleading statement, either oral or written, or deliberately omit any material statement that would be considered misleading if omitted in the sale, offer, or advertisement of the home service contract.

C. No provider shall make or permit any unfair discrimination between individuals in the provider fees charged for any contract or in the performance of services.

D. No provider shall fail to perform the services promised under the home service contract in a timely, competent, or workmanlike manner.

E. The purchase of a home service contract is not mandatory.

§ 38.2-2624. Examinations.

The Commission may investigate or examine the affairs, transactions, accounts, records and assets of the home service contract provider as it deems necessary. Examinations shall be conducted pursuant to §§ 38.2-1317.1 through 38.2-1321.1.

§ 38.2-2625. Cancellation of reimbursement insurance policy.

As applicable, an insurer that issued a reimbursement insurance policy shall not terminate the policy until a notice of termination in accordance with § 38.2-231 has been mailed or delivered to the Commission. The termination of a reimbursement insurance policy shall not reduce the issuer's responsibility for home service contracts issued by providers prior to the date of the termination.

§ 38.2-2626. Obligation of reimbursement insurance policy insurers.

A. Insurers issuing reimbursement insurance to providers are deemed to have received the premiums for such insurance upon the payment of provider fees by contract holders for home service contracts issued by such insured providers.

B. This article shall not prevent or limit the right of an insurer that issued a reimbursement insurance policy to seek indemnification or subrogation against a provider if the issuer pays or is obligated to pay the home service contract holder sums that the provider was obligated to pay pursuant to the provisions of the home service contract.

§ 38.2-2627. Enforcement.

A. The Commission may take all administrative action as specified and set forth in subsections A and B of § 38.2-219, and § 38.2-220. Nothing in this article shall infer or be construed to create a private right or cause of action.

B. A person who is found to have violated this article or orders of the Commission may be assessed a penalty in an amount determined by the Commission of not more than \$500 per violation and no more than \$10,000 in the aggregate for all violations of a similar nature. For purposes of this section, violations shall be of a similar nature if the violation consists of the same or similar course of conduct, action, or practice, irrespective of the number of times the act, conduct, or practice that is determined to be a violation of this article occurred.

C. The Commission may, after notice and opportunity to be heard, suspend, revoke, refuse to issue or renew any person's license for any violation of this article.

D. Home service contract providers shall be subject to the provisions of Chapter 15 (§ 38.2-1500 et seq.) of this title.

§ 38.2-2628. Severability.

If any provision of this article, or the application of the provision to any person or circumstances, shall be held invalid, the remainder of this article, and the application of the provision to person or circumstances other than those as to which it is held invalid, shall not be affected.