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**HOUSE BILL NO. 69**

AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the House Committee on Commerce and Labor  
on January 16, 2014)

(Patron Prior to Substitute—Delegate Marshall, D.W.)

A BILL to amend and reenact §§ 59.1-435 and 59.1-438 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 59.1-440.1, relating to the Extended Service Contract Act; scope of services provided.

Be it enacted by the General Assembly of Virginia:

1. That §§ 59.1-435 and 59.1-438 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 59.1-440.1 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 primarily used for personal, family, or household purposes.

"Extended service contract" or "contract" means a written contract or agreement for a specific duration in return for the payment of a segregated charge by the purchaser to perform the repair or replacement of any consumer product, including a motor vehicle, or indemnification for repair or replacement, for the operational or structural failure of any consumer product, including a motor vehicle, 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, including, but not limited to, towing, rental, and emergency road service and road hazard protection. Extended service contracts may provide for the any one or more of the following:

1. The repair or replacement of any consumer product for damage resulting from power surges or interruption or accidental damage from handling. ~~Extended service contracts are not insurance in the Commonwealth or otherwise regulated under Title 38.2;~~

2. The repair or replacement of tires or wheels, or both, on a motor vehicle damaged as the result of coming into contact with a road hazard;

3. The removal of dents, dings, or creases on a motor vehicle that can be repaired using the process of paintless dent removal without affecting the existing paint finish and without replacing vehicle body panels, sanding, bonding, or painting;

4. The repair of chips or cracks in, or the replacement of, a motor vehicle windshield as a result of damage caused by a road hazard;

5. The replacement of a motor vehicle key or key fob in the event that the key or key fob becomes inoperable or is lost or stolen;

6. The installation on or application to a motor vehicle of a protective chemical, substance, device, or system that (i) is designed to prevent loss or damage to the motor vehicle from a specific cause and (ii) includes, within or as an accompaniment to the extended service contract, an agreement that provides for payment to or on behalf of the purchaser of incidental costs in the event that the protective chemical, substance, device, or system fails to prevent loss or damage as specified, provided that the reimbursement of incidental costs under such agreement is tied to the purchase of a protective chemical, substance, device, or system that is formulated or designed to make the specified loss or damage less likely to occur; or

7. Any other service that may be designated by the Board as provided in subsection B of § 59.1-438.

"Extended service contract" does not include a contract or agreement that provides (i) for the application of fuel additives, oil additives, or other chemical products to the engine, transmission, or fuel system of a motor vehicle or (ii) coverage for (a) the repair of damage to the interior surfaces of a motor vehicle or the replacement of the interior surfaces of a motor vehicle, or both, or (b) the repair of damage to the exterior paint finish of a motor vehicle or the replacement of the exterior paint finish of a motor vehicle, or both, unless the coverage is provided under a product warranty included in connection with the sale of a protective chemical, substance, device, or system described in subdivision 6.

"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

60 manufacturer, seller or obligor.

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

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

69 "Road hazard" means a hazard that is encountered while driving a motor vehicle, including potholes,  
70 rocks, wood debris, metal parts, glass, plastic, curbs, and composite scraps.

71 **§ 59.1-438. Regulations.**

72 A. The Board is authorized to ~~prescribe~~ adopt reasonable regulations in order to implement  
73 provisions in this chapter relating to extended service contracts. These regulations shall be adopted,  
74 amended, or repealed in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

75 B. Without limiting the authority of the Board under subsection A, the Board is authorized to adopt  
76 reasonable regulations that designate services, in addition to those enumerated in the definition of  
77 extended service contract in § 59.1-435, that may be provided under an extended service contract,  
78 provided that the designation of the additional services is not inconsistent with the provisions of this  
79 chapter.

80 **§ 59.1-440.1. Extended service contracts not insurance.**

81 Extended service contracts are (i) not contracts of insurance in the Commonwealth and (ii) not  
82 subject to regulation under Title 38.2.