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**HOUSE BILL NO. 2604**

Offered January 8, 2003

Prefiled January 8, 2003

*A BILL to amend and reenact §§ 46.2-1527.1, 46.2-1527.2, 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.*

Patrons—Bryant, Hargrove, Marrs and Rollison; Senator: Williams

Referred to Committee on Transportation

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

**1. That §§ 46.2-1527.1, 46.2-1527.2, 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, 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 an original motor vehicle dealer's license or to applicants for the renewal of a motor vehicle dealer's license where 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.*

§ 46.2-1527.2. Bonding requirements for Fund participant applicants for an original license.

Before the Board shall issue to an applicant an original license to an applicant electing to participate in the Motor Vehicle Transaction Recovery Fund, the applicant shall obtain and file with the Board a bond in the amount of \$25,000. The bond shall come from a corporate surety licensed to do business in the Commonwealth and approved by the Attorney General. 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. The Board may,

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59 without holding a hearing, suspend the dealer's license during the period that the dealer does not have a  
60 sufficient bond on file.

61 If a person suffers any of the following: (i) loss or damage in connection with the purchase or lease  
62 of a motor vehicle by reason of fraud practiced on him or fraudulent representation made to him by a  
63 licensed motor vehicle dealer or one of the dealer's salespersons acting within his scope of employment,  
64 (ii) loss or damage by reason of the violation by a dealer or salesperson of any provision of this chapter  
65 in connection with the purchase or lease of a motor vehicle, or (iii) loss or damage resulting from a  
66 breach of an extended service contract entered into on or after the effective date of this act, as defined  
67 by § 59.1-435, that person shall have a claim against the dealer and the dealer's bond, and may recover  
68 such damages as may be awarded to such person by final judgment of a court of competent jurisdiction  
69 against the dealer as a proximate result of such loss or damage up to but not exceeding the amount of  
70 the bond, from such surety, who shall be subrogated to the rights of such person against the dealer or  
71 salesperson. The liability of such surety shall be limited to actual damages, and shall not include any  
72 punitive damages or attorneys' fees assessed against the dealer or salesperson.

73 In those cases in which a ~~dealer's~~ *the surety of a dealer participating in the Motor Vehicle*  
74 *Transaction Recovery Fund* shall be liable pursuant to this section, the surety shall be liable only for the  
75 first \$25,000 in claims against the dealer. Thereafter, the Fund shall be liable for the next \$75,000 in  
76 those cases in which the Fund itself may be liable. The aggregate liability of the dealer's surety to any  
77 and all persons, regardless of the number of claims made against the bond or the number of years the  
78 bond remains in force, shall in no event exceed \$25,000.

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

84 § 46.2-1527.3. Recovery from Fund, generally.

85 ~~Whenever~~ *Except as otherwise provided in this chapter, whenever* any person is awarded a final  
86 judgment in a court of competent jurisdiction in the Commonwealth for (i) any loss or damage in  
87 connection with the purchase or lease of a motor vehicle by reason of any fraud practiced on him or  
88 fraudulent representation made to him by a licensed or registered motor vehicle dealer or one of a  
89 dealer's salespersons acting for the dealer or within the scope of his employment or (ii) any loss or  
90 damage by reason of the violation by a dealer or salesperson of any of the provisions of this chapter in  
91 connection with the purchase of a motor vehicle on or after January 1, 1989, or the lease of a motor  
92 vehicle on or after October 1, 1998, the judgment creditor may file a verified claim with the Board,  
93 requesting payment from the Fund of the amount unpaid on the judgment. The claim shall be filed with  
94 the Board no sooner than thirty days and no later than twelve months after the judgment becomes final.

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

100 § 46.2-1527.5. Limitations on recovery from Fund.

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

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

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

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

118 However, claims against motor vehicle dealers and salespersons ~~under~~ *participating in the Motor*  
119 *Vehicle Transaction Recovery Fund pursuant to* § 46.2-1527.2 shall be prorated when the aggregate  
120 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 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 an original motor vehicle dealer's license or for a renewal of a motor vehicle dealer's license may elect to maintain continuous bonding in the amount of \$100,000 in lieu of participation in the Motor Vehicle Transaction Recovery Fund. 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 continued 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 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 an original motor vehicle dealer's license or 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)(3)(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 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 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 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.*

*If any person suffers from (i) 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 a licensed motor vehicle dealer or one of the dealer's salespersons acting within the scope of his employment, (ii) loss or damage by reason of the violation by a dealer or salesperson of any provision of this chapter in connection with the purchase or lease of a motor vehicle, or (iii) 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, such person shall have a claim against the dealer and the dealer's bond, and may recover such damages as may be awarded to such person by final judgment of a court of competent jurisdiction against the dealer as a proximate result of such loss or damage up to but not exceeding the amount of the bond, from such 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 shall not include any punitive 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 a 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.*