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SENATE BILL NO. 439

Offered January 13, 2010

Prefiled January 13, 2010

A BILL to amend and reenact §§ 38.2-2617, 38.2-2618, and 38.2-2619 of the Code of Virginia, relating to home service contract providers.

Patron—Saslaw

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-2617, 38.2-2618, and 38.2-2619 of the Code of Virginia are amended and reenacted as follows:

§ 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" or "home service contract 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. Any home service contract provider that has a net worth in excess of \$100 million shall be exempt from this article.

D. 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

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59 article.

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

62 1. Provided a receipt for, or other written evidence of, the purchase of the home service contract to
63 the contract holder; and

64 2. Provided a copy of the home service contract to the home service contract holder within a
65 reasonable period of time from the date of purchase.

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

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

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

78 2. Maintains a net worth in an amount not less than 20% of the premiums charged on its contracts
79 currently in force; however, the minimum required net worth shall be not less than \$100,000, and the
80 maximum required net worth shall be that amount required of insurers under the provisions of Article 5
81 (§ 38.2-1024 et seq.) of Chapter 10 of Title 38.2;

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

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

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

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

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

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

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

112 3. Maintain, ~~or together~~ with its parent company ~~maintain~~, a net worth or stockholders' equity of at
113 least \$100 million and upon request, provide the Commission with a copy of the provider's ~~or the~~
114 ~~provider's~~ parent company's most recent Form 10-K or similar document filed with the federal Securities
115 and Exchange Commission within the last calendar year, or if the company does not file with the federal
116 Securities and Exchange Commission, a copy of the company's audited financial statements, which
117 shows a net worth of the ~~provider~~ *or its provider's* parent company of at least \$100 million. If the
118 provider's parent company's federal Securities and Exchange Commission filing or financial statements
119 are filed to meet the provider's financial stability requirement, then the parent company shall agree to
120 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.