

# Code of Virginia – Extended Service Contract Act

## § 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 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;
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 manufacturer, seller or obligor.

"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, (ii) acting through or with the written consent of the original manufacturer, seller or purchaser of the merchandise covered by the extended service contract, or (iii) acting through or with the written consent of a manufacturer or seller of merchandise similar to 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.

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

(1991, c. 654; 1996, c. 966; 2008, c. 524; **2014, c. 193.**)

### **§ 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.

(1991, c. 654; 1996, c. 966; 1997, c. 30; 2005, c. 407.)

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

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. In lieu of compliance with subsection D, 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.

(1991, c. 654; 1996, c. 966; 2003, c. 411.)

### **§ 59.1-438. Regulations.**

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 These regulations shall be adopted, amended, or repealed in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

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

(1991, c. 654; **2014, c. 193.**)

## **§ 59.1-439. Investigations.**

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

1. Make necessary public and private investigations within or without this Commonwealth to determine whether any person has violated the provisions of this chapter or any rule, regulation, or order issued pursuant to this chapter;
2. Require or permit any person to file a statement in writing, under oath or otherwise as the Commissioner determines, as to all facts and circumstances concerning the matter under investigation; and
3. Administer oaths or affirmations, and upon motion or upon request of any party, may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter that is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

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

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

(1991, c. 654.)

## **§ 59.1-440. Production of records.**

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

(1991, c. 654; 1996, c. 966.)

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

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

(2014, c. 193.)

**§ 59.1-441. Violations of chapter; penalty.**

A. Any extended service 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.) of this title.

(1991, c. 654.)