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SENATE BILL NO. 1188

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on January 14, 2019)

(Patron Prior to Substitute—Senator Dance)

A *BILL to amend and reenact § 59.1-437 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 59.1-437.1, relating to extended service contract providers; bonding requirement; remedies; civil penalty.*

Be it enacted by the General Assembly of Virginia:

1. That § 59.1-437 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 59.1-437.1 as follows:

§ 59.1-437. Third party obligors; proof of financial stability.

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

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

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

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

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

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

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

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

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

C. *Each service contract shall include a disclosure in substantially the form as follows or in such other form as the Commissioner directs:*

"If any promise made in the contract has been denied or has not been honored within 60 days after your request, you may contact the Virginia Department of Agriculture and Consumer Services, Office of Charitable and Regulatory Programs to file a complaint."

D. Upon receipt of a complaint by a purchaser against an obligor asserting that a promise made in a contract has been denied or has not been honored within 60 days after the purchaser's request, the Commissioner may conduct an investigation as authorized by § 59.1-439 to determine if the obligor or its insurance company, if complying with subsection B, has improperly denied or failed to honor a purchaser's request. If the Commissioner determines that a purchaser's request was improperly denied or failed to be honored by an obligor or its insurance company, if complying with subsection B, the Commissioner may issue an order requiring the obligor to rectify or justify the denial or failure. In addition to the penalties provided in § 59.1-441, if the denial or failure is not rectified or sufficiently justified by the obligor, the Commissioner may (i) issue a cease and desist order requiring the obligor to cease operations in the Commonwealth until the denial or failure has been rectified; (ii) deny, suspend, or revoke the obligor's registration; or (iii) assess a civil penalty of up to \$1,000 per violation not to exceed \$10,000 in the aggregate for all similar violations. Any civil penalties collected pursuant to this subsection shall be payable to the State Treasurer for deposit to the general fund. If the Commissioner elects to assess such a civil penalty and an obligor does not pay the civil penalty within 60 days of its assessment, the Commissioner may (a) issue a cease and desist order requiring the obligor to cease operations in the Commonwealth until the civil penalty has been paid or (b) deny, suspend, or revoke the obligor's registration.

§ 59.1-437.1. Denial, suspension, or revocation of registration.

A. The Commissioner may deny an application for registration of an obligor under § 59.1-436 or may suspend or revoke such registration if the Commissioner finds that such action is necessary for the protection of purchasers or prospective purchasers or that any one of the following is true:

1. The obligor has failed to comply with any provision of this chapter;

2. The obligor has improperly denied or failed to honor a purchaser's request as provided in subsection D of § 59.1-437 and the denial or failure is not rectified or sufficiently justified by the obligor;

3. The obligor does not pay a civil penalty assessed pursuant to subsection D of § 59.1-437 within 60 days of its assessment;

4. The obligor's application for registration or any amendment thereto is incomplete in any respect.

5. The obligor failed to meet any other requirement of § 59.1-437;

6. The obligor has made any representation in any document or information filed with the Commissioner that is false or misleading;

7. The obligor has engaged or is engaging in any unlawful act or practice;

8. The obligor does not have a reasonable ability to discharge the obligations imposed upon it by any extended service contract; or

9. Facts not known by the Commissioner at the time the Commissioner considered the application for registration indicate that such registration should not have been issued.

B. Except as provided in subsection C, the Commissioner may deny, suspend, or revoke an obligor's registration after a hearing with 15 days' notice.

C. If the Commissioner finds that the public health, safety, or welfare requires emergency action and incorporates this finding in his order, the Commissioner may summarily deny, suspend, or revoke a registration. The obligor shall be given an opportunity within 10 days after entry of such an order to appear before the Commissioner and show cause why the summary order should not remain in effect. If good cause is shown, the Commissioner shall vacate the summary order. If good cause is not shown, the summary order shall remain in effect. The obligor shall have 15 days after the registration is summarily suspended within which to request a hearing, or the Commissioner may within 30 days thereafter set the matter for a hearing.

D. If any such registration is suspended or revoked, the Commissioner shall state its reasons for doing so, which shall be entered of record. Suspension or revocation of a registration for any violation of this chapter shall not affect the Commissioner's authority to take any action authorized by § 59.1-441 with respect to such violation.