

VIRGINIA ACTS OF ASSEMBLY -- 1994 SESSION

CHAPTER 478

An Act to amend the Code of Virginia by adding in Chapter 15 of Title 46.2 an article numbered 3.1, consisting of sections numbered 46.2-1527.1 through 46.2-1527.8, and to repeal Article 3 of Chapter 15 of Title 46.2 of the Code of Virginia, consisting of sections numbered 46.2-1522 through 46.2-1527, relating to the Motor Vehicle Transaction Recovery Fund.

[H 855]

Approved April 8, 1994

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 15 of Title 46.2 an article numbered 3.1, consisting of sections numbered 46.2-1527.1 through 46.2-1527.8, as follows:

Article 3.1.

Motor Vehicle Transaction Recovery Fund.

§ 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 chapter 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. 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 Commissioner shall maintain an accurate record of all transactions involving the Fund. The minimum balance of the Fund shall be \$250,000. However, beginning with the effective date of this act, the Fund balance may decline to \$50,000, in order to pay current claims. Beginning on July 1, 1995, the Fund balance shall be allowed to return to \$250,000.

Effective July 1, 1994, 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.

Beginning with the effective date of this act, 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.

Persons licensed as motor vehicle dealers as of the effective date of this act, shall not be subject to the \$250 annual fee or the bond, nor shall persons licensed as motor vehicle dealers as of the effective date of this act, who open an additional dealership be subject to the \$250 annual fee or the bond.

At the time of the first renewal after July 1, 1994, the annual Fund fee paid by persons already holding a license shall be doubled from \$10 to \$20 for a salesperson and from \$100 to \$200 for a licensed dealer. The double fee shall be paid one time.

Beginning with the effective date of this act, 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 Commissioner, after consulting with the Motor Vehicle Dealer's Advisory Board, may suspend or reinstate collection of Fund fees.

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

Before the Commissioner shall issue to an applicant an original license, the applicant shall obtain and file with the Commissioner 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 Commissioner 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 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 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, 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 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 \$25,000 in claims against the dealer. Thereafter, the Fund shall be liable for the next \$25,000 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 \$25,000.

The dealer's surety shall notify the Department 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 days' notice to the Department.

§ 46.2-1527.3. Recovery from Fund, generally.

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 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 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 of any of the provisions of this chapter in connection with the purchase of a motor vehicle, on or after January 1, 1989, the judgment creditor may file a verified claim with the Commissioner, requesting payment from the Fund of the amount unpaid on the judgment. The claim shall be filed with the Commissioner no sooner than thirty days and no later than twelve months after the judgment becomes final.

On or after the effective date of this act, the Commissioner shall only 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.

§ 46.2-1527.4. Opportunity to intervene.

Any action instituted by a person against a licensed or registered dealer or a salesperson, which may become a claim against the Fund, shall be served to the Commissioner in the manner prescribed by law. All subsequent pleadings and documents shall also be served to the Commissioner. Included in such service shall be an affidavit stating all acts constituting fraud or violations of this chapter. Upon service of process, the Commissioner, or duly authorized representative, shall have the right to request leave of the court to intervene. The person shall submit such pleadings or documents to the Commissioner by certified mail or the equivalent.

§ 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 \$15,000, 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 \$50,000, 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 \$25,000 and then only after the dealer's \$25,000 bond has been exhausted.

If a claim has been made against the Fund, and the Commissioner has reason to believe that there may be additional claims against the Fund from other transactions involving the same licensee or registrant, the Commissioner 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 \$50,000, a total of \$50,000 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 under § 46.2-1527.2 shall be prorated when the aggregate exceeds \$25,000. 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 Commissioner 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 Commissioner, the Commissioner 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 Commissioner and authorized by this article, the Commissioner shall pay such claims, claim, or portion thereof to the claimants in the order that the claims were filed with the Commissioner. However, claims by retail purchasers shall take precedence over other claims.

§ 46.2-1527.6. Assignment of claimant's rights to the Department; payment of claims.

Subject to the provisions of this article and on the claimant's execution and delivery to the Commissioner of an assignment to the Department of his rights against the licensee or registrant, to the extent he received satisfaction from the Fund, the Commissioner shall pay the claimant from the Fund the amount of the unpaid final judgment.

§ 46.2-1527.7. Revocation of license or certificate of registration on payment from the Fund.

On payment by the Commissioner to a claimant from the Fund as provided in this article, the Commissioner shall immediately notify the licensee or registrant in writing of the Department's payment to the claimant and request full reimbursement be made to the Department within thirty days of the notification. Failure to reimburse the Department in full within the specified period shall cause the Commissioner to immediately revoke the license or certificate of the dealer or the license of a salesperson whose fraud, fraudulent representation, or violation of this chapter resulted in this payment. Any person whose license or certificate is revoked shall not be eligible to apply for a license or certificate as a motor vehicle dealer or a license as a salesperson until the person has repaid in full the amount paid from the Fund on his account, plus interest at the rate of eight percent per year from the date of payment.

§ 46.2-1527.8. No waiver by the Department of disciplinary action against licensee or registrant.

Nothing contained in this article shall limit the authority of the Department to take disciplinary action against any licensee or registrant for any violation of this chapter or any regulation promulgated thereunder, nor shall full repayment of the amount paid from the Fund on a licensee's or registrant's account nullify or modify the effect of any disciplinary action against that licensee or registrant for any violation.

2. That Article 3 of Chapter 15 of Title 46.2 of the Code of Virginia, consisting of sections numbered 46.2-1522 through 46.2-1527, is repealed.

3. That an emergency exists and this act is in force from its passage.