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HOUSE BILL NO. 171

Offered January 11, 2012

Prefiled January 9, 2012

A BILL to amend and reenact §§ 46.2-1527.1 and 46.2-1527.2 of the Code of Virginia, relating to the Motor Vehicle Transaction Recovery Fund; bonding requirements.

Patron—Cosgrove

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-1527.1 and 46.2-1527.2 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 *provided that any such payment does not result in a negative balance of the Fund*, except the Board may expend moneys for the administration of this article up to the maximum amount authorized for consumer assistance in the general appropriation act, provided the amount expended *for administration* 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 to pay claims against the Fund, and the Board may choose to await a positive balance in the Fund to pay claims ready for payment in chronological order.~~

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.

INTRODUCED

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59 If a person suffers any of the following: (i) loss or damage in connection with the purchase or lease
60 of a motor vehicle by reason of fraud practiced on him or fraudulent representation made to him by a
61 licensed motor vehicle dealer or one of the dealer's salespersons acting within his scope of employment,
62 (ii) loss or damage by reason of the violation by a dealer or salesperson of any provision of this chapter
63 in connection with the purchase or lease of a motor vehicle, or (iii) loss or damage resulting from a
64 breach of an extended service contract entered into on or after the effective date of this act, as defined
65 by § 59.1-435, that person shall have a claim against the dealer and the dealer's bond, and may recover
66 such damages as may be awarded to such person by final judgment of a court of competent jurisdiction
67 against the dealer as a proximate result of such loss or damage up to but not exceeding \$20,000, from
68 such surety, who shall be subrogated to the rights of such person against the dealer or salesperson. The
69 liability of such surety shall be limited to actual damages *and attorney fees*, and shall not include any
70 punitive damages ~~or attorney fees~~ assessed against the dealer or salesperson.

71 *If the final judgment from a court of competent jurisdiction includes, as part of the judgment, an*
72 *award of attorney fees and court costs, the surety may include those in its payment of the claim if (a)*
73 *the claimant had previously submitted to the trial court a detailed and itemized affidavit by counsel for*
74 *the judgment creditor seeking such fees and costs, including a breakdown of the hours worked and the*
75 *subject matter of those hours; (b) such itemized affidavit formed the basis of the court's award of such*
76 *fees; and (c) a copy of such affidavit is provided to the surety with the judgment creditor's claim. If the*
77 *award of attorney fees and costs by the trial court was not based on a detailed and itemized affidavit*
78 *from counsel for the judgment creditor with a breakdown of the hours worked, then the surety may*
79 *review and limit any claim for attorney fees to those attorney fees directly attributable to that portion of*
80 *the final judgment that is determined to be a compensable claim by the surety against the bond, and the*
81 *surety may require a detailed itemization from counsel before considering such claim for attorney fees.*

82 In those cases in which a dealer's surety shall be liable pursuant to this section, the surety shall be
83 liable only for the first \$50,000 in claims against the dealer. Thereafter, the Fund shall be liable for the
84 next \$50,000 in those cases in which the Fund itself may be liable. The aggregate liability of the
85 dealer's surety to any and all persons, regardless of the number of claims made against the bond or the
86 number of years the bond remains in force, shall in no event exceed \$50,000.

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