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## HOUSE BILL NO. 1542

AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the House Committee on Commerce and Labor  
on January 26, 2017)

(Patron Prior to Substitute—Delegate Kilgore)

A BILL to amend and reenact §§ 38.2-100, 38.2-2600, 38.2-2601, 38.2-2602, 38.2-2604, 38.2-2605, 38.2-2613, 38.2-2615, 59.1-200, and 59.1-436 of the Code of Virginia; to amend the Code of Virginia by adding a section numbered 58.1-400.4 and by adding in Title 59.1 a chapter numbered 33.1, consisting of sections numbered 59.1-434.1 through 59.1-434.8; and to repeal Article 2 (§§ 38.2-2617 through 38.2-2627) of Chapter 26 of Title 38.2 of the Code of Virginia, relating to the regulation of home service contract providers; penalties.

**Be it enacted by the General Assembly of Virginia:**

1. That §§ 38.2-100, 38.2-2600, 38.2-2601, 38.2-2602, 38.2-2604, 38.2-2605, 38.2-2613, 38.2-2615, 59.1-200, and 59.1-436 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 58.1-400.4 and by adding in Title 59.1 a chapter numbered 33.1, consisting of sections numbered 59.1-434.1 through 59.1-434.8, as follows:

**§ 38.2-100. Definitions.**

As used in this title:

"Alien company" means a company incorporated or organized under the laws of any country other than the United States.

"Commission" means the State Corporation Commission.

"Commissioner" or "Commissioner of Insurance" means the administrative or executive officer of the division or bureau of the Commission established to administer the insurance laws of this Commonwealth.

"Company" means any association, aggregate of individuals, business, corporation, individual, joint-stock company, Lloyds type of organization, organization, partnership, receiver, reciprocal or interinsurance exchange, trustee or society.

"Domestic company" means a company incorporated or organized under the laws of this Commonwealth.

"Foreign company" means a company incorporated or organized under the laws of the United States, or of any state other than this Commonwealth.

"Health services plan" means any arrangement for offering or administering health services or similar or related services by a corporation licensed under Chapter 42 (§ 38.2-4200 et seq.) of this title.

"Insurance" means the business of transferring risk by contract wherein a person, for a consideration, undertakes (i) to indemnify another person, (ii) to pay or provide a specified or ascertainable amount of money, or (iii) to provide a benefit or service upon the occurrence of a determinable risk contingency. Without limiting the foregoing, "insurance" shall include (i) each of the classifications of insurance set forth in Article 2 (§ 38.2-101 et seq.) of this chapter and (ii) the issuance of group and individual contracts, certificates, or evidences of coverage by any health services plan as provided for in Chapter 42 (§ 38.2-4200 et seq.) of this title, health maintenance organization as provided for in Chapter 43 (§ 38.2-4300 et seq.) of this title, legal services organization or legal services plan as provided for in Chapter 44 (§ 38.2-4400 et seq.) of this title, dental or optometric services plan as provided for in Chapter 45 (§ 38.2-4500 et seq.) of this title, and dental plan organization as provided for in Chapter 61 (§ 38.2-6100 et seq.) of this title. "Insurance" shall not include any activity involving a home service contract that is subject to regulation pursuant to Chapter 33.1 (§ 59.1-434.1 et seq.) of Title 59.1, an extended service contract that is subject to regulation pursuant to Chapter 34 (§ 59.1-435 et seq.) of Title 59.1, or a warranty made by a manufacturer, seller, lessor, or builder of a product or service.

"Insurance company" means any company engaged in the business of making contracts of insurance.

"Insurance transaction," "insurance business," and "business of insurance" include solicitation, negotiations preliminary to execution, execution of an insurance contract, and the transaction of matters subsequent to execution of the contract and arising out of it.

"Insurer" means an insurance company.

"Medicare" means the "Health Insurance for the Aged Act," Title XVIII of the Social Security Amendment of 1965, as amended.

"Person" means any association, aggregate of individuals, business, company, corporation, individual, joint-stock company, Lloyds type of organization, organization, partnership, receiver, reciprocal or interinsurance exchange, trustee or society.

"Rate" or "rates" means any rate of premium, policy fee, membership fee or any other charge made by an insurer for or in connection with a contract or policy of insurance. The terms "rate" or "rates"

60 shall not include a membership fee paid to become a member of an organization or association, one of  
61 the benefits of which is the purchasing of insurance coverage.

62 "Rate service organization" means any organization or person, other than a joint underwriting  
63 association under § 38.2-1915 or any employee of an insurer including those insurers under common  
64 control or management, who assists insurers in ratemaking or filing by:

- 65 (a) Collecting, compiling, and furnishing loss or expense statistics;
- 66 (b) Recommending, making or filing rates or supplementary rate information; or
- 67 (c) Advising about rate questions, except as an attorney giving legal advice.

68 "State" means any commonwealth, state, territory, district or insular possession of the United States.

69 "Surplus to policyholders" means the excess of total admitted assets over the liabilities of an insurer,  
70 and shall be the sum of all capital and surplus accounts, including any voluntary reserves, minus any  
71 impairment of all capital and surplus accounts.

72 Without otherwise limiting the meaning of or defining the following terms, "insurance contracts" or  
73 "insurance policies" shall include contracts of fidelity, indemnity, guaranty and suretyship.

#### 74 CHAPTER 26.

### 75 HOME PROTECTION COMPANIES AND HOME SERVICE CONTRACT PROVIDERS.

#### 76 Article 1-

#### 77 Home Protection Companies.

#### 78 § 38.2-2600. Definitions.

79 As used in this ~~article~~ chapter:

80 "Fronting company" means a licensed insurer or licensed home protection company which generally  
81 transfers to one or more unlicensed insurers or unlicensed home protection companies by reinsurance or  
82 otherwise all or substantially all of the risk of loss under all of the home protection contracts written by  
83 it in this Commonwealth.

84 "Home protection company" means any person who performs, or arranges to perform, services  
85 pursuant to a home protection insurance contract.

86 "Home protection insurance contract" or "contract" means any insurance contract or agreement  
87 whereby a person undertakes for a specified period of time and for a predetermined fee to furnish,  
88 arrange for or indemnify for service, repair, or replacement of any and all of the structural components,  
89 parts, appliances, or systems of any covered residential dwelling necessitated by wear and tear,  
90 deterioration, inherent defect, or by the failure of an inspection to detect the likelihood of failure.

91 The contract shall provide for a system to effect repair or replacement if the contract undertakes to  
92 provide for repair or replacement services. The contract shall not include protection against  
93 consequential damage from the failure of any structural component, part, appliance or system.

94 "Structural component" means the roof, foundation, basement, walls, ceilings, or floors of a home.

#### 95 § 38.2-2601. Exemptions.

96 This ~~article~~ chapter shall not apply to:

- 97 1. Performance guarantees given by either (i) the builder of a home or (ii) the manufacturer, seller,  
98 or lessor of the property that is the subject of the contract if no identifiable charge is made for the  
99 guarantee.
- 100 2. Any service contract, guarantee, or warranty intending to guarantee or warrant the repairs or  
101 service of a home appliance, component, part, or system that is issued (i) by a person who has sold,  
102 serviced, repaired, or provided replacement of the appliance, component, part, or system at the time of  
103 or prior to issuance of the service contract, guarantee or warranty if such person does not engage in the  
104 business of a home protection company or (ii) by a home protection company which sells such service  
105 contracts, guarantees or warranties in the Commonwealth of Virginia and which has net worth in excess  
106 of \$100 million.

#### 107 § 38.2-2602. Limited applicability to certain insurers.

108 A property and casualty insurer may be licensed to transact home protection insurance as defined in  
109 § 38.2-129. An insurer licensed in this Commonwealth to transact the class of insurance defined by  
110 § 38.2-111 on July 1, 1986, may also transact home protection insurance without additional authority.  
111 No other provision of this ~~article~~ chapter, except § 38.2-2606 and §§ 38.2-2608 through 38.2-2614, shall  
112 be applicable to the insurers, their businesses, or their home protection contracts.

#### 113 § 38.2-2604. Qualification for license; net worth; deposit of securities with State Treasurer.

114 A. No license shall be issued to any home protection company unless the applicant:

- 115 1. Is a Virginia corporation formed under the provisions of Article 3 (§ 13.1-618 et seq.) of Chapter  
116 9 of Title 13.1, or Article 3 (§ 13.1-818 et seq.) of Chapter 10 of Title 13.1; or
- 117 2. Is a foreign corporation subject to regulation and licensing under the laws of its domiciliary  
118 jurisdiction which are substantially similar to those provided in this ~~article~~ chapter, and has obtained a  
119 certificate of authority to transact business in this Commonwealth;
- 120 3. Furnishes the Commission with evidence satisfactory to it that the management of the home  
121 protection company is competent and trustworthy, and can be reasonably expected to successfully

manage the company's affairs in compliance with law;

4. Establishes to the satisfaction of the Commission that it (i) maintains employees or has contractual arrangements sufficient to provide the services or indemnity undertaken by it, and (ii) agrees to accept requests for heating, electrical and plumbing services contracted for twenty-four hours per day, seven days per week;

5. Makes the deposit of bonds or other securities required by this section;

6. Is otherwise in compliance with this ~~article~~ chapter;

7. Has filed the required application and paid the required fee;

8. Has paid all fees, taxes, and charges required by law;

9. Has the minimum net worth prescribed by this section;

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

11. Keeps adequate, correct and complete books and records of accounts and maintains proper accounting controls.

B. The Commission shall not issue a license to or renew the license of a home protection company unless it is satisfied that the financial condition, the method of operation, and the manner of doing business enable the home protection company to meet its obligations to all contract holders and that the home protection company has otherwise complied with all the requirements of law.

C. A home protection company shall maintain a net worth in an amount not less than 20% of the premiums charged on its contracts currently in force; however, the minimum required net worth shall be not less than \$100,000, and the maximum required net worth shall be that amount required of insurers under the provisions of Article 5 (§ 38.2-1024 et seq.) of Chapter 10 of this title.

D. No license shall be granted to any home protection company until it presents to the Commission a certificate of the State Treasurer that bonds or other securities have been deposited with him to be held in accordance with the provisions of and upon the terms and conditions and in the amount as provided in Article 7 (§ 38.2-1045 et seq.) of Chapter 10 of this title.

#### **§ 38.2-2605. Expiration and renewal of license.**

Every home protection company licensed under this ~~article~~ chapter shall obtain a renewal of its license annually from the Commission. Every license issued under this ~~article~~ chapter shall expire at midnight on June 30 immediately following the date of issuance. No renewal license shall be issued unless the home protection company has paid all taxes, fees, assessments and other charges imposed upon it, and has complied with all the other requirements of law. The Commission shall not fail or refuse to renew the license of any home protection company without giving the home protection company ten days' notice of the failure or refusal to renew and providing it an opportunity to be heard and to introduce evidence in its behalf. Any such hearing may be informal, and the required notice may be waived by the Commission and the home protection company.

#### **§ 38.2-2613. Application of insurance laws.**

Except as otherwise specifically provided in this ~~article~~ chapter or where the context requires otherwise, all of the provisions of this title that apply to property and casualty insurers shall apply in every respect to home protection companies licensed under this ~~article~~ chapter. In addition, Article 1 (§ 58.1-2500 et seq.) and Article 2 (§ 58.1-2520 et seq.) of Chapter 25 of Title 58.1 shall apply to the operation of a home protection company.

#### **§ 38.2-2615. Other insurance transactions prohibited.**

A. A home protection company that engages in any business other than the business of a home protection company is not eligible for the issuance or renewal of a license in this Commonwealth.

B. Nothing in this ~~article~~ chapter shall be deemed to authorize any home protection company to transact any business other than that of a home protection company or to transact any other business of insurance, unless the company is authorized by a license issued by the Commission.

#### **§ 59.1-200. Prohibited practices.**

A. The following fraudulent acts or practices committed by a supplier in connection with a consumer transaction are hereby declared unlawful:

1. Misrepresenting goods or services as those of another;

2. Misrepresenting the source, sponsorship, approval, or certification of goods or services;

3. Misrepresenting the affiliation, connection, or association of the supplier, or of the goods or services, with another;

4. Misrepresenting geographic origin in connection with goods or services;

5. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits;

6. Misrepresenting that goods or services are of a particular standard, quality, grade, style, or model;

7. Advertising or offering for sale goods that are used, secondhand, repossessed, defective,

183 blemished, deteriorated, or reconditioned, or that are "seconds," irregulars, imperfects, or "not first  
184 class," without clearly and unequivocally indicating in the advertisement or offer for sale that the goods  
185 are used, secondhand, repossessed, defective, blemished, deteriorated, reconditioned, or are "seconds,"  
186 irregulars, imperfects or "not first class";

187 8. Advertising goods or services with intent not to sell them as advertised, or with intent not to sell  
188 at the price or upon the terms advertised.

189 In any action brought under this subdivision, the refusal by any person, or any employee, agent, or  
190 servant thereof, to sell any goods or services advertised or offered for sale at the price or upon the terms  
191 advertised or offered, shall be prima facie evidence of a violation of this subdivision. This paragraph  
192 shall not apply when it is clearly and conspicuously stated in the advertisement or offer by which such  
193 goods or services are advertised or offered for sale, that the supplier or offeror has a limited quantity or  
194 amount of such goods or services for sale, and the supplier or offeror at the time of such advertisement  
195 or offer did in fact have or reasonably expected to have at least such quantity or amount for sale;

196 9. Making false or misleading statements of fact concerning the reasons for, existence of, or amounts  
197 of price reductions;

198 10. Misrepresenting that repairs, alterations, modifications, or services have been performed or parts  
199 installed;

200 11. Misrepresenting by the use of any written or documentary material that appears to be an invoice  
201 or bill for merchandise or services previously ordered;

202 12. Notwithstanding any other provision of law, using in any manner the words "wholesale,"  
203 "wholesaler," "factory," or "manufacturer" in the supplier's name, or to describe the nature of the  
204 supplier's business, unless the supplier is actually engaged primarily in selling at wholesale or in  
205 manufacturing the goods or services advertised or offered for sale;

206 13. Using in any contract or lease any liquidated damage clause, penalty clause, or waiver of  
207 defense, or attempting to collect any liquidated damages or penalties under any clause, waiver, damages,  
208 or penalties that are void or unenforceable under any otherwise applicable laws of the Commonwealth,  
209 or under federal statutes or regulations;

210 13a. Failing to provide to a consumer, or failing to use or include in any written document or  
211 material provided to or executed by a consumer, in connection with a consumer transaction any  
212 statement, disclosure, notice, or other information however characterized when the supplier is required  
213 by 16 C.F.R. Part 433 to so provide, use, or include the statement, disclosure, notice, or other  
214 information in connection with the consumer transaction;

215 14. Using any other deception, fraud, false pretense, false promise, or misrepresentation in connection  
216 with a consumer transaction;

217 15. Violating any provision of § 3.2-6512, 3.2-6513, or 3.2-6516, relating to the sale of certain  
218 animals by pet dealers which is described in such sections, is a violation of this chapter;

219 16. Failing to disclose all conditions, charges, or fees relating to:

220 a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign  
221 attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be  
222 readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does  
223 not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of  
224 this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not  
225 less than 20 days after date of purchase, a cash refund or credit to the purchaser's credit card account  
226 for the return of defective, unused, or undamaged merchandise upon presentation of proof of purchase.  
227 In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase and any  
228 refund may be delayed for a period of 10 banking days to allow for the check to clear. This subdivision  
229 does not apply to sale merchandise that is obviously distressed, out of date, post season, or otherwise  
230 reduced for clearance; nor does this subdivision apply to special order purchases where the purchaser  
231 has requested the supplier to order merchandise of a specific or unusual size, color, or brand not  
232 ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection with a  
233 transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in  
234 § 46.2-100;

235 b. A layaway agreement. Such disclosure shall be furnished to the consumer (i) in writing at the time  
236 of the layaway agreement, or (ii) by means of a sign placed in a conspicuous public area of the  
237 premises of the supplier, so as to be readily noticeable and readable by the consumer, or (iii) on the bill  
238 of sale. Disclosure shall include the conditions, charges, or fees in the event that a consumer breaches  
239 the agreement;

240 16a. Failing to provide written notice to a consumer of an existing open-end credit balance in excess  
241 of \$5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's overpayment  
242 on such account. Suppliers shall give consumers written notice of such credit balances within 60 days of  
243 receiving overpayments. If the credit balance information is incorporated into statements of account  
244 furnished consumers by suppliers within such 60-day period, no separate or additional notice is required;

17. If a supplier enters into a written agreement with a consumer to resolve a dispute that arises in connection with a consumer transaction, failing to adhere to the terms and conditions of such an agreement;

18. Violating any provision of the Virginia Health Club Act, Chapter 24 (§ 59.1-294 et seq.) of this title;

19. Violating any provision of the Virginia Home Solicitation Sales Act, Chapter 2.1 (§ 59.1-21.1 et seq.) of this title;

20. Violating any provision of the Automobile Repair Facilities Act, Chapter 17.1 (§ 59.1-207.1 et seq.) of this title;

21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4 (§ 59.1-207.17 et seq.) of this title;

22. Violating any provision of the Prizes and Gifts Act, Chapter 31 (§ 59.1-415 et seq.) of this title;

23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32 (§ 59.1-424 et seq.) of this title;

24. Violating any provision of § 54.1-1505;

25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter 17.6 (§ 59.1-207.34 et seq.) of this title;

26. Violating any provision of § 3.2-5627, relating to the pricing of merchandise;

27. Violating any provision of the Pay-Per-Call Services Act, Chapter 33 (§ 59.1-429 et seq.) of this title;

28. Violating any provision of the Extended Service Contract Act, Chapter 34 (§ 59.1-435 et seq.) of this title;

29. Violating any provision of the Virginia Membership Camping Act, Chapter 25 (§ 59.1-311 et seq.) of this title;

30. Violating any provision of the Comparison Price Advertising Act, Chapter 17.7 (§ 59.1-207.40 et seq.) of this title;

31. Violating any provision of the Virginia Travel Club Act, Chapter 36 (§ 59.1-445 et seq.) of this title;

32. Violating any provision of §§ 46.2-1231 and 46.2-1233.1;

33. Violating any provision of Chapter 40 (§ 54.1-4000 et seq.) of Title 54.1;

34. Violating any provision of Chapter 10.1 (§ 58.1-1031 et seq.) of Title 58.1;

35. Using the consumer's social security number as the consumer's account number with the supplier, if the consumer has requested in writing that the supplier use an alternate number not associated with the consumer's social security number;

36. Violating any provision of Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2;

37. Violating any provision of § 8.01-40.2;

38. Violating any provision of Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1;

39. Violating any provision of Chapter 34.1 (§ 59.1-441.1 et seq.) of this title;

40. Violating any provision of Chapter 20 (§ 6.2-2000 et seq.) of Title 6.2;

41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46 (§ 59.1-525 et seq.) of this title;

42. Violating any provision of Chapter 47 (§ 59.1-530 et seq.) of this title;

43. Violating any provision of § 59.1-443.2;

44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.) of this title;

45. Violating any provision of Chapter 25 (§ 6.2-2500 et seq.) of Title 6.2;

46. Violating the provisions of clause (i) of subsection B of § 54.1-1115;

47. Violating any provision of § 18.2-239;

48. Violating any provision of Chapter 26 (§ 59.1-336 et seq.);

49. Selling, offering for sale, or manufacturing for sale a children's product the supplier knows or has reason to know was recalled by the U.S. Consumer Product Safety Commission. There is a rebuttable presumption that a supplier has reason to know a children's product was recalled if notice of the recall has been posted continuously at least 30 days before the sale, offer for sale, or manufacturing for sale on the website of the U.S. Consumer Product Safety Commission. This prohibition does not apply to children's products that are used, secondhand or "seconds";

50. Violating any provision of Chapter 44.1 (§ 59.1-518.1 et seq.) of this title;

51. Violating any provision of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2;

52. Violating any provision of § 8.2-317.1;

53. Violating subsection A of § 9.1-149.1; and

54. Selling, offering for sale, or using in the construction, remodeling, or repair of any residential dwelling in the Commonwealth, any drywall that the supplier knows or has reason to know is defective drywall. This subdivision shall not apply to the sale or offering for sale of any building or structure in

which defective drywall has been permanently installed or affixed; and

55. Violating any provision of Chapter 33.1 (§ 59.1-434.1 et seq.).

B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or lease solely by reason of the failure of such contract or lease to comply with any other law of the Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable such contract or lease.

**§ 58.1-400.4. Minimum tax on home service contract providers.**

A. As used in this section, unless the context requires a different meaning:

"Collected provider fees" means provider fees collected on home service contracts issued to a resident of the Commonwealth.

"Home service contract" means the same as that term is defined in § 59.1-434.1.

"Home service contract provider" means the same as that term is defined in § 59.1-434.1.

"Provider fee" means the consideration paid for a home service contract issued to a resident of the Commonwealth.

B. For taxable years beginning on and after January 1, 2018, a home service contract provider shall be subject to a minimum tax instead of the corporate income tax imposed by § 58.1-400, if applicable, net any income tax credits that may be used to offset such tax, if the tax imposed by § 58.1-400 is less than the minimum tax imposed by this subsection. The minimum tax imposed by this subsection shall be equal to 2.25 percent of such home service contract provider's collected provider fees.

C. In the case of an income tax return for a period of less than 12 months, the minimum tax shall be based on the collected provider fees for the calendar year that ends during the taxable period or, if none, the most recent calendar year that ended before the taxable period. The minimum tax shall be prorated by the number of months in the taxable period.

D. For purposes of the corporate income tax imposed by § 58.1-400, a home service contract provider's collected provider fees shall be considered sales in the Commonwealth when determining such home service contract provider's sales factor pursuant to § 58.1-414.

E. When a home service contract provider that is subject to the tax imposed by this section is one of several affiliated corporations that file a consolidated or combined income tax return, the portion of the affiliated corporations' tax liability that is attributable to the home service contract provider shall be computed as follows:

1. Each corporation included in the consolidated or combined return shall recompute its corporate income tax liability, net of any income tax credits, as if it were filing a separate return. The separate income tax liability of the home service contract provider shall then be compared to the affiliated corporation's tax liability, net of any income tax credits, indicated on the consolidated or combined return. For purposes of this section, the lesser amount shall be deemed to be the corporate income tax imposed by § 58.1-400 and attributable to the home service contract provider.

2. If such corporate income tax amount is less than the minimum tax of the home service contract provider as calculated pursuant to subsection B, the home service contract provider shall be subject to the minimum tax in lieu of the corporate income tax imposed by § 58.1-400.

3. If such corporate income tax amount exceeds the minimum tax of the home service contract provider as calculated pursuant to subsection B, the home service contract provider shall not owe the minimum tax.

F. The requirements imposed under Article 20 (§ 58.1-500 et seq.) of Chapter 3 regarding the filing of a declaration of estimated income taxes and the payment of such estimated taxes shall be applicable to home service contract provider regardless of whether such taxpayer expects to be subject to the minimum tax imposed herein or to the corporate income tax imposed by § 58.1-400.

For purposes of determining the applicability of the exceptions under which the addition to the tax for the underpayment of any installment of estimated taxes shall not be imposed, it shall be irrelevant whether the tax shown on the return for the preceding taxable year is the corporate income tax or the minimum tax.

G. Every home service contract provider that owes the minimum tax imposed by this section shall remit such tax payment to the Department of Taxation.

H. The minimum tax imposed by this section on home service contract providers is in lieu of all other state and local taxes and license fees imposed on home service contract providers and home service contracts.

I. The minimum tax imposed by this section shall:

1. Apply to (i) any entity that immediately prior to January 1, 2018, was licensed as a home service contract provider under former Article 2 (§ 38.2-2617 et seq.) of Chapter 26 of Title 38.2 and that continues to act as a home service contract provider on and after January 1, 2018, and (ii) any entity that registers to sell home service contracts under Chapter 33.1 (§ 59.1-434.1 et seq.) of Title 59.1 on or after January 1, 2018; and

2. Not apply to any entity that was exempt from the provisions of former Article 2 (§ 38.2-2617 et seq.) of Chapter 26 of Title 38.2 immediately prior to January 1, 2018.

#### CHAPTER 33.1.

#### HOME SERVICE CONTRACT PROVIDERS.

##### § 59.1-434.1. 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.

"Home service contract" means a contract or agreement for a separately stated consideration for any duration to perform the service, repair, replacement, or maintenance of property or to indemnify for the costs of service, repair, replacement, or maintenance, for the operational failure of any property 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 service, repair, replacement, or maintenance of property for damage resulting from power surges or interruption and for accidental damage from handling. Home service contracts may provide roof leak coverage.

"Property" means any component, part, appliance, or household system of a residential property that is covered by a contract, whether such component, part, appliance, or household system is personal property or is affixed as real property to the covered residential property.

"Provider" means a person that is contractually obligated to the purchaser under the terms of the home service contract.

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

##### § 59.1-434.2. Registration; fees.

A. It shall be unlawful for any provider to offer, advertise, or execute or cause to be executed by the purchaser any home service contract for property in the Commonwealth unless the provider 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; (ii) be renewed annually on July 1; (iii) be accompanied by a fee of \$300 per registration and annual renewal; and (iv) be accompanied by an audited financial statement per registration and annual renewal that is prepared in accordance with generally accepted accounting principles or statutory accounting principles, at the election of the provider. The Commissioner shall not have authority to extend or expand the provisions of this section regarding the registration of a provider. A registration application or registration renewal will not be considered filed until all required information and fees are received by the Commissioner. A provider shall not be required by this chapter to file with the Commissioner or any other entity or agency copies of the provider's home service contract forms or information regarding the rates or charges under the provider's home service contracts. Any provider who fails to register prior to the sale of a home service contract shall pay a late filing fee of \$100 for each 30-day period, or portion thereof, that the registration is late. A provider 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 in the special fund of the Virginia Department of Agriculture and Consumer Services to be used in the administration of this chapter.

##### § 59.1-434.3. Bond or letter of credit required.

A. Every provider shall maintain a funded reserve account for its obligations under its home service contracts issued and outstanding in the Commonwealth. The reserves shall not be less than 40 percent of gross consideration received, less claims paid, on the sale of the home service contract for all in-force home service contracts sold in the Commonwealth.

B. Each provider, before it is registered under § 59.1-434.2, 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<br>Home Service Contracts | Amount of Bond or<br>Letter of Credit |
|---|---------------------------------------|
| \$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 home service contracts shall be the total consideration paid by all

430 purchasers to the provider for all home service contracts currently in effect. The bond or letter of credit  
431 required by this subsection shall be in favor of the Commonwealth for the benefit of purchasers of home  
432 service contracts for property in the event that the provider does not fulfill its obligations under such  
433 home service contracts for any reason, including insolvency or bankruptcy.

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

438 D. In lieu of compliance with subsections A and B, a provider may demonstrate financial  
439 responsibility by filing with the Commissioner a copy of a liability insurance policy issued by an insurer  
440 authorized to transact business in the Commonwealth and that covers 100 percent of the provider's  
441 home service contract liabilities, including the administration of claims and the cost for such  
442 administration. Reimbursement insurance policies filed pursuant to this section may not be canceled by  
443 either the provider or the issuing insurer without providing 60 days' notice to the Commissioner.

444 **§ 59.1-434.4. Regulations.**

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

448 B. Without limiting the authority of the Board under subsection A, the Board is authorized to adopt  
449 reasonable regulations that designate services, in addition to those enumerated in the definition of home  
450 service contract in § 59.1-434.1, that may be provided under a home service contract, provided that the  
451 designation of the additional services is not inconsistent with the provisions of this chapter.

452 **§ 59.1-434.5. Investigations.**

453 A. The Commissioner may, with respect to home service contracts:

454 1. Make necessary public and private investigations within or without the Commonwealth to  
455 determine whether any person has violated the provisions of this chapter or any rule, regulation, or  
456 order issued pursuant to this chapter;

457 2. Require or permit any person to file a statement in writing, under oath or otherwise as the  
458 Commissioner determines, as to all facts and circumstances concerning the matter under investigation;  
459 and

460 3. Administer oaths or affirmations, and upon motion or upon request of any party, may subpoena  
461 witnesses, compel their attendance, take evidence, and require the production of any matter that is  
462 relevant to the investigation, including the existence, description, nature, custody, condition, and location  
463 of any books, documents, or other tangible things and the identity and location of persons having  
464 knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of  
465 material evidence.

466 B. Any proceeding or hearing of the Commissioner pursuant to this chapter, in which witnesses are  
467 subpoenaed and their attendance required for evidence to be taken, or any matter produced to ascertain  
468 material evidence, shall take place within the City of Richmond.

469 C. If any person fails to obey the subpoena or to answer questions propounded by the Commissioner  
470 and upon reasonable notice to all persons affected thereby, the Commissioner may apply to the Circuit  
471 Court of the City of Richmond for an order compelling compliance.

472 **§ 59.1-434.6. Production of records.**

473 Every provider, upon written request of the Commissioner, shall make available to the Commissioner  
474 its home service contract records for inspection and copying to enable the Commissioner to reasonably  
475 determine compliance with this chapter. Every provider shall maintain a true copy of each contract  
476 executed between the provider and a purchaser, and each contract shall be maintained for its term.

477 **§ 59.1-434.7. Home service contracts not insurance; exemptions.**

478 A. Home service contracts are (i) not contracts of insurance in the Commonwealth and (ii) not  
479 subject to regulation under Title 38.2.

480 B. Any provider that has a net worth, on a stand-alone basis or together with a parent company,  
481 calculated in accordance with generally accepted accounting principles or statutory accounting  
482 principles at the election of the provider, in excess of \$100 million shall be subject to neither (i) the  
483 provisions of this chapter nor (ii) the provisions of Title 38.2.

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

486 D. Providers who comply with this chapter shall not be subject to the provisions of Title 38.2.

487 E. Employees of providers that comply with this chapter and licensed real estate agents or other  
488 contractors operating under a written agreement with such providers who market, sell, or offer to sell  
489 home service contracts on behalf of the registered provider shall be subject to neither (i) the provisions  
490 of this chapter nor (ii) the provisions of Title 38.2.

491 F. The provisions of this chapter shall not apply to:

1. Any extended service contract providers offering extended service contracts on consumer products, as those terms are defined in § 59.1-435, that are registered and regulated pursuant to Chapter 34 (§ 59.1-435 et seq.); or

2. Any maintenance and service agreement (i) pertaining to a heating, ventilation, air conditioning, or cooling system entered into between a seller of petroleum heating oil, propane, or natural gas and the seller's customer if the seller does not engage in selling home service contracts for property other than heating, ventilation, air conditioning, or cooling systems or (ii) entered into by a person who provides telecommunications services in the Commonwealth to which the service contract, guarantee or warranty relates.

**§ 59.1-434.8. Violations of chapter; penalty.**

A. Any provider who knowingly and willfully violates any provision of this chapter shall be guilty of a Class 3 misdemeanor.

B. Any violation of the provisions of this chapter shall constitute a prohibited practice pursuant to the provisions of § 59.1-200 and shall be subject to any and all of the enforcement provisions of the Virginia Consumer Protection Act (§ 59.1-196 et seq.).

**§ 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 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 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.

F. Providers of a home service contract, as those terms are defined in § 59.1-434.1, that are registered and regulated pursuant to Chapter 33.1 (§ 59.1-434.1 et seq.) shall not be subject to the provisions of this chapter.

2. That Article 2 (§§ 38.2-2617 through 38.2-2627) of Chapter 26 of Title 38.2 of the Code of Virginia is repealed.

3. Until such time as the Department of Taxation promulgates a regulation for home service contract providers, the provisions of 23 VAC 10-120-89 shall apply, mutatis mutandis, to the minimum tax imposed by § 58.1-400.4 of the Code of Virginia, as created by this act.

4. That any entity that is exempt from the provisions of former Article 2 (§§ 38.2-2617 et seq.) of Chapter 26 of Title 38.2 of the Code of Virginia prior to its repeal pursuant to the second enactment of this act shall be exempt from the provisions of Chapter 33.1 (§ 59.1-434.1 et seq.) of Title 59.1 of the Code of Virginia, as created by this act, for such period that the activities or status of the entity that made it exempt from the application of former Article 2 of Chapter 26 of Title 38.2 continue to exist.

5. That the provisions of this act shall become effective on January 1, 2018.