

VIRGINIA ACTS OF ASSEMBLY -- 1998 SESSION

CHAPTER 325

An Act to amend and reenact §§ 46.2-1503.3, 46.2-1521, 46.2-1527.1, 46.2-1527.2, 46.2-1527.3, 46.2-1527.5, 46.2-1581, 46.2-1921, 46.2-1992.19, and 46.2-1993.19 of the Code of Virginia, relating to the Motor Vehicle Dealer Board Fund, motor vehicle dealers, T&M vehicle dealers, trailer dealers, and motorcycle dealers.

[H 1013]

Approved April 9, 1998

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-1503.3, 46.2-1521, 46.2-1527.1, 46.2-1527.2, 46.2-1527.3, 46.2-1527.5, 46.2-1581, 46.2-1921, 46.2-1992.19, and 46.2-1993.19 of the Code of Virginia are amended and reenacted as follows:

§ 46.2-1503.3. Motor Vehicle Dealer Board Fund; receipts; disbursements.

The Motor Vehicle Dealer Board Fund is established as a special fund in the state treasury. Except as otherwise provided in this chapter, all fees collected as provided in this chapter and by regulations promulgated by the Board, shall be paid into the state treasury immediately upon collection and credited to the Motor Vehicle Dealer Board Fund. *Any interest income shall accrue to the Motor Vehicle Dealer Board Fund.* All disbursements from the Fund shall be made by the State Treasurer upon warrants of the Comptroller issued upon vouchers signed by an authorized officer of the Board or the Executive Director as authorized by the Board.

§ 46.2-1521. Issuance, expiration, and renewal of licenses and certificates of registration.

A. All licenses and certificates of registration issued under this chapter shall be issued for a period of twelve consecutive months except, at the discretion of the Board, the periods may be adjusted as is necessary to distribute the licenses and certificates as equally as practicable on a monthly basis. The expiration date shall be the last day of the twelfth month of validity or the last day of the designated month. Every license and certificate of registration shall be renewed annually on application by the licensee or registrant and by payment of fees required by law, the renewal to take effect on the first day of the succeeding month.

B. Licenses and certificates of registration issued under this chapter shall be deemed not to have expired if the renewal application and required fees as set forth in this subsection are received by the Board or postmarked not more than thirty days after the expiration date of such license or certificate of registration. Whenever the renewal application is received by the Board or postmarked no more than thirty days after the expiration date of such license or certificate of registration, the license fees shall be 150 percent of the fees provided for in § 46.2-1519.

C. *The Board may offer an optional multi-year license. When such option is offered and chosen by the licensee, all annual and twelve-month fees due at the time of licensing shall be multiplied by the number of years or fraction thereof for which the license will be issued.*

§ 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 the general appropriation act.* 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. ~~However, beginning with April 8, 1994, 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 April 8, 1994,~~ 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 April 8, 1994, shall not be subject to the \$250 annual fee or the bond, nor shall persons licensed as motor vehicle dealers as of April 8, 1994, 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 April 8, 1994, 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: On and after July 1, 1995, the provisions of this section shall not apply to, T&M vehicles vehicle dealers as defined in § 46.2-1900, trailer dealers as defined in § 46.2-1992, and motorcycle dealers as defined in § 46.2-1993.

§ 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 \$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 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, 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~~ \$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 \$25,000.

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 days' notice to the Board.

§ 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 *or lease* 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, *or the lease of a motor vehicle on or after October 1, 1998*, the judgment creditor may file a verified claim with the Board, requesting payment from the Fund of the amount unpaid on the judgment. The claim shall be filed with the Board 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 Board 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. *The Board shall also consider for payment claims submitted by lessees of motor vehicles leased on or after October 1, 1998, from licensed or registered motor vehicle dealers who contribute to the Fund.*

§ 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~~ \$75,000, 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~~ \$50,000 and then only after the dealer's \$25,000 bond has been exhausted.

If a claim has been made against the Fund, and the 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 ~~\$50,000~~ \$75,000, a total of ~~\$50,000~~ \$75,000 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~~ \$50,000. 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 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 thirty 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 interest, or punitive or exemplary damages.

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.

§ 46.2-1581. Regulated advertising practices.

For purposes of this chapter, a violation of the following regulated advertising practices shall be an unfair, deceptive, or misleading act or practice.

1. A vehicle shall not be advertised as new, either by word or implication, unless it is one which conforms to the requirements of § 46.2-1500.

2. When advertising any vehicle which does not conform to the definition of "new" as provided in § 46.2-1500, the fact that it is used shall be clearly and unequivocally expressed by the term "used" or by such other term as is commonly understood to mean that the vehicle is used. By way of example but not by limitation, "special purchase" by itself is not a satisfactory disclosure; however, such terms as "demonstrator" or "former leased vehicles" used alone clearly express that the vehicles are used for advertising purposes.

3. Advertisement of finance charges or other interest rates shall not be used when there is a cost to buy-down said charge or rate which is passed on, in whole or in part, to the purchaser.

4. Terms, conditions, and disclaimers shall be stated clearly and conspicuously. An asterisk or other reference symbol may be used to point to a disclaimer or other information, but shall not be used as a means of contradicting or changing the meaning of an advertised statement.

5. The expiration date of an advertised sale shall be clearly and conspicuously disclosed.

6. The term "list price," "sticker price," or "suggested retail price" and similar terms, shall be used only in reference to the manufacturer's suggested retail price for new vehicles or the dealer's own usual and customary price for used vehicles.

7. Terms such as "at cost," "below cost," "\$ off cost" shall not be used in advertisements because of the difficulty in determining a dealer's actual net cost at the time of the sale. Terms such as "invoice price," "\$ over invoice," may be used, provided that the invoice referred to is the manufacturer's factory invoice or a bona fide bill of sale and the invoice or bill of sale is available for customer inspection.

"Manufacturer's factory invoice" means that document supplied by the manufacturer to the dealer listing the manufacturer's charge to the dealer before any deduction for holdback, group advertising, factory incentives or rebates, or any governmental charges.

8. When the price or credit terms of a vehicle are advertised, the vehicle shall be fully identified as to year, make, and model. In addition, in advertisements placed by individual dealers and not line-make marketing groups, the advertised price or credit terms shall include all charges which the buyer must pay to the seller, except buyer-selected options, state and local fees and taxes, and manufacturer's or distributor's freight or destination charges, and a processing fee, if any. If a processing fee or freight or destination charges are not included in the advertised price, the amount of any such processing fee and freight or destination charge must be (i) clearly and conspicuously disclosed in not less than eight-point boldface type or (ii) not smaller than the largest typeface within the advertisement. If the processing fee

is not included in the advertised price, the amount of the processing fee may be omitted from any advertisement in which the largest type size is less than eight-point typeface, so long as the dealer participates in a media-provided listing of processing fees and the dealer's advertisement includes an asterisk or other such notation to refer the reader to the listing of the fees.

9. Advertisements which set out a policy of matching or bettering competitors' prices shall not be used unless the terms of the offer are specific, verifiable and reasonable.

10. Advertisements of "dealer rebates" shall not be used. This does not affect advertisement of manufacturer rebates.

11. "Free," "at no cost," or other words to that effect shall not be used unless the "free" item, merchandise, or service is available without a purchase. This provision shall not apply to advertising placed by manufacturers, distributors, or line-make marketing groups.

12. "Bait" advertising, in which an advertiser may have no intention to sell at the price or terms advertised, shall not be used. By way of example, but not by limitation:

a. If a specific vehicle is advertised, the seller shall be in possession of a reasonable supply of said vehicles, and they shall be available at the advertised price. If the advertised vehicle is available only in limited numbers or only by order, that shall be stated in the advertisement. For purposes of this subdivision, the listing of a vehicle by stock number or vehicle identification number in the advertisement for a used vehicle is one means of satisfactorily disclosing a limitation of availability. Stock numbers or vehicle identification numbers shall not be used in advertising a new vehicle unless the advertisement clearly and conspicuously discloses that it relates to only one vehicle.

b. Advertising a vehicle at a certain price, including "as low as" statements, but having available for sale only vehicles equipped with dealer added cost "options" which increase the selling price, above the advertised price, shall also be considered "bait" advertising.

c. If a lease payment is advertised, the fact that it is a lease arrangement shall be disclosed.

13. The term "repossessed" shall be used only to describe vehicles that have been sold, registered, titled and then taken back from a purchaser and not yet resold to an ultimate user. Advertisers offering repossessed vehicles for sale shall provide proof of repossession upon request.

14. Words such as "finance" or "loan" shall not be used in a motor vehicle advertiser's firm name or trade name, unless that person is actually engaged in the financing of motor vehicles.

15. Any advertisement which gives the impression a dealer has a special arrangement or relationship with the distributor or manufacturer, as compared to similarly situated dealers, shall not be used.

§ 46.2-1921. Issuance, expiration, and renewal of licenses and certificates of registration.

A. All licenses and certificates of registration issued under this chapter shall be issued for a period of twelve consecutive months except, at the discretion of the Commissioner, the periods may be adjusted as is necessary to distribute the licenses and certificates as equally as practicable on a monthly basis. The expiration date shall be the last day of the twelfth month of validity or the last day of the designated month. Every license and certificate of registration shall be renewed annually on application by the licensee or registrant and by payment of fees required by law, the renewal to take effect on the first day of the succeeding month.

B. Licenses and certificates of registration issued under this chapter shall be deemed not to have expired if the renewal application and required fees as set forth in this subsection are received by the Commissioner or postmarked not more than thirty days after the expiration date of such license or certificate of registration. Whenever the renewal application is received by the Commissioner or postmarked no more than thirty days after the expiration date of such license or certificate of registration, the license fees shall be 150 percent of the fees provided for in § 46.2-1919.

C. The Commissioner may offer an optional multi-year license. When such option is offered and chosen by the licensee, all annual and twelve-month fees due at the time of licensing shall be multiplied by the number of years or fraction thereof for which the license will be issued.

§ 46.2-1992.19. Issuance, expiration, and renewal of licenses and certificates of registration.

A. All licenses and certificates of registration issued under this chapter shall be issued for a period of twelve consecutive months except, at the discretion of the Commissioner, the periods may be adjusted as is necessary to distribute the licenses and certificates as equally as practicable on a monthly basis. The expiration date shall be the last day of the twelfth month of validity or the last day of the designated month. Every license and certificate of registration shall be renewed annually on application by the licensee or registrant and by payment of fees required by law, the renewal to take effect on the first day of the succeeding month.

B. Licenses and certificates of registration issued under this chapter shall be deemed not to have expired if the renewal application and required fees as set forth in this subsection are received by the Commissioner or postmarked not more than thirty days after the expiration date of such license or certificate of registration. Whenever the renewal application is received by the Commissioner or postmarked no more than thirty days after the expiration date of such license or certificate of registration, the license fees shall be 150 percent of the fees provided for in § 46.2-1992.17.

C. The Commissioner may offer an optional multi-year license. When such option is offered and chosen by the licensee, all annual and twelve-month fees due at the time of licensing shall be multiplied

by the number of years or fraction thereof for which the license will be issued.

§ 46.2-1993.19. Issuance, expiration, and renewal of licenses and certificates of registration.

A. All licenses and certificates of registration issued under this chapter shall be issued for a period of twelve consecutive months except, at the discretion of the Commissioner, the periods may be adjusted as is necessary to distribute the licenses and certificates as equally as practicable on a monthly basis. The expiration date shall be the last day of the twelfth month of validity or the last day of the designated month. Every license and certificate of registration shall be renewed annually on application by the licensee or registrant and by payment of fees required by law, the renewal to take effect on the first day of the succeeding month.

B. Licenses and certificates of registration issued under this chapter shall be deemed not to have expired if the renewal application and required fees as set forth in this subsection are received by the Commissioner or postmarked not more than thirty days after the expiration date of such license or certificate of registration. Whenever the renewal application is received by the Commissioner or postmarked no more than thirty days after the expiration date of such license or certificate of registration, the license fees shall be 150 percent of the fees provided for in § 46.2-1993.17.

C. *The Commissioner may offer an optional multi-year license. When such option is offered and chosen by the licensee, all annual and twelve-month fees due at the time of licensing shall be multiplied by the number of years or fraction thereof for which the license will be issued.*

2. That the provisions of this act amending §§ 46.2-1503.3, 46.2-1527.1, 46.2-1527.2, 46.2-1527.3, 46.2-1527.5, and 46.2-1581 of the Code of Virginia shall become effective on October 1, 1998.

3. That the provisions of this act amending §§ 46.2-1521, 46.2-1921, 46.2-1992.19, and 46.2-1993.19 of the Code of Virginia shall become effective on January 1, 1999.