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SENATE BILL NO. 421

Offered January 11, 2012

Prefiled January 11, 2012

A *BILL to amend and reenact §§ 46.2-618, 46.2-1527.1, 46.2-1527.2, and 46.2-1527.5 of the Code of Virginia, relating to possession of vehicle titles, the Motor Vehicle Transaction Recovery Fund, and bonding of motor vehicle dealers.*

Patron—Marsden

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-618, 46.2-1527.1, 46.2-1527.2, and 46.2-1527.5 of the Code of Virginia are amended and reenacted as follows:

§ 46.2-618. When unlawful to have in possession certificate of title issued to another; remedy of purchaser against persons in possession of title of vehicle purchased from dealer.

A. It shall constitute a Class 1 misdemeanor for any person in the Commonwealth to possess a certificate of title issued by the Commissioner to a person other than the holder thereof, unless the certificate of title has been assigned to the holder as provided in this title. This section, however, shall apply neither to secured parties who legally hold certificates of title as provided in this title nor to the spouse of the person to whom the certificate of title was issued.

B. *Any person who provides financing of motor vehicles held for sale by a dealer who does not have a properly recorded lien on a vehicle at the time such vehicle is purchased by a customer, and who has taken possession of the title to such vehicle shall be liable in a civil action to the purchaser of the vehicle for (i) possession of the title or in the alternative, the cost of the vehicle, insurance, costs of cover, and (iii) reasonable attorney fees and costs.*

§ 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 for the administration of this article up to the maximum amount authorized for consumer assistance in the general appropriation act, ~~provided the amount expended 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~~ a minimum Fund balance ~~that is in its judgment adequate~~, the Board may levy a special assessment on all dealers participating in the Fund.

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

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§ 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.

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 ~~\$20,000~~ \$25,000, 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 attorney fees assessed against the dealer or salesperson. *Effective January 1, 2013, and on January 1 of each year thereafter, the amount which may be awarded against such bond to any person as a result of loss or damage to that person as provided in this section shall be increased by the percentage increase over the most recently available unadjusted 12-month period in the Consumer Price Index for used cars and trucks, as published by the U.S. Bureau of Labor Statistics or any successor index. In the event that this index decreases over any such 12-month period, there shall be no change in the amount that may be awarded.*

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 \$50,000 in claims against the dealer. Thereafter, the Fund shall be liable for ~~the next \$50,000~~ amounts in excess of the bond up to the amount that may be paid out of the fund, less the amount of the bond, 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 \$50,000.

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 30 days' notice to the Board.

§ 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 ~~\$20,000~~ \$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 judgment creditor as a result of loss or damage to that person as provided in this article shall be increased by the percentage increase over the most recently available unadjusted 12-month period in the Consumer Price Index for used cars and trucks, as published by the U.S. Bureau of Labor Statistics, or any successor index. In the event that this index decreases over any such 12-month period, there shall be no change in the amount that may be awarded.*

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 ~~\$100,000~~ four times the amount that may be awarded to a single judgment creditor, 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 ~~\$50,000~~ the amount that may be paid out of the Fund under the preceding paragraph less the amount of the dealer's bond and then only after the dealer's ~~\$50,000~~ 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

121 against the licensee or registrant exceeds \$100,000, a total of \$100,000 the aggregate amount that may
122 be paid from the Fund under this section, then such amount shall be prorated among the claimants and
123 paid from the Fund in proportion to the amounts of their unpaid final judgments against the licensee or
124 registrant.

125 However, claims against motor vehicle dealers and salespersons participating in the Motor Vehicle
126 Transaction Recovery Fund pursuant to § 46.2-1527.2 shall be prorated when the aggregate exceeds
127 \$50,000. Claims shall be prorated only after the dealer's \$50,000 bond has been exhausted.

128 *The Board may require a purchaser of a vehicle who seeks recovery from the dealer not providing*
129 *title to seek recovery from a person providing financing of inventory for the dealer selling the vehicle,*
130 *where it appears that such person took possession of the title before authorizing a payment from the*
131 *Fund.*

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

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

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