

VIRGINIA ACTS OF ASSEMBLY -- 2011 SESSION

CHAPTER 407

An Act to amend and reenact §§ 46.2-1527.1, 46.2-1527.2, and 46.2-1527.5 of the Code of Virginia, relating to bonding requirements for motor vehicle dealers and limitations on recoveries from the Motor Vehicle Transaction Recovery Fund.

[H 1838]

Approved March 23, 2011

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-1527.1, 46.2-1527.2, and 46.2-1527.5 of the Code of Virginia are amended and reenacted 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~~ *up to the maximum amount authorized for consumer assistance in the general appropriation act, provided the amount expended does not result in a balance of the Fund of less than \$250,000.* 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 \$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 \$50,000 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 \$50,000 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.

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

Before the Board shall issue to an applicant an original license, the applicant shall obtain and file with the Board a bond in the amount of \$50,000. 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, without holding a hearing, suspend the dealer's license during the period that the dealer does not have a sufficient bond on file.

If a person suffers any of the following: (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 his scope of 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 entered into on or after the effective date of this act, as defined by § 59.1-435, that 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~~ \$20,000, 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 or ~~attorneys' fees~~ *attorney fees* assessed against the dealer or salesperson.

In those cases in which a dealer's surety shall be liable pursuant to this section, the surety shall be liable only for the first \$50,000 in claims against the dealer. Thereafter, the Fund shall be liable for the next \$50,000 in those cases in which the Fund itself may be liable. 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 force, shall in no event exceed \$50,000.

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 ~~thirty~~ 30 days' notice to the Board.

§ 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, *including any amount paid from the dealer's surety bond*, 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 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 participating in the Motor Vehicle Transaction Recovery Fund pursuant to § 46.2-1527.2 shall be prorated when the aggregate exceeds \$50,000. Claims shall be prorated only after the dealer's \$50,000 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 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 (i) interest, (ii) punitive damages, and (iii) exemplary damages. Awards from the Fund shall be limited to reimbursement of costs paid to the dealer for all charges related to the vehicle including without limitation, the sales price, taxes, insurance, and repairs; other out of pocket costs related to the purchase, insuring and registration of the vehicle, and to the loss of use of the vehicle by the purchaser.

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.