

15100296D

HOUSE BILL NO. 1610

Offered January 14, 2015

Prefiled January 8, 2015

A *BILL to amend and reenact §§ 8.01-40, 8.01-44.5, 8.01-622.1, 38.2-1501, 38.2-1603, 38.2-1701, 46.2-1527.5, 46.2-1527.10, 51.5-46, 54.1-1123, and 54.1-2116 of the Code of Virginia, relating to punitive damages.*

Patron—Habeeb

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-40, 8.01-44.5, 8.01-622.1, 38.2-1501, 38.2-1603, 38.2-1701, 46.2-1527.5, 46.2-1527.10, 51.5-46, 54.1-1123, and 54.1-2116 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-40. Unauthorized use of name or picture of any person; punitive damages; statute of limitations.

A. Any person whose name, portrait, or picture is used without having first obtained the written consent of such person, or if dead, of the surviving consort and if none, of the next of kin, or if a minor, the written consent of his or her parent or guardian, for advertising purposes or for the purposes of trade, such persons may maintain a suit in equity against the person, firm, or corporation so using such person's name, portrait, or picture to prevent and restrain the use thereof; and may also sue and recover damages for any injuries sustained by reason of such use. And if the defendant shall have knowingly used such person's name, portrait or picture in such manner as is forbidden or declared to be unlawful by this chapter, the jury, in its discretion, may award ~~exemplary~~ *punitive* damages.

B. No action shall be commenced under this section more than ~~twenty~~ 20 years after the death of such person.

§ 8.01-44.5. Punitive damages for persons injured by intoxicated drivers.

In any action for personal injury or death arising from the operation of a motor vehicle, engine or train, the finder of fact may, in its discretion, award ~~exemplary~~ *punitive* damages to the plaintiff if the evidence proves that the defendant acted with malice toward the plaintiff or the defendant's conduct was so willful or wanton as to show a conscious disregard for the rights of others.

A defendant's conduct shall be deemed sufficiently willful or wanton as to show a conscious disregard for the rights of others when the evidence proves that (i) when the incident causing the injury or death occurred, the defendant had a blood alcohol concentration of 0.15 percent or more by weight by volume or 0.15 grams or more per 210 liters of breath; (ii) at the time the defendant began drinking alcohol, or during the time he was drinking alcohol, he knew or should have known that his ability to operate a motor vehicle, engine or train would be impaired, or when he was operating a motor vehicle he knew or should have known that his ability to operate a motor vehicle was impaired; and (iii) the defendant's intoxication was a proximate cause of the injury to or death of the plaintiff. For the purposes of clause (i), it shall be rebuttably presumed that the blood alcohol concentration at the time of the incident causing injury or death was at least as high as the test result as shown in a certificate issued pursuant to § 18.2-268.9 or in a certificate of analysis for a blood test administered pursuant to § 18.2-268.7, provided that the test was administered within three hours of the incident causing injury or death. In addition to any other forms of proof, a party may submit a copy of a certificate issued pursuant to § 18.2-268.9 or a certificate of analysis for a blood test administered pursuant to § 18.2-268.7, which shall be prima facie evidence of the facts contained therein.

However, when a defendant has unreasonably refused to submit to a test of his blood alcohol content as required by § 18.2-268.2, a defendant's conduct shall be deemed sufficiently willful or wanton as to show a conscious disregard for the rights of others when the evidence proves that (a) when the incident causing the injury or death occurred the defendant was intoxicated, which may be established by evidence concerning the conduct or condition of the defendant; (b) at the time the defendant began drinking alcohol, or during the time he was drinking alcohol, he knew or should have known that his ability to operate a motor vehicle was impaired; and (c) the defendant's intoxication was a proximate cause of the injury to the plaintiff or death of the plaintiff's decedent. In addition to any other forms of proof, a party may submit a certified copy of a court's determination of unreasonable refusal pursuant to § 18.2-268.3, which shall be prima facie evidence that the defendant unreasonably refused to submit to the test.

§ 8.01-622.1. Injunction against assisted suicide; damages; professional sanctions.

A. Any person who knowingly and intentionally, with the purpose of assisting another person to

INTRODUCED

HB1610

59 commit or attempt to commit suicide, (i) provides the physical means by which another person commits
60 or attempts to commit suicide or (ii) participates in a physical act by which another person commits or
61 attempts to commit suicide shall be liable for damages as provided in this section and may be enjoined
62 from such acts.

63 B. A cause of action for injunctive relief against any person who is reasonably expected to assist or
64 attempt to assist a suicide may be maintained by any person who is the spouse, parent, child, sibling or
65 guardian of, or a current or former licensed health care provider of, the person who would commit
66 suicide; by a ~~Commonwealth's~~ *an attorney for the Commonwealth* with appropriate jurisdiction; or by
67 the Attorney General. The injunction shall prevent the person from assisting any suicide in the
68 Commonwealth.

69 C. A spouse, parent, child or sibling of a person who commits or attempts to commit suicide may
70 recover compensatory and ~~exemplary~~ *punitive* damages in a civil action from any person who provided
71 the physical means for the suicide or attempted suicide or who participated in a physical act by which
72 the other person committed or attempted to commit suicide.

73 D. A licensed health care provider who assists or attempts to assist a suicide shall be considered to
74 have engaged in unprofessional conduct for which his certificate or license to provide health care
75 services in the Commonwealth shall be suspended or revoked by the licensing authority.

76 E. Nothing in this section shall be construed to limit or conflict with § 54.1-2971.01 or the Health
77 Care Decisions Act (§ 54.1-2981 et seq.). This section shall not apply to a licensed health care provider
78 who (i) administers, prescribes or dispenses medications or procedures to relieve another person's pain or
79 discomfort and without intent to cause death, even if the medication or procedure may hasten or increase
80 the risk of death, or (ii) withholds or withdraws life-prolonging procedures as defined in § 54.1-2982.
81 This section shall not apply to any person who properly administers a legally prescribed medication
82 without intent to cause death, even if the medication may hasten or increase the risk of death.

83 F. For purposes of this section:

84 "Licensed health care provider" means a physician, surgeon, podiatrist, osteopath, osteopathic
85 physician and surgeon, physician assistant, nurse, dentist or pharmacist licensed under the laws of this
86 Commonwealth.

87 "Suicide" means the act or instance of taking one's own life voluntarily and intentionally.

88 **§ 38.2-1501. Definitions.**

89 As used in this chapter:

90 "Actual direct compensatory damages" does not include ~~punitive or exemplary~~ damages, damages for
91 lost profit or lost opportunity, or damages for pain and suffering, but does include normal and
92 reasonable costs of cover or other reasonable measures of damages utilized in the derivatives, securities,
93 or other market for the contract and agreement claims.

94 "Association" means the Virginia Property and Casualty Insurance Guaranty Association created by
95 Chapter 16 of this title (§ 38.2-1600 et seq.) or the Virginia Life, Accident and Sickness Insurance
96 Guaranty Association created by Chapter 17 of this title (§ 38.2-1700 et seq.) or any person performing
97 a similar function in another state.

98 "Commodity contract" means:

99 1. A contract for the purchase or sale of a commodity for future delivery on, or subject to the rules
100 of, a board of trade or contract market under the Commodity Exchange Act (7 U.S.C. § 1 et seq.) or a
101 board of trade outside the United States;

102 2. An agreement that is subject to regulation under § 19 of the Commodity Exchange Act (7 U.S.C.
103 § 1 et seq.) and that is commonly known to the commodities trade as a margin account, margin contract,
104 leverage account, or leverage contract;

105 3. An agreement or transaction that is subject to regulation under § 4c(b) of the Commodity
106 Exchange Act (7 U.S.C. § 1 et seq.) and that is commonly known to the commodities trade as a
107 commodity option;

108 4. Any combination of the agreements or transactions referred to in this definition; or

109 5. Any option to enter into an agreement or transaction referred to in this definition.

110 "Contractual right" as used in § 38.2-1522 includes any right set forth in a rule or bylaw of a
111 derivatives clearing organization as defined in the Commodity Exchange Act, a multilateral clearing
112 organization as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991, a
113 national securities exchange, a national securities association, a securities clearing agency, a contract
114 market designated under the Commodity Exchange Act, a derivatives transaction execution facility
115 registered under the Commodities Exchange Act, or a board of trade as defined in the Commodity
116 Exchange Act, or in a resolution of the governing board thereof and any right, whether or not evidenced
117 in writing, arising under statutory or common law, under law merchant, or by reason of normal business
118 practice.

119 "Delinquency proceeding" means any proceeding commenced against an insurance company for the
120 purpose of liquidating, rehabilitating, reorganizing, or conserving an insurer.

"Forward contract," "repurchase agreement," "securities contract," and "swap agreement" have the meanings set forth with respect thereto in 12 U.S.C. § 1821(e)(8)(D), as amended.

"Insolvent" means (i) the condition of an insurer that has liabilities in excess of assets or (ii) the inability of an insurer to pay its obligations as they become due in the usual course of business.

"Netting agreement" means:

1. A contract or agreement, including terms and conditions incorporated by reference in it, including a master agreement, which master agreement, together with all schedules, confirmations, definitions, and addenda to it and transactions under any of them, shall be treated as one netting agreement, that documents one or more transactions between the parties to the agreement for or involving one or more qualified financial contracts and that provides for the netting, liquidation, setoff, termination, acceleration, or close-out, under or in connection with one or more qualified financial contracts or present or future payment or delivery obligations or payment or delivery entitlements under it, including liquidation or close-out values relating to those obligations or entitlements, among the parties to the netting agreement;

2. Any master agreement or bridge agreement for one or more master agreements described in subdivision 1 of this definition; or

3. Any security agreement or arrangement or other credit enhancement or guarantee or reimbursement obligation related to any contract or agreement described in subdivision 1 or 2 of this definition, provided that any contract or agreement described in subdivision 1 or 2 of this definition relating to agreements or transactions that are not qualified financial contracts shall be deemed to be a netting agreement only with respect to those agreements or transactions that are qualified financial contracts.

"Qualified financial contract" means any commodity contract, forward contract, repurchase agreement, securities contract, swap agreement, or any similar agreement that the Commission determines to be a qualified financial contract for the purposes of this chapter.

"Receiver" means the Commission or any person appointed to manage delinquency proceedings.

§ 38.2-1603. Definitions.

As used in this chapter:

"Account" means any one of the three accounts created by § 38.2-1604.

"Affiliate" means a person who directly, or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with an insolvent insurer on December 31 of the year next preceding the date the insurer becomes an insolvent insurer.

"Association" means the Virginia Property and Casualty Insurance Guaranty Association created under § 38.2-1604.

"Claimant" means any insured making a first party claim or any person instituting a liability claim; provided that no person who is an affiliate of the insolvent insurer may be a claimant.

"Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ~~ten~~ 10 percent or more of the voting securities of any other person. This presumption may be rebutted by a showing that control does not exist in fact.

"Covered claim" means an unpaid claim, including one for unearned premiums, submitted by a claimant, that (i) arises out of and is within the coverage and is subject to the applicable limits of a policy covered by this chapter and issued by an insurer who has been declared to be an insolvent insurer or (ii) arises out of and is within the coverage and is subject to the applicable limits of a policy that would not be excluded from the coverage of this chapter under the provisions of § 38.2-1601 if it were a policy of direct insurance and that has been assumed as a direct obligation by an insurer who has been declared to be an insolvent insurer, where such obligation is assumed through a merger or acquisition, or pursuant to an acquisition of assets and assumption of liabilities, an assumption under the provisions of subsection B or C of § 38.2-136 or a substantially similar law of another jurisdiction, or any other novation agreement. The claimant or insured shall be a resident of the Commonwealth at the time of the insured loss, provided that for entities other than an individual, the residence of a claimant or insured is the state in which its principal place of business is located at the time of the insured loss or the property from which the claim arises shall be permanently located in the Commonwealth. "Covered claim" shall not include any amount awarded as punitive or exemplary damages or sought as a return of premium under any retrospective rating plan; any amount due any reinsurer, insurer, insurance pool, or underwriting association as subrogation recoveries, reinsurance recoveries, contribution, indemnification, or otherwise; any amount due under any policy originally issued by a surplus lines carrier or risk retention group; any obligation assumed by an insolvent insurer after the commencement of any delinquency proceeding, as defined in Chapter 15 (§ 38.2-1500 et seq.) of this title, involving the

insolvent insurer or the original insurer, unless it would have been a "covered claim" absent such assumption; or any obligation assumed by an insolvent insurer in a transaction in which the original insurer remains separately liable. An obligation owing under a contract of reinsurance shall not be deemed a direct obligation for the purposes of this definition unless it shall have been assumed pursuant to the provisions of subsection B or C of § 38.2-136 or a substantially similar law of another jurisdiction. No claim for any amount due any reinsurer, insurer, insurance pool, or underwriting association may be asserted against a person insured under a policy issued by an insolvent insurer other than to the extent the claim exceeds the association obligation limitations set forth in § 38.2-1606.

"Insolvent insurer" means an insurer that is (i) licensed to transact the business of insurance in the Commonwealth either at the time the policy was issued, when the obligation with respect to the covered claim was assumed, or when the insured loss occurred and (ii) against whom an order of liquidation with a finding of insolvency has been entered after July 1, 1987, by a court of competent jurisdiction in the insurer's state of domicile or of the Commonwealth under the provisions of Chapter 15 (§ 38.2-1500 et seq.) of this title, and which order of liquidation has not been stayed or been the subject of a writ of supersedeas or other comparable order.

"Member insurer" means any person who (i) writes any class of insurance to which this chapter applies under § 38.2-1601, including reciprocal insurance contracts, and (ii) is licensed to transact the business of insurance in the Commonwealth but shall not include persons listed in subdivision 9 of § 38.2-1601.

"Net direct written premiums" means direct gross premiums written in the Commonwealth on insurance policies applicable to this chapter, less return premiums and dividends paid or credited to policyholders on direct business. "Net direct written premiums" does not include premiums on contracts between insurers or reinsurers.

§ 38.2-1701. Definitions.

As used in this chapter:

"Account" means any one of the two accounts created under § 38.2-1702.

"Association" means the Virginia Life, Accident and Sickness Insurance Guaranty Association created under § 38.2-1702.

"Authorized assessment" or the term "authorized" when used in the context of assessments means that a resolution by the board of directors has been passed whereby an assessment will be called immediately or in the future from member insurers for a specified amount. An assessment is authorized when the resolution is passed.

"Benefit plan" means a specific employee, union, or association of natural persons benefit plan.

"Called assessment" or the term "called" when used in the context of assessments means that a notice has been issued by the Association to member insurers requiring that an authorized assessment be paid within the time frame set forth within the notice. An authorized assessment becomes a called assessment when notice is mailed by the Association to member insurers.

"Contractual obligation" means an obligation under a policy or contract or certificate under a group policy or contract, or portion thereof for which coverage is provided under § 38.2-1700.

"Covered policy" means a policy or contract or portion of a policy or contract for which coverage is provided under § 38.2-1700.

"Extra-contractual claims" shall include, for example, claims relating to bad faith in the payment of claims, punitive or exemplary damages, or attorney fees and costs.

"Impaired insurer" means a member insurer considered by the Commission to be potentially unable to fulfill its contractual obligations.

"Insolvent insurer" means a member insurer that is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency.

"Member insurer" means an insurer licensed to transact in this Commonwealth any class of insurance to which this chapter applies under § 38.2-1700, including an insurer whose license to transact the business of insurance in the Commonwealth has been suspended, revoked, not renewed or voluntarily withdrawn, but does not include cooperative nonprofit life benefit companies, health maintenance organizations, mutual assessment life, accident and sickness insurance companies, burial societies, fraternal benefit societies, dental and optometric services plans, and health services plans not subject to this chapter pursuant to § 38.2-4213.

"Moody's Corporate Bond Yield Average" means the Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor thereto.

"Owner" of a policy or contract or "policy owner" and "contract owner" means the person who is identified as the legal owner under the terms of the policy or contract or who is otherwise vested with legal title to the policy or contract through a valid assignment completed in accordance with the terms of the policy or contract and properly recorded as the owner on the books of the insurer. The terms "owner," "contract owner," and "policy owner" do not include persons with a mere beneficial interest in a policy or contract.

"Plan sponsor" means: (i) the employer, in the case of a benefit plan established or maintained by a single employer; (ii) the employee organization in the case of a benefit plan established or maintained by an employee organization; or (iii) in the case of a benefit plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan.

"Premiums" means amounts or considerations, by whatever name called, received on covered policies or contracts, less any returned premiums, considerations, and deposits and less dividends and experience credits. "Premiums" does not include amounts or considerations received for policies or contracts or for the portions of policies or contracts for which coverage is not provided under subsection C of § 38.2-1700 except that assessable premium shall not be reduced on account of subdivision C 2 of § 38.2-1700 relating to interest limitations and ~~subsection~~ *subdivision* D 2 of § 38.2-1700 relating to limitations with respect to one individual, one participant, and one contract owner. "Premiums" shall not include (i) premiums for coverage in excess of \$5 million on an unallocated annuity contract covered under subdivision D 2 d of § 38.2-1700 or (ii) with respect to multiple nongroup policies of life insurance owned by one owner, whether the policy owner is an individual, firm, corporation, or other person, and whether the persons insured are officers, managers, employees or other persons, premiums for coverage in excess of \$5 million with respect to these policies or contracts, regardless of the number of policies or contracts held by the owner.

"Principal place of business" of a plan sponsor or a person other than a natural person means the single state in which the natural persons who establish policy for the direction, control, and coordination of the operations of the entity as a whole primarily exercise that function, determined by the Association in its reasonable judgment by considering the following factors: (i) the state in which the primary executive and administrative headquarters of the entity is located; (ii) the state in which the principal office of the chief executive officer of the entity is located; (iii) the state in which the board of directors (or similar governing person or persons) of the entity conducts the majority of its meetings; (iv) the state from which the management of the overall operations of the entity is directed; and in the case of a benefit plan sponsored by affiliated companies comprising a consolidated corporation, the state in which the holding company or controlling affiliate has its principal place of business as determined using these factors. However, in the case of a plan sponsor, if more than 50 percent of the participants in the benefit plan are employed in a single state, that state shall be deemed to be the principal place of business of the plan sponsor. The principal place of business of a plan sponsor described in clause (iii) of the definition of plan sponsor in this section shall be deemed to be the principal place of business of the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan that, in lieu of a specific or clear designation of a principal place of business, shall be deemed to be the principal place of business of the employer or employee organization that has the largest investment in the benefit plan in question.

"Receivership court" means the court in the insolvent or impaired insurer's state having jurisdiction over the conservation, rehabilitation, or liquidation of the insurer.

"Resident" means a person to whom a contractual obligation is owed and who resides in the Commonwealth on the date a member insurer becomes an impaired insurer or a court order is entered that determines a member insurer to be an insolvent insurer. A person may be a resident of only one state, which in the case of a person other than a natural person shall be its principal place of business. Citizens of the United States that are either (i) residents of foreign countries, or (ii) residents of United States possessions, territories, or protectorates that do not have an association similar to the Association, shall be deemed residents of the state of domicile of the insurer that issued the policies or contracts.

"Structured settlement annuity" means an annuity purchased in order to fund periodic payments for a plaintiff or other claimant in payment for or with respect to personal injury or sickness suffered by the plaintiff or other claimant.

"Supplemental contract" means a written agreement entered into for the distribution of proceeds under a life, health, or annuity policy or contract.

"Unallocated annuity contract" means an annuity contract or group annuity certificate that is not issued to and owned by an individual or a trust created by an individual for the benefit of one or more individuals, except to the extent of any annuity benefits guaranteed to an individual or such a trust by an insurer under the contract or certificate.

§ 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 \$25,000, including any amount paid from the dealer's surety bond, regardless of the amount of the unpaid final judgment of one judgment creditor. Effective January 1, 2013, and on January 1 of each year thereafter, the amount that may be awarded to any

305 person as a result of loss or damage to that person as provided in this section shall be increased by the
306 percentage increase over the most recently available unadjusted 12-month period in the Consumer Price
307 Index for used cars and trucks, as published by the U.S. Bureau of Labor Statistics or any successor
308 index. In the event that this index decreases over any such 12-month period, there shall be no change in
309 the amount which may be awarded.

310 The aggregate of claims against the Fund based on unpaid final judgments arising out of any loss or
311 damage by reason of a claim submitted under § 46.2-1527.3 involving more than one transaction shall
312 be limited to four times the amount that may be awarded to a single judgment creditor, regardless of the
313 total amounts of the unpaid final judgments of judgment creditors.

314 However, aggregate claims against the Fund under § 46.2-1527.2 shall be limited to the amount that
315 may be paid out of the Fund under the preceding paragraph less the amount of the dealer's bond and
316 then only after the dealer's bond has been exhausted.

317 If a claim has been made against the Fund, and the Board has reason to believe that there may be
318 additional claims against the Fund from other transactions involving the same licensee or registrant, the
319 Board may withhold any payment from the Fund involving the licensee or registrant for a period not to
320 exceed the end of the relevant license or registration period. After this period, if the aggregate of claims
321 against the licensee or registrant exceeds the aggregate amount that may be paid from the Fund under
322 this section, then such amount shall be prorated among the claimants and paid from the Fund in
323 proportion to the amounts of their unpaid final judgments against the licensee or registrant.

324 However, claims against motor vehicle dealers and salespersons participating in the Motor Vehicle
325 Transaction Recovery Fund pursuant to § 46.2-1527.2 shall be prorated when the aggregate exceeds
326 \$50,000. Claims shall be prorated only after the dealer's \$50,000 bond has been exhausted.

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

332 Excluded from the amount of any unpaid final judgment on which a claim against the Fund is based
333 shall be any sums representing (i) interest; (ii) and punitive damages; and (iii) ~~exemplary damages~~.
334 Awards from the Fund shall be limited to reimbursement of costs paid to the dealer for all charges
335 related to the vehicle including without limitation, the sales price, taxes, insurance, and repairs; other out
336 of pocket costs related to the purchase, insuring and registration of the vehicle, and to the loss of use of
337 the vehicle by the purchaser.

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

342 § 46.2-1527.10. Recovery on bond.

343 With respect to a motor vehicle dealer electing continuous bonding under § 46.2-1527.9, whenever
344 any person is awarded a final ~~judgement~~ *judgment* in a court of competent jurisdiction in the
345 Commonwealth against the dealer for (i) any loss or damage in connection with the purchase or lease of
346 a motor vehicle by reason of fraud practiced on him or fraudulent representation made to him by the
347 dealer or one of the dealer's salespersons acting within the scope of his employment, (ii) any loss or
348 damage by reason of the violation by the dealer or salesperson of any provision of this chapter in
349 connection with the purchase or lease of a motor vehicle, or (iii) any loss or damage resulting from a
350 breach of an extended service contract, as defined in § 59.1-435, entered into on or after July 1, 2003,
351 the ~~judgement~~ *judgment* creditor shall have a claim against the dealer bond for such damages as may be
352 awarded such person in final ~~judgement~~ *judgment* and unpaid by the dealer, and may recover such
353 unpaid damages up to but not exceeding the maximum liability of the surety as set forth in
354 § 46.2-1527.9 from the surety who shall be subrogated to the rights of such person against the dealer or
355 salesperson. The liability of such surety shall be limited to actual damages and ~~attorneys'~~ *attorney* fees
356 assessed against the dealer or salesperson as part of the underlying ~~judgement~~ *judgment* but this section
357 does not authorize the award of ~~attorneys'~~ *attorney* fees in the underlying ~~judgement~~ *judgment*. The
358 liability of such surety shall not include any sums representing interest or punitive ~~or exemplary~~
359 damages assessed against the dealer or salesperson.

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

365 § 51.5-46. Remedies.

366 A. Any circuit court having jurisdiction and venue pursuant to Title 8.01, on the petition of any

person with a disability, shall have the right to enjoin the abridgement of rights set forth in this chapter and to order such affirmative equitable relief as is appropriate and to award compensatory damages and to award to a prevailing party reasonable ~~attorneys'~~ attorney fees, except that a defendant shall not be entitled to an award of ~~attorneys'~~ attorney fees unless the court finds that the claim was frivolous, unreasonable or groundless, or brought in bad faith. Compensatory damages shall not include damages for pain and suffering. Punitive ~~or exemplary~~ damages shall not be awarded.

B. An action may be commenced pursuant to this section any time within one year of the occurrence of any violation of rights under this chapter. However, such action shall be forever barred unless such claimant or his agent, attorney or representative has commenced such action or has filed by registered mail a written statement of the nature of the claim with the potential defendant or defendants within 180 days of the occurrence of the alleged violation. Any liability for back pay shall not accrue from a date more than 180 days prior to the filing of the notice or the initial pleading in such civil action and shall be limited to a total of 180 days, reduced by the amount of other earnings over the same period. The petitioner shall have a duty to mitigate damages.

C. The relief available for violations of this chapter shall be limited to the relief set forth in this section.

§ 54.1-1123. Limitations upon recovery from Fund; certain actions not a bar to recovery.

A. The maximum claim of one claimant against the Fund based upon an unpaid judgment arising out of the improper or dishonest conduct of one regulant in connection with a single transaction involving contracting, is limited to \$20,000, regardless of the amount of the unpaid judgment of the claimant.

B. The aggregate of claims against the Fund based upon unpaid judgments arising out of the improper or dishonest conduct of any one regulant involving contracting, is limited by the Board to \$40,000 during any biennium. If a claim has been made against the Fund, and the Board has reason to believe there may be additional claims against the Fund from other transactions involving the same regulant, the Board may withhold any payment(s) from the Fund involving such regulant for a period of not more than one year from the date on which the claimant is awarded in a court of competent jurisdiction in the Commonwealth the final judgment on which his claim against the Fund is based. After this one-year period, if the aggregate of claims against the regulant exceeds \$40,000, during a biennium, \$40,000 shall be prorated by the Board among the claimants and paid from the Fund in proportion to the amounts of their judgments against the regulant remaining unpaid.

C. Excluded from the amount of any unpaid judgment upon which a claim against the Fund is based shall be any sums representing interest, or punitive ~~or exemplary~~ damages, or any amounts that do not constitute actual monetary loss to the claimants. Such claim against the Fund may include court costs and ~~attorneys'~~ attorney fees.

D. If, at any time, the amount of the Fund is insufficient to fully satisfy any claims or claim filed with the Board and authorized by this Act, the Board shall pay such claims, claim, or portion thereof to the claimants in the order that the claims were filed with the Board.

E. Failure of a claimant to comply with the provisions of subdivisions A 1 and A 2 and subsection B of § 54.1-1120 and the provisions of § 54.1-1124 shall not be a bar to recovery under this Act if the claimant is otherwise entitled to such recovery.

F. The Board shall have the authority to deny any claim which otherwise appears to meet the requirements of the Act if it finds by clear and convincing evidence that the claimant has presented false information or engaged in collusion to circumvent any of the requirements of the Act.

§ 54.1-2116. Limitations upon recovery from fund; certain actions not a bar to recovery.

A. The aggregate of claims by claimants against the fund based upon unpaid judgments arising out of the improper or dishonest conduct of one regulant in connection with a single transaction involving the sale, lease, or management of real property, is limited to \$50,000. 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 arising out of the same transaction, the Board may withhold any payment(s) from the fund for a period of not more than one year. After such one-year period, if the aggregate of claims arising out of the same transaction exceeds \$50,000, such \$50,000 shall be prorated by the Board among the claimants and paid from the fund in proportion to the amounts of their judgments against the regulant remaining unpaid.

B. The maximum claim of one claimant against the fund based upon an unpaid judgment arising out of the improper or dishonest conduct of one regulant in connection with a single transaction involving the sale, lease, or management of real property, shall be limited to \$20,000, regardless of the number of claimants and regardless of the amount of the unpaid judgment of the claimant.

C. The aggregate of claims against the fund based upon unpaid judgments arising out of the improper or dishonest conduct of one regulant in connection with more than a single transaction involving the sale, lease, or management of real property is limited to \$100,000 during any biennial license period, the biennial periods expiring on June 30 of each even-numbered year. If a claim has been made against the fund, and the Board has reason to believe that there may be additional claims against

428 the fund from other transactions involving the same regulant, the Board may withhold any payment(s)
429 from the fund involving such regulant for a period of not more than one year. After the one-year period,
430 if the aggregate of claims against the regulant exceeds \$100,000, such \$100,000 shall be prorated by the
431 Board among the claimants and paid from the fund in proportion to the amounts of their judgments
432 against the regulant remaining unpaid.

433 D. Excluded from the amount of any unpaid judgment upon which a claim against the fund is based
434 shall be any sums included in the judgment which represent interest, or punitive or exemplary damages.
435 The claim against the fund may include court costs and attorneys' attorney fees.

436 E. If, at any time, the amount of the fund is insufficient to satisfy any claims, claim, or portion
437 thereof filed with the Board and authorized by the act, the Board shall, when the amount of the fund is
438 sufficient to satisfy some or all of such claims, claim, or portion thereof, pay the claimants in the order
439 that such claims were filed with the Board.

440 F. Failure of a claimant to comply with the provisions of subdivisions A 1 and 2 of subsection A of
441 § 54.1-2114 and the provisions of § 54.1-2117 shall not be a bar to recovery under this act if the
442 claimant is otherwise entitled to such recovery.