

H. B. 2569

(BY DELEGATE(S) GEARHEART AND HAMRICK)

[Introduced February 3, 2015; referred to the
Committee on Roads and Transportation; and then
to the Committee on Finance.]

A BILL to amend and reenact §17A-6-2a of the Code of West Virginia, 1931, as amended, relating to the Dealer Recovery Program; specifying that the Dealer Recovery Fund Control Board has discretionary jurisdiction to hear claims; and providing the types of claims for damages that may be awarded from the Dealer Recovery Fund.

Be it enacted by the Legislature of West Virginia:

That §17A-6-2a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR
DISMANTLERS; SPECIAL PLATES; TEMPORARY
PLATES OR MARKERS.**

§17A-6-2a. Dealer recovery fund created.

1 (a) There is hereby created a special fund in the State
2 Treasury which is to be designated the “Dealer Recovery Fund.”
3 The fund ~~shall consist~~ consists of ~~certain~~ moneys received from
4 persons engaged in the business of selling new or used motor
5 vehicles, new or used motorcycles, trailers, multitrailers or
6 recreational vehicles or from grants, gifts, bequests or awards
7 arising out of the settlement or adjudication of a claim. The fund
8 is not to be treated by the Auditor and Treasurer as part of the
9 general revenue of the state. The fund is to be a special revolving
10 fund paid out upon order of the Commissioner of Motor Vehicles
11 based on the recommendation of the Dealer Recovery Fund
12 control board created in this section, solely for the purposes
13 specified in this section. The commissioner may use up to one
14 percent of funds from the Dealer Recovery Fund for the
15 administrative expenses of operating the dealer recovery fund
16 program.

17 (b) The Dealer Recovery Fund control board ~~shall consist~~
18 consists of the Commissioner of Motor Vehicles or his or her
19 designee, the Attorney General's designee representing the
20 Office of Consumer Protection and one representative selected
21 by the Motor Vehicle Dealer's Advisory Board. The
22 Commissioner of Motor Vehicles or his or her designee ~~shall~~
23 ~~serve~~ serves as chair and the board shall meet at least once a year
24 during the month of July, and as required by the commissioner.
25 The board may hear claims consistent with the purposes
26 specified in this section. The board may recommend rejection or
27 acceptance, in full or in part. The recommendation of the board
28 requires a majority vote. The commissioner may propose rules
29 for promulgation in accordance with article three, chapter
30 twenty-nine-a of this code that are necessary to effectuate the
31 provisions of this section. The commissioner may employ the
32 necessary staff needed to operate the program. The board may
33 prorate the amount paid on claims when the amount of valid
34 claims submitted would exceed thirty-three percent of the fund.
35 However, claims presented by the Division of Motor Vehicles
36 for taxes and fees shall be paid in full. The board may purchase

37 insurance at a cost not to exceed one percent of the fund to cover
38 extraordinary or excess claims from the fund.

39 (c) Every applicant for either an original dealer license or
40 renewal of an existing dealer license of the type enumerated in
41 subsection (a) of this section shall pay, in addition to any other
42 license fee, an annual Dealer Recovery Fund fee of \$150. All
43 dealers shall continue to maintain a surety bond as required by
44 this article and the Dealer Recovery Fund payment unless
45 exempt by one of the following requirements:

46 (1) Any dealer who, for the three years immediately
47 preceding assessment of the fees, has not had a claim paid
48 against their bond or against the Dealer Recovery Fund, whose
49 license has not been suspended or revoked and who has not been
50 assessed any civil penalties is not required to continue to keep
51 the bond required by this article. However, no dealer can submit
52 a claim against the fund unless it has contributed to the fund for
53 at least three years.

54 (2) If the Dealer Recovery Fund reaches or exceeds the
55 amount of \$3,000,000 as of July 1, of any year, a dealer who
56 meets the requirements of subdivision (1) of this subsection, is

57 exempt from payment of the annual Dealer Recovery Fund fee.
58 However, if the fund should, as of April 1 of any year, drop
59 below \$3,000,000, all dealers, regardless of any previous
60 exemption shall pay the annual dealer recovery fee of \$150. The
61 exemption prescribed in subdivision (1) of this subsection
62 remains in effect regardless of the status of the fund.

63 (d) The Dealer Recovery Fund control board may consider
64 payment only after any dealer surety bond required pursuant to
65 the provisions of section four of this article has been exhausted.

66 (e) When the fund reaches \$250,000, the board shall
67 consider claims for payment.

68 (f) Claims against the fund are not to be made for any act or
69 omission which occurred prior to July 1, 2002.

70 (g) Claims for payment shall be submitted within six months
71 of the date of sale or the date the division is made aware of the
72 claim.

73 (h) The board shall pay claims in the following order:

74 (1) Claims submitted by the Division of Motor Vehicles for
75 unpaid taxes and fees;

76 (2) Claims submitted by a retail purchaser of a vehicle from
77 a dealer covered by the fund with an undisclosed lien or a retail
78 purchaser of a vehicle from a dealer covered by the fund who
79 finds that the lien on the vehicle traded in has not been satisfied
80 by the selling dealer if the lien satisfaction was a condition of the
81 purchase agreement;

82 (3) Claims submitted by a motor vehicle dealer contributing
83 to the fund, which has purchased a vehicle or vehicles from
84 another dealer covered by the fund with an undisclosed lien;

85 (4) Claims submitted by a retail purchaser of third party
86 goods or services from a dealer covered by the fund for the
87 unpaid charges when the dealer fails to pay the third party for the
88 goods or services; or

89 (5) Claims submitted by the Division of Motor Vehicles, a
90 retail purchaser or a motor vehicle dealer contributing to the
91 fund, not authorized by subdivisions (1) through (4) of this
92 subsection, but otherwise payable under the bond described in
93 section four of this article, may be considered for payment by the
94 board up to the amount of \$50,000 for each licensing year the
95 West Virginia dealer that is the subject of the complaint did not

96 maintain the bond: *Provided*, That the board may not consider
97 claims submitted by or on behalf of a financial institution for
98 money owed by a dealer upon a loan to a dealer or credit
99 extended to a dealer that is secured by a lien upon the inventory
100 of the dealer, commonly referred to as a floor planner: *Provided,*
101 *however, That payments under this section may not include*
102 *punitive or exemplary damages, compensation for property*
103 *damage other than to the vehicle, recompense for any personal*
104 *injury or inconvenience, reimbursement for alternate*
105 *transportation or payment for attorney fees, legal expenses, court*
106 *costs or accrued interest.*

107 (i) The maximum claim against the fund for any unpaid lien
108 of a used vehicle is the unpaid balance of the lien up to the loan
109 value of the vehicle as of the date of the sale or other transaction
110 as shown by a generally accepted motor vehicle value guide. The
111 maximum claim against the fund for any new or unused vehicle
112 is the amount of the invoice less any amounts rebated or to be
113 rebated to the dealer from the manufacturer. Payment is only to
114 be made to a secured party who agrees to accept payment from
115 the Dealer Recovery Fund and who accepts the payment in full

116 settlement of any claims, and who releases the lien and the title,
117 if applicable, prior to receiving payment. Any dealer who agrees
118 to accept payment from the Dealer Recovery Fund shall release
119 the title prior to receiving payment.

120 (j) On payment by the board to a claimant from the fund, the
121 board shall immediately notify the licensee against whom a
122 claim was paid and request full reimbursement within thirty days
123 of notification. If a dealer fails to fully reimburse the board
124 within the specified period of time, the commissioner shall
125 immediately and without prior hearing revoke the dealer license
126 of dealer against whom the claim was paid. No applicant with an
127 unpaid claim is eligible for renewal or relicensure until the full
128 amount of the reimbursement plus interest as determined by the
129 board is paid to the fund. ~~Nothing in~~ This section shall does not
130 limit the authority of the commissioner to suspend, revoke or
131 levy civil penalties against a dealer, nor ~~shall~~ does full
132 repayment of the amount owed to the fund necessarily nullify or
133 modify the effect of any action by the commissioner.

134 (k) ~~Nothing in~~ This section shall does not limit the right ~~for~~
135 of any person to seek relief through civil action against any other
136 person.

137 (l) The provisions of this section do not apply to those class
138 DTR dealers in the business of selling manufactured housing and
139 covered by the state manufactured housing recovery fund
140 established by the Division of Labor pursuant to a legislative
141 rule.

NOTE: The purpose of this bill is to clarify the authority and discretion of the Dealer Recovery Board to hear claims. The bill further clarifies the types of payments which the Dealer Recovery Board may or may not disburse in the execution of their duties.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

