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HOUSE BILL NO. 1779

Offered January 10, 2007

Prefiled December 28, 2006

A BILL to amend and reenact §§ 46.2-1527.3 and 46.2-1527.5 of the Code of Virginia, relating to the Motor Vehicle Transaction Recovery Fund.

Patron—Cosgrove

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-1527.3 and 46.2-1527.5 of the Code of Virginia are amended and reenacted as follows:

§ 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: *subject to the following conditions:*

1. The claim shall be filed with the Board no sooner than 30 days and no later than 12 months after the judgment becomes final *along with the evidence of compliance with subdivision 3 below.*

2. ~~On or after the effective date of this act, the~~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.

3. *If the final judgment from a court of competent jurisdiction includes, as part of the judgment, an award of attorney fees and court costs, the Fund may include those in its payment of the claim if (i) the claimant had previously submitted to the trial court a detailed and itemized affidavit by counsel for the judgment creditor seeking such fees and costs, including a breakdown of the hours worked and the subject matter of those hours; (ii) said itemized affidavit formed the basis of the court's award of such fees; and (iii) a copy of such affidavit is provided to the Board with the judgment creditor's claim. If the award of attorney fees and costs by the trial court was not based on a detailed and itemized affidavit from counsel for the judgment creditor with a breakdown of the hours worked, then the Board may review and limit any claim for attorney fees to those attorney fees directly attributable to that portion of the final judgment that is determined to be a compensable claim by the Board against the Fund, and the Board may require a detailed itemization from counsel before considering such claim for attorney fees.*

§ 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 \$50,000 and then only after the dealer's \$50,000 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

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59 claimants and paid from the Fund in proportion to the amounts of their unpaid final judgments against
60 the licensee or registrant.

61 However, claims against motor vehicle dealers and salespersons participating in the Motor Vehicle
62 Transaction Recovery Fund pursuant to § 46.2-1527.2 shall be prorated when the aggregate exceeds
63 \$50,000. Claims shall be prorated only after the dealer's \$50,000 bond has been exhausted.

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

69 Excluded from the amount of any unpaid final judgment on which a claim against the Fund is based
70 shall be any sums representing (i) interest, ~~or~~ (ii) punitive damages, ~~or~~ (iii) exemplary damages, and (iv)
71 any sums for noneconomic damages sought by the claimant. As used in this section, "noneconomic
72 damages" shall be defined as any loss or damage for pain, suffering, mental anguish, emotional pain
73 and suffering, physical injury or impairment, comfort, counseling, or other nonpecuniary injury.

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