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SENATE BILL NO. 682

Offered January 11, 1995

A BILL to amend and reenact §§ 54.1-1118 and 54.1-1120 of the Code of Virginia, relating to the Virginia Contractor Transaction Recovery Act; claims in bankruptcy.

Patron—Gartlan

Referred to the Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:**1. That §§ 54.1-1118 and 54.1-1120 of the Code of Virginia are amended and reenacted as follows:**

§ 54.1-1118. Definitions.

As used in this article, unless the context requires a different meaning:

"Act" means the Virginia Contractor Transaction Recovery Act.

"Biennium" means a two-year period beginning on July 1 of an even-numbered year and continuing through June 30 of the next even-numbered year.

"Claimant" means any person with an unsatisfied judgment against a regulant, who has filed a verified claim under this Act.

"Fund" means the Contractor Transaction Recovery Fund.

"Improper or dishonest conduct" includes only the wrongful taking or conversion of money, property or other things of value which involves fraud, material misrepresentation or conduct constituting gross negligence, continued incompetence, or intentional violation of the Uniform Statewide Building Code (§ 36-97 et seq.). The term "improper or dishonest conduct" does not include mere breach of contract.

"Judgment" includes an order of a United States Bankruptcy Court (i) declaring a claim against a regulant who is in bankruptcy to be a "Debt Nondischargeable in Bankruptcy" or (ii) *extinguishing a claim against a regulant who is in bankruptcy and for which claim no distribution was made from the regulant's bankruptcy estate but excluding any such claim disallowed by order of the bankruptcy court.*

"Regulant" means any individual, person, firm, corporation, association, partnership, joint venture or any other legal entity licensed by the Board for Contractors. "Regulant" shall not include tradesmen certified in accordance with Article 3 (§ 54.1-1128 et seq.) of this chapter.

§ 54.1-1120. Recovery from fund generally.

A. Whenever any person is awarded a judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct occurring (i) during a period when such individual or entity was a regulant and (ii) in connection with a transaction involving contracting, the claimant may file a verified claim with the Director to obtain a directive ordering payment from the fund of the amount unpaid upon the judgment, subject to the following conditions:

1. If any action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board in the manner prescribed by law. Included in such service shall be an affidavit stating all acts constituting improper or dishonest conduct. The provisions of § 8.01-288 shall not be applicable to the service of process required by this subdivision.

2. A copy of any pleading or document filed subsequent to the initial service of process in the action against a regulant shall be provided to the Board. The claimant shall submit such copies to the Board by certified mail, or the equivalent, upon his receipt of the pleading or document.

3. A verified claim shall be filed with the Director no later than six months after the judgment became final. Such verified claim shall be accompanied by the copies of the order for the underlying judgment, and evidence of compliance with subdivisions 6 and 7 below.

4. The claimant shall be an individual whose contract with the regulant involved contracting for the claimant's residence(s).

5. The claimant shall not himself be (i) an employee of such judgment debtor, (ii) vendor of such judgment debtor, (iii) another licensee, (iv) the spouse or child of such judgment debtor nor the employee of such spouse or child, or (v) any financial or lending institution nor anyone whose business involves the construction or development of real property.

6. No directive ordering payment from the fund shall be entered unless and until the claimant has filed with the Director a verified claim containing the following statements:

a. That the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment.

b. A description of the assets disclosed by such interrogatories.

c. That all legally available actions have been taken for the sale, or application of the disclosed

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60 assets and the amount realized therefrom.

61 d. The balance remaining due the claimant after the sale or application of such assets.

62 7. If the regulant has filed bankruptcy, the claimant shall file with the proper bankruptcy court a
63 complaint under 11 U.S.C. § 523(a) and obtain an order determining dischargeability of debt. A claimant
64 shall not be denied recovery from the fund due to the fact the order for the judgment filed with the
65 verified claim does not contain a specific finding of "improper or dishonest conduct." Any language in
66 the order which supports the conclusion that the court found that the conduct of the regulant involved
67 improper or dishonest conduct may be used by the Board to determine eligibility for recovery from the
68 fund.

69 *B. If the regulant has filed bankruptcy, a claimant's failure to file a complaint under 11 U.S.C.*
70 *§ 523(a) and obtain an order determining dischargeability, as required by subdivision A 7, shall not bar*
71 *a claim under this article if an order of the bankruptcy court extinguished the claimant's claim, and (i)*
72 *no distribution was made from the regulant's bankruptcy estate to the claimant on account of such claim*
73 *and (ii) the claim was not disallowed by the bankruptcy court. Such claimant may file a verified claim*
74 *with the Director. The Board shall then determine (i) whether the conduct that gave rise to the claim*
75 *was improper or dishonest under § 54.1-1118 and (ii) what amount, if any, such claimant is entitled to*
76 *recover from the fund. Procedures for processing such claims shall conform, mutatis mutandis, to the*
77 *provisions of subsection A.*

78 **2. That the provisions of this act shall be applicable to all claims against the fund arising out of**
79 **judgments entered on and after April 26, 1993.**

80 **3. That notwithstanding the provisions of § 54.1-1120 A 3, claims (i) satisfying the provisions of the**
81 **second enactment clause of this act and (ii) previously denied by the Board because the claimant**
82 **lacked a judgment then cognizable under the Virginia Contractor Transaction Recovery Act, shall**
83 **be reconsidered by the Board if such claim is refiled with the Board within six months after the**
84 **effective date of this act.**