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SENATE BILL NO. 1188

Offered January 9, 2019

Prefiled January 3, 2019

A *BILL to amend and reenact § 59.1-437 of the Code of Virginia, relating to extended service contract providers; bonding requirement.*

Patron—Dance

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 59.1-437 of the Code of Virginia is amended and reenacted 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.

INTRODUCED

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