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HOUSE BILL NO. 417

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Corporations, Insurance and Banking
on January 30, 1996

(Patron Prior to Substitute—Delegate Cantor)

A BILL to amend and reenact §§ 59.1-435, 59.1-436, 59.1-437 and 59.1-440 of the Code of Virginia, relating to the Extended Service Contract Act.

Be it enacted by the General Assembly of Virginia:

1. That §§ 59.1-435, 59.1-436, 59.1-437 and 59.1-440 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 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 whereby the purchaser is indemnified against the cost of repair or replacement of a consumer product which 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 or seller.*

"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, or (ii) acting through or with the written consent of the original manufacturer or seller of 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 Commonwealth unless the ~~provider~~ *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 ~~provider~~ *obligor*; (ii) be renewed annually; and (iii) be accompanied by a fee of \$100 per registration and annual renewal.

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 provisions of this chapter.

E. Extended service contract providers who comply with this section and the employees of such providers who market, sell or offer to sell extended service contracts on behalf of the provider shall not be subject to the provisions of Title 38.2 (§ 38.2-100 et seq.).

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

A. Every extended service contract ~~provider~~ *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

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| | | |
|----|------------------------|----------|
| 60 | \$0 to \$50,000 | \$10,000 |
| 61 | \$50,001 to \$300,000 | \$40,000 |
| 62 | \$300,001 to \$750,000 | \$65,000 |
| 63 | \$750,001 or more | \$90,000 |

64
65 The total amount of unexpired extended service contracts shall be the total consideration paid by all
66 purchasers to the extended service ~~provider~~ obligor for all extended service contracts currently in effect.

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

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

75 *D. In order to ensure the faithful performance of a third party obligor's obligations to its contract*
76 *holders, each third party obligor shall provide the Commissioner as proof of financial stability a copy*
77 *of the third party obligor's or, if the third party obligor's financial statements are consolidated with*
78 *those of its parent company, the third party obligor's parent company's most recent Form 10-K filed*
79 *with the Securities and Exchange Commission which shows a net worth of the third party obligor or its*
80 *parent company of at least \$100 million provided the Form 10-K was filed with the Securities and*
81 *Exchange Commission within the last calendar year. If the third party obligor's parent company's Form*
82 *10-K is filed to meet the third party obligor's financial stability requirement, then the parent company*
83 *shall agree to guarantee the obligations of the third party obligor relating to service contracts sold by*
84 *the third party obligor in this Commonwealth.*

85 § 59.1-440. Production of records.

86 Every extended service contract ~~provider~~ obligor, upon written request of the Commissioner, shall
87 make available to the Commissioner its extended service contract records for inspection and copying to
88 enable the Commissioner to reasonably determine compliance with this chapter. Every ~~provider~~ obligor
89 shall maintain a true copy of each contract executed between the ~~provider~~ obligor and a purchaser, and
90 each contract shall be maintained for its term.