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HOUSE BILL NO. 383

Offered January 11, 2006

Prefiled January 6, 2006

A BILL to amend and reenact §§ 59.1-435, 59.1-436, and 59.1-437 of the Code of Virginia, relating to extended service contracts.

 Patron—Suit

 Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 59.1-435, 59.1-436, and 59.1-437 of the Code of Virginia are amended and reenacted as follows:

§ 59.1-435. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Board" means the Virginia Board of Agriculture and Consumer Services.

"Commissioner" means the Commissioner of the Department of Agriculture and Consumer Services or his designee.

"Consumer product" means tangible personal property *and built-in household appliances, mechanical, plumbing, or electrical systems* primarily used for personal, family, or household purposes.

"Extended service contract" or "contract" means a written agreement which is in effect for ~~at least one year~~ *a specified duration* whereby the purchaser is indemnified against the cost of repair or replacement of a consumer product ~~which that fails due to normal wear and tear or is~~ defective in material or workmanship in return for the payment of a segregated charge by the purchaser.

"Extended service contract provider" or "provider" means any person or entity other than a public service corporation supervised by the State Corporation Commission, ~~who is the original manufacturer or seller and~~ who solicits, offers, advertises, or executes extended service contracts. Such definition includes the obligor of the contract sold, solicited, offered, advertised, or executed by the original manufacturer, seller or obligor.

"Maintenance agreement" means a contract of limited duration that provides for scheduled maintenance only and does not indemnify against the cost of repair or replacement of a consumer product.

"Obligor" means the person who is contractually obligated to the purchaser to provide services under the extended service contract and who is (i) the original manufacturer or seller of the merchandise covered by the extended service contract, (ii) acting through or with the written consent of the original manufacturer, seller, or purchaser of the merchandise covered by the extended service contract, or (iii) acting through or with the written consent of a manufacturer or seller of merchandise similar to the merchandise covered by the extended service contract.

"Purchaser" means a person who enters into an extended service contract with an extended service contract provider.

§ 59.1-436. Registration; fees; exemptions.

A. It shall be unlawful for any extended service contract provider to offer, advertise, or execute or cause to be executed by the purchaser any extended service contract for a consumer product in ~~this the~~ Commonwealth unless the obligor at the time of the solicitation, offer, advertisement, sale, or execution of a contract has been properly registered with the Commissioner. The registration shall (i) disclose the address, ownership, and nature of business of the obligor; (ii) be renewed annually on July 1; and (iii) be accompanied by a fee of \$300 per registration and annual renewal. A registration application or registration renewal will not be considered filed until all required information and fees are received by the Commissioner. Any obligor who fails to register prior to the sale of an extended service contract shall pay a late filing fee of \$100 for each 30-day period, or portion thereof, that the registration is late. An obligor who fails to timely renew its registration shall pay a late fee of \$50 for each 30-day period, or portion thereof, that the annual renewal filing is late. The late fees authorized by this subsection shall be in addition to all other penalties authorized by law.

B. All fees shall be remitted to the State Treasurer and shall be placed to the credit and special fund of the Virginia Department of Agriculture and Consumer Services to be used in the administration of this chapter.

C. Any matter subject to the insurance regulatory authority of the State Corporation Commission pursuant to Title 38.2 shall not be subject to the provisions of this chapter.

D. Licensed or registered motor vehicle dealers, as defined in § 46.2-1500, shall not be subject to the

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59 provisions of this chapter.

60 E. Extended service contract providers who comply with this section and the employees of such
61 providers who market, sell or offer to sell extended service contracts on behalf of the provider shall not
62 be subject to the provisions of Title 38.2.

63 *F. Maintenance agreements shall not be subject to the provisions of this chapter.*

64 § 59.1-437. Bond or letter of credit required.

65 A. Every extended service contract obligor, before it is registered, shall file and maintain with the
66 Commissioner, in form and substance satisfactory to him, a bond with corporate surety, from a company
67 authorized to transact business in the Commonwealth or a letter of credit from a bank insured by the
68 Federal Deposit Insurance Corporation, in the amount of \$10,000. Additional bond or letter of credit
69 amounts shall be similarly filed with the Commissioner and shall be adjusted from time to time, in
70 accordance with the following schedule:

71	Total Amount of Unexpired	Amount of Bond or
72	Extended Service Contracts	Letter of Credit
73	\$0 to \$50,000	\$10,000
74	\$50,001 to \$300,000	\$40,000
75	\$300,001 to \$750,000	\$65,000
76	\$750,001 or more	\$90,000

77 The total amount of unexpired extended service contracts shall be the total consideration paid by all
78 purchasers to the extended service obligor for all extended service contracts currently in effect.

79 B. The bond or letter of credit required by subsection A of this section shall be in favor of the
80 Commonwealth for the benefit of purchasers of extended service contracts for consumer products in the
81 event that the extended service contract obligor does not fulfill its obligations under such contracts for
82 any reason, including insolvency or bankruptcy.

83 C. The aggregate liability of the bond or letter of credit to all persons for all breaches of the
84 conditions of the bond or letter of credit shall in no event exceed the amount of the bond or letter of
85 credit. The bond or letter of credit shall not be cancelled or terminated except with the consent of the
86 Commissioner.

87 D. In order to ensure the faithful performance of a third party obligor's obligations to its contract
88 holders, each third party obligor shall furnish proof of its financial stability by complying with either of
89 the following:

90 1. The third party obligor shall show that it has a net worth of at least \$100 million by providing the
91 Commissioner with a copy of the third party obligor's most recent annual audited financial statement; or

92 2. The third party obligor shall show a net worth of the third party obligor or its parent company of
93 at least \$100 million by providing the Commissioner with a copy of the third party obligor's, or if the
94 third party obligor's financial statements are consolidated with those of its parent company, the third
95 party obligor's parent company's, most recent Form 10-K or Form 20-F filed with the Securities and
96 Exchange Commission, provided the Form 10-K or Form 20-F was filed with the Securities and
97 Exchange Commission within the last calendar year. If the third party obligor's parent company's Form
98 10-K or Form 20-F is filed to meet the third party obligor's financial stability requirement, then the
99 parent company shall agree to guarantee the obligations of the third party obligor relating to service
100 contracts sold by the third party obligor in ~~this~~ the Commonwealth.

101 E. In lieu of compliance with subsection D, a third party obligor may demonstrate financial
102 responsibility by filing with the Commissioner a copy of a liability insurance policy issued by an insurer
103 ~~authorized licensed~~ to transact business in ~~this~~ the Commonwealth and which covers 100 percent of the
104 obligor's service contract liabilities, including the administration of claims and the cost for such
105 administration. Reimbursement insurance policies filed pursuant to this section may not be cancelled by
106 either the third party obligor or the issuing insurer without providing 60 days' notice to the
107 Commissioner.

108 *F. In lieu of compliance with subsection D or E, a third party obligor may demonstrate financial*
109 *responsibility by maintaining a funded reserve account for its obligations under its contracts issued and*
110 *outstanding in the Commonwealth. The reserves shall not be less than 40 percent of the gross*
111 *consideration received, less claims paid, on the sale of the service contract for all in-force contracts.*
112 *Every year upon submission of the renewal, the reserve account shall be certified by an officer of the*
113 *corporation and an independent certified public accountant that the 40 percent requirement is met and*
114 *that such are sufficient reserves to cover possible claims.*