

# VIRGINIA ACTS OF ASSEMBLY -- 2003 SESSION

## CHAPTER 331

*An Act to amend and reenact §§ 46.2-1527.1, 46.2-1527.3, and 46.2-1527.5 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 15 of Title 46.2 an article numbered 3.2, consisting of sections numbered 46.2-1527.9, 46.2-1527.10 and 46.2-1527.11, relating to motor vehicle dealers and salespersons; the Motor Vehicle Transaction Recovery Fund; optional bonding of dealers and salespersons.*

[H 2604]

Approved March 16, 2003

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

**1. That §§ 46.2-1527.1, 46.2-1527.3, and 46.2-1527.5 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 15 of Title 46.2 an article numbered 3.2, consisting of sections numbered 46.2-1527.9, 46.2-1527.10 and 46.2-1527.11, as follows:**

§ 46.2-1527.1. Motor Vehicle Transaction Recovery Fund established.

All fees in this article shall be deposited in the Motor Vehicle Transaction Recovery Fund, hereinafter referred to in this article as "the Fund." The Fund shall be a special fund in the state treasury to pay claims against the Fund and for no other purpose, except the Board may expend moneys from the interest earned on the Fund for the administration of this article, in accordance with the general appropriation act. The Fund shall be used to satisfy unpaid judgments, as provided for in § 46.2-1527.3. Any interest income shall accrue to the Fund. The Board shall maintain an accurate record of all transactions involving the Fund. The minimum balance of the Fund shall be \$250,000. *In order to maintain the minimum Fund balance, the Board may levy a special assessment on all dealers participating in the Fund.*

Every applicant renewing a motor vehicle dealer's license shall pay, in addition to other license fees, an annual Fund fee of \$100, and every applicant for a motor vehicle salesperson's license shall pay, in addition to other license fees, an annual Fund fee of ~~ten dollars~~ \$10, prior to license issue. However, annual Fund renewal fees from salespersons shall not exceed \$100 per year from an individual dealer. These fees shall be deposited in the Motor Vehicle Transaction Recovery Fund.

Applicants for an original motor vehicle dealer's license shall pay an annual Fund fee of \$250 each year for three consecutive years. During this period, the \$250 Fund fee will take the place of the annual \$100 Fund fee.

In addition to the \$250 annual fee, applicants for an original dealer's license shall have a \$25,000 bond pursuant to § 46.2-1527.2 for three consecutive years. Only those renewing licensees who have not been the subject of a claim against their bond or against the Fund for three consecutive years shall pay the annual \$100 fee and will no longer be required to pay the \$250 annual fee or hold the \$25,000 bond.

In addition to other license fees, applicants for an original Certificate of Dealer Registration or its renewal shall pay a Fund fee of \$60.

The Board may suspend or reinstate collection of Fund fees.

The provisions of this section shall not apply to manufactured home dealers as defined in § 36-85.16, T&M vehicle dealers as defined in § 46.2-1900, trailer dealers as defined in § 46.2-1992, motorcycle dealers as defined in § 46.2-1993, and nonprofit organizations issued certificates pursuant to subsection B of § 46.2-1508.1.

*The provisions of this section shall not apply to applicants for the renewal of a motor vehicle dealer's license where such applicants have not been the subject of a claim against a bond issued pursuant to § 46.2-1527.2 or against the Fund for three years and such applicants elect to maintain continuous bonding pursuant to Article 3.2 (§ 46.2-1527.9 et seq.) of this chapter. Such applicants shall not participate in the Fund and shall be exempt from the payment of any Fund fees.*

§ 46.2-1527.3. Recovery from Fund, generally.

*Except as otherwise provided in this chapter, whenever any person is awarded a final judgment in a court of competent jurisdiction in the Commonwealth for (i) any loss or damage in connection with the purchase or lease of a motor vehicle by reason of any fraud practiced on him or fraudulent representation made to him by a licensed or registered motor vehicle dealer participating in the Motor Vehicle Transaction Recovery Fund or one of a dealer's salespersons acting for the dealer or within the scope of his employment or (ii) any loss or damage by reason of the violation by a dealer or salesperson participating in the Motor Vehicle Transaction Recovery Fund of any of the provisions of this chapter in connection with the purchase of a motor vehicle on or after January 1, 1989, or the lease of a motor vehicle on or after October 1, 1998, the judgment creditor may file a verified claim with the Board,*

requesting payment from the Fund of the amount unpaid on the judgment. The claim shall be filed with the Board no sooner than ~~thirty~~ 30 days and no later than ~~twelve~~ 12 months after the judgment becomes final.

On or after the effective date of this act, the Board shall consider for payment claims submitted by retail purchasers of motor vehicles, and for purchases of motor vehicles by licensed or registered motor vehicle dealers who contribute to the Fund. The Board shall also consider for payment claims submitted by lessees of motor vehicles leased on or after October 1, 1998, from licensed or registered motor vehicle dealers who contribute to the Fund.

§ 46.2-1527.5. Limitations on recovery from Fund.

The maximum claim of one judgment creditor against the Fund based on an unpaid final judgment arising out of any loss or damage by reason of a claim submitted under § 46.2-1527.2 or § 46.2-1527.3 involving a single transaction, shall be limited to \$20,000, regardless of the amount of the unpaid final judgment of one judgment creditor.

The aggregate of claims against the Fund based on unpaid final judgments arising out of any loss or damage by reason of a claim submitted under § 46.2-1527.3 involving more than one transaction shall be limited to \$100,000, regardless of the total amounts of the unpaid final judgments of judgment creditors.

However, aggregate claims against the Fund under § 46.2-1527.2 shall be limited to \$75,000 and then only after the dealer's \$25,000 bond has been exhausted.

If a claim has been made against the Fund, and the Board has reason to believe that there may be additional claims against the Fund from other transactions involving the same licensee or registrant, the Board may withhold any payment from the Fund involving the licensee or registrant for a period not to exceed the end of the relevant license or registration period. After this period, if the aggregate of claims against the licensee or registrant exceeds \$100,000, a total of \$100,000 shall be prorated among the claimants and paid from the Fund in proportion to the amounts of their unpaid final judgments against the licensee or registrant.

However, claims against motor vehicle dealers and salespersons ~~under participating in the Motor Vehicle Transaction Recovery Fund pursuant to~~ § 46.2-1527.2 shall be prorated when the aggregate exceeds \$75,000. Claims shall be prorated only after the dealer's \$25,000 bond has been exhausted.

On receipt of a verified claim filed against the Fund, the Board shall forthwith notify the licensee or registrant who is the subject of the unpaid judgment that a verified claim has been filed and that the licensee or registrant should satisfy the judgment debt. If the judgment debt is not fully satisfied ~~thirty~~ 30 days following the date of the notification by the Board, the Board shall make payment from the Fund subject to the other limitations contained in this article.

Excluded from the amount of any unpaid final judgment on which a claim against the Fund is based shall be any sums representing interest, or punitive or exemplary damages.

If at any time the Fund is insufficient to fully satisfy any claims or claim filed with the Board and authorized by this article, the Board shall pay such claims, claim, or portion thereof to the claimants in the order that the claims were filed with the Board. However, claims by retail purchasers shall take precedence over other claims.

Article 3.2.

*Bonding Requirements for Dealers Not Participating in Motor Vehicle Transaction Recovery Fund.*

§ 46.2-1527.9. Continuous bonding requirements for Fund nonparticipants.

*Applicants for a renewal of a motor vehicle dealer's license may elect to obtain and continuously maintain a bond in the amount of \$100,000 in lieu of participation in the Motor Vehicle Transaction Recovery Fund, provided that such applicants have not been the subject of a claim against a bond issued pursuant to § 46.2-1527.2, or against the Fund for three consecutive years. The bond shall come from a corporate surety licensed to do business in the Commonwealth and approved by the Attorney General and shall be filed with the Board. The bond shall be conditioned on a statement by the applicant that the applicant will not practice fraud, make any fraudulent representation, or violate any provision of this chapter in the conduct of the applicant's business. In those cases in which the surety of a dealer electing continuous bonding under this section shall be liable pursuant to this section, the maximum liability to one claimant against the surety by reason of a claim involving a single transaction shall be limited to \$20,000 regardless of the amount of the claim by one claimant, and the aggregate liability of the dealer's surety to any and all persons, regardless of the number of claims made against the bond or the number of years the bond remains in effect shall in no event exceed \$100,000.*

*An applicant for a renewal of a motor vehicle dealer's license who is a member of a nonprofit organization established under 26 U.S.C. § 501(c)(6) that provides on behalf of its membership a blanket or umbrella bond in the amount of \$1 million satisfies the bonding requirements of this section. When posted, a blanket or umbrella bond shall be considered a dealer bond for the purposes of § 46.2-1527.10. The bond shall come from a corporate surety licensed to do business in the Commonwealth and approved by the Attorney General and shall be filed with the Board. In those cases in which the nonprofit organization's surety shall be liable pursuant to § 46.2-1527.10, the maximum liability to one claimant against the surety by reason of a claim involving a single transaction shall be*

limited to \$20,000, regardless of the amount of the claim by one claimant, and the aggregate liability of the nonprofit organization's surety to any and all persons for claims against a single dealer shall in no event exceed \$100,000. In those cases in which the nonprofit organization's surety shall be liable pursuant to § 46.2-1527.10, the maximum liability to any and all persons, regardless of the number of claims made against the bond or the number of years the bond remains in force shall in no event exceed \$1 million.

The Board may, without holding a hearing, suspend the dealer's license during the period that the dealer does not have a sufficient bond on file. Dealers bonded under this article and those salespersons employed by such dealers shall be exempt from the Fund fees specified in § 46.2-1527.1.

*§ 46.2-1527.10. Recovery on bond.*

With respect to a motor vehicle dealer electing continuous bonding under § 46.2-1527.9, whenever any person is awarded a final judgement in a court of competent jurisdiction in the Commonwealth against the dealer for (i) any loss or damage in connection with the purchase or lease of a motor vehicle by reason of fraud practiced on him or fraudulent representation made to him by the dealer or one of the dealer's salespersons acting within the scope of his employment, (ii) any loss or damage by reason of the violation by the dealer or salesperson of any provision of this chapter in connection with the purchase or lease of a motor vehicle, or (iii) any loss or damage resulting from a breach of an extended service contract, as defined in § 59.1-435, entered into on or after July 1, 2003, the judgement creditor shall have a claim against the dealer bond for such damages as may be awarded such person in final judgement and unpaid by the dealer, and may recover such unpaid damages up to but not exceeding the maximum liability of the surety as set forth in § 46.2-1527.9 from the surety who shall be subrogated to the rights of such person against the dealer or salesperson. The liability of such surety shall be limited to actual damages and attorneys' fees assessed against the dealer or salesperson as part of the underlying judgement but this section does not authorize the award of attorneys' fees in the underlying judgement. The liability of such surety shall not include any sums representing interest or punitive or exemplary damages assessed against the dealer or salesperson.

The dealer's surety shall notify the Board when a claim is made against a dealer's bond, when a claim is paid, and when the bond is cancelled. Such notification shall include the amount of claim and the circumstances surrounding the claim. Notification of cancellation shall include the effective date and reason for cancellation. The bond may be cancelled as to future liability by the dealer's surety upon 30 days' notice to the Board.

*§ 46.2-1527.11. No waiver by the Board of disciplinary action against licensee or registrant.*

Nothing contained in this article shall limit the authority of the Board to take disciplinary action against any licensee or registrant for any violation of this chapter or any regulation promulgated under this chapter.