

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Committee Substitute

for

House Bill 2008

BY DELEGATES GEARHEART AND HAMRICK

[Originating in the Committee on Finance;

February 22, 2018.]

1 A BILL to amend and reenact §17A-6-2a of the Code of West Virginia, 1931, as amended, relating
2 generally to the Dealer Recovery Fund; specifying that the Dealer Recovery Fund Control
3 Board has discretionary jurisdiction to hear claims; and providing the types of claims for
4 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, ~~semi-trailers~~ multitrailers or recreational vehicles ~~or~~ and from grants, gifts, bequests or
5 awards arising out of the settlement or adjudication of a claim. The fund is not to be treated by
6 the Auditor and Treasurer as part of the general revenue of the state. The fund is to be a special
7 revolving fund paid out upon order of the Commissioner of Motor Vehicles based on the
8 recommendation of the Dealer Recovery Fund control board created in this section, solely for the
9 purposes specified in this section. The commissioner may use up to one percent of funds from
10 the Dealer Recovery Fund for the administrative expenses of operating the Dealer Recovery Fund
11 program.

12 (b) The Dealer Recovery Fund control board ~~shall consist~~ consists of the Commissioner
13 of Motor Vehicles or his or her designee, the Attorney General's designee representing the Office
14 of Consumer Protection and one representative selected by the Motor Vehicle Dealer's Advisory
15 Board. The Commissioner of Motor Vehicles or his or her designee ~~shall serve~~ serves as chair
16 and the board shall meet at least once a year during the month of July, and as required by the

17 commissioner. The board may hear claims consistent only with the purposes specified in this
18 section. The board may recommend rejection or acceptance of a claim, in full or in part. The
19 recommendation of the board requires a majority vote of the board. The commissioner may
20 propose rules for promulgation in accordance with ~~article three, chapter twenty-nine-a~~ §29A-3-1
21 et seq. of this code that are necessary to effectuate the provisions of this section. The
22 commissioner may employ the necessary staff needed to operate the program. The board may
23 prorate the amount paid on claims when the aggregate amount of valid claims submitted would
24 exceed ~~thirty-three~~ 33 percent of the fund. However, claims presented by the Division of Motor
25 Vehicles for taxes and fees shall be paid in full. The board may purchase insurance at a cost not
26 to exceed one percent of the fund to cover extraordinary or excess claims from the fund.

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

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

37 (2) If the Dealer Recovery Fund reaches or exceeds the amount of \$3,000,000 as of July
38 1, of any year, a dealer who meets the requirements of subdivision (1) of this subsection, is
39 exempt from payment of the annual Dealer Recovery Fund fee. However, if the fund should, as
40 of April 1 of any year, drop below \$3,000,000, all dealers, regardless of any previous exemption
41 shall pay the annual dealer recovery fee of \$150. The exemption prescribed in subdivision (1) of
42 this subsection remains in effect regardless of the status of the fund.

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

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

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

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

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

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

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

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

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

61 (5) Claims submitted by the Division of Motor Vehicles, a retail purchaser or a motor
62 vehicle dealer contributing to the fund, not authorized by subdivisions (1) through (4) of this
63 subsection, but otherwise payable under the bond described in section four of this article, may be
64 considered for payment by the board up to the amount of \$50,000 for each licensing year the
65 West Virginia dealer that is the subject of the complaint did not maintain the bond: *Provided*, That
66 the board may not consider claims submitted by or on behalf of a financial institution for money
67 owed by a dealer upon a loan to a dealer or credit extended to a dealer that is secured by a lien
68 upon the inventory of the dealer, commonly referred to as a floor planner.

69 (i) Payments under this section may not include payment for claims of punitive or
70 exemplary damages, compensation for property damage other than to the vehicle, recompense
71 for any personal injury or inconvenience, reimbursement for alternate transportation or payment
72 for attorney fees, legal expenses, court costs or accrued interest.

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

82 ~~(j)~~(k) On payment by the board to a claimant from the fund, the board shall immediately
83 notify the licensee against whom a claim was paid and request full reimbursement within thirty
84 days of notification. If a dealer fails to fully reimburse the board within the specified period of time,
85 the commissioner shall immediately and without prior hearing revoke the dealer license of dealer
86 against whom the claim was paid. No applicant with an unpaid claim is eligible for renewal or
87 relicensure until the full amount of the reimbursement plus interest as determined by the board is
88 paid to the fund. ~~Nothing in~~ This section ~~shall~~ does not limit the authority of the commissioner to
89 suspend, revoke or levy civil penalties against a dealer, nor ~~shall~~ does full repayment of the
90 amount owed to the fund necessarily nullify or modify the effect of any action by the commissioner.

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

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