

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 2569

2015 Carryover

(BY DELEGATES GEARHEART AND HAMRICK)

[By Request of the Division of Motor Vehicles]

[Introduced January 13, 2016; referred to the
Committee on Roads and Transportation then

Finance.]

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

Be it enacted by the Legislature of West Virginia:

1 That §17A-6-2a of the Code of West Virginia, 1931, as amended, be amended and
 2 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 Treasury which is to be designated
 2 the "Dealer Recovery Fund." The fund ~~shall consist~~ consists of ~~certain~~ moneys received from
 3 persons engaged in the business of selling new or used motor vehicles, new or used motorcycles,
 4 trailers, multitrailers or recreational vehicles or from grants, gifts, bequests or awards arising out
 5 of the settlement or adjudication of a claim. The fund is not to be treated by the Auditor and
 6 Treasurer as part of the general revenue of the state. The fund is to be a special revolving fund
 7 paid out upon order of the Commissioner of Motor Vehicles based on the recommendation of the
 8 Dealer Recovery Fund control board created in this section, solely for the purposes specified in
 9 this section. The commissioner may use up to one percent of funds from the Dealer Recovery
 10 Fund for the administrative expenses of operating the dealer recovery fund program.

11 (b) The Dealer Recovery Fund control board ~~shall consist~~ consists of the Commissioner
 12 of Motor Vehicles or his or her designee, the Attorney General's designee representing the Office
 13 of Consumer Protection and one representative selected by the Motor Vehicle Dealer's Advisory

14 Board. The Commissioner of Motor Vehicles or his or her designee ~~shall serve~~ serves as chair
15 and the board shall meet at least once a year during the month of July, and as required by the
16 commissioner. The board may hear claims consistent with the purposes specified in this section.
17 The board may recommend rejection or acceptance, in full or in part. The recommendation of the
18 board requires a majority vote. The commissioner may propose rules for promulgation in
19 accordance with article three, chapter twenty-nine-a of this code that are necessary to effectuate
20 the provisions of this section. The commissioner may employ the necessary staff needed to
21 operate the program. The board may prorate the amount paid on claims when the amount of
22 valid claims submitted would exceed thirty-three percent of the fund. However, claims presented
23 by the Division of Motor Vehicles for taxes and fees shall be paid in full. The board may purchase
24 insurance at a cost not to exceed one percent of the fund to cover extraordinary or excess claims
25 from the fund.

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

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

36 (2) If the Dealer Recovery Fund reaches or exceeds the amount of \$3,000,000 as of July
37 1, of any year, a dealer who meets the requirements of subdivision (1) of this subsection, is

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

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

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

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

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

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

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

51 (2) Claims submitted by a retail purchaser of a vehicle from a dealer covered by the fund
52 with an undisclosed lien or a retail purchaser of a vehicle from a dealer covered by the fund who
53 finds that the lien on the vehicle traded in has not been satisfied by the selling dealer if the lien
54 satisfaction was a condition of the purchase agreement;

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

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

60 (5) Claims submitted by the Division of Motor Vehicles, a retail purchaser or a motor
61 vehicle dealer contributing to the fund, not authorized by subdivisions (1) through (4) of this

62 subsection, but otherwise payable under the bond described in section four of this article, may be
63 considered for payment by the board up to the amount of \$50,000 for each licensing year the
64 West Virginia dealer that is the subject of the complaint did not maintain the bond: *Provided,*
65 That the board may not consider claims submitted by or on behalf of a financial institution for
66 money owed by a dealer upon a loan to a dealer or credit extended to a dealer that is secured by
67 a lien upon the inventory of the dealer, commonly referred to as a floor planner: *Provided,*
68 *however, That payments under this section may not include punitive or exemplary damages,*
69 *compensation for property damage other than to the vehicle, recompense for any personal injury*
70 *or inconvenience, reimbursement for alternate transportation or payment for attorney fees, legal*
71 *expenses, court costs or accrued interest.*

72 (i) The maximum claim against the fund for any unpaid lien of a used vehicle is the unpaid
73 balance of the lien up to the loan value of the vehicle as of the date of the sale or other transaction
74 as shown by a generally accepted motor vehicle value guide. The maximum claim against the
75 fund for any new or unused vehicle is the amount of the invoice less any amounts rebated or to
76 be rebated to the dealer from the manufacturer. Payment is only to be made to a secured party
77 who agrees to accept payment from the Dealer Recovery Fund and who accepts the payment in
78 full settlement of any claims, and who releases the lien and the title, if applicable, prior to receiving
79 payment. Any dealer who agrees to accept payment from the Dealer Recovery Fund shall
80 release the title prior to receiving payment.

81 (j) On payment by the board to a claimant from the fund, the board shall immediately notify
82 the licensee against whom a claim was paid and request full reimbursement within thirty days of
83 notification. If a dealer fails to fully reimburse the board within the specified period of time, the
84 commissioner shall immediately and without prior hearing revoke the dealer license of dealer
85 against whom the claim was paid. No applicant with an unpaid claim is eligible for renewal or

86 relicensure until the full amount of the reimbursement plus interest as determined by the board is
87 paid to the fund. ~~Nothing in~~ This section ~~shall~~ does not limit the authority of the commissioner to
88 suspend, revoke or levy civil penalties against a dealer, nor ~~shall~~ does full repayment of the
89 amount owed to the fund necessarily nullify or modify the effect of any action by the commissioner.

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

92 (l) The provisions of this section do not apply to those class DTR dealers in the business
93 of selling manufactured housing and covered by the state manufactured housing recovery fund
94 established by the Division of Labor pursuant to a legislative 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.