

1 **H. B. 4391**

2
3 (By Delegates Howell, Craig, Lynch, Skaff,
4 R. Phillips, Tomblin, L. Phillips, Staggers,
5 Longstreth, White and Morgan)
6

7 [Introduced February 3, 2014; referred to the
8 Committee on Roads & Transportation then the Judiciary.]
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10 A BILL to amend and reenact §17A-6-2a of the Code of West Virginia,
11 1931, as amended, relating to Dealer Recovery Fund and the
12 operation of the Dealer Recovery Board.

13 *Be it enacted by the Legislature of West Virginia:*

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

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

18 **§17A-6-2a. Dealer Recovery Fund created.**

19 (a) ~~There is hereby created a~~ The special fund in the State
20 Treasury ~~which is to be~~ designated the "Dealer Recovery Fund" is
21 continued. The fund ~~shall consist~~ consists of ~~certain~~ moneys
22 received from persons engaged in the business of selling new or
23 used motor vehicles, new or used motorcycles, trailers,
24 multitrailers or recreational vehicles or from grants, gifts,
25 bequests or awards arising out of the settlement or adjudication of

1 a claim. The fund is not to be treated by the Auditor and
2 Treasurer as part of the general revenue of the state. The fund is
3 to be a special revolving fund paid out upon order of the
4 Commissioner of Motor Vehicles based on the recommendation of the
5 Dealer Recovery Fund Control Board created in this section, solely
6 for the purposes specified in this section. The commissioner may
7 use up to one percent of funds from the dealer recovery fund for
8 the administrative expenses of operating the dealer recovery fund
9 program.

10 (b) The Dealer Recovery Fund Control Board ~~shall consist~~
11 consists of the Commissioner of Motor Vehicles or his or her
12 designee, the Attorney General's designee representing the Office
13 of Consumer Protection and one representative selected by the Motor
14 Vehicle Dealer's Advisory Board. The Commissioner of Motor
15 Vehicles or his or her designee ~~shall serve~~ serves as chair and the
16 board shall meet at least once a year during the month of July, and
17 as required by the commissioner. The board may hear claims
18 consistent with the purposes specified in this section. The board
19 has discretion to recommend rejection or acceptance, in full, or in
20 part. The recommendation of the board requires a majority vote.
21 The commissioner may propose rules for promulgation in accordance
22 with article three, chapter twenty-nine-a of this code that are
23 necessary to effectuate the provisions of this section. The
24 commissioner may employ the necessary staff needed to operate the

1 program. The board may prorate the amount paid on claims when the
2 amount of valid claims submitted would exceed thirty-three percent
3 of the fund. However, claims presented by the Division of Motor
4 Vehicles for taxes and fees shall be paid in full. The board may
5 purchase insurance at a cost not to exceed one percent of the fund
6 to cover extraordinary or excess claims from the fund.

7 (c) Every applicant for either an original dealer license or
8 renewal of an existing dealer license of the type enumerated in
9 subsection (a) of this section shall pay, in addition to any other
10 license fee, an annual dealer recovery fund fee of \$150. All
11 dealers shall continue to maintain a surety bond as required by
12 this article and the dealer recovery fund payment unless exempt by
13 one of the following requirements:

14 (1) Any dealer who, for the three years immediately preceding
15 assessment of the fees, has not had a claim paid against their bond
16 or against the dealer recovery fund, whose license has not been
17 suspended or revoked and who has not been assessed any civil
18 penalties is not required to continue to keep the bond required by
19 this article. However, no dealer ~~can~~ may submit a claim against
20 the fund unless it has contributed to the fund for at least three
21 years.

22 (2) If the Dealer Recovery Fund reaches or exceeds the amount
23 of \$3 million as of July 1, of any year, a dealer who meets the
24 requirements of subdivision (1) of this subsection, is exempt from

1 payment of the annual dealer recovery fund fee. However, if the
2 fund should, as of April 1 of any year, drop below \$3 million all
3 dealers, regardless of any previous exemption shall pay the annual
4 dealer recovery fee of \$150. The exemption prescribed in
5 subdivision (1) of this subsection remains in effect regardless of
6 the status of the fund.

7 (d) The Dealer Recovery Fund Control Board may consider
8 payment only after any dealer surety bond required pursuant to the
9 provisions of section four of this article has been exhausted.

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

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

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

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

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

20 (2) Claims submitted by a retail purchaser of a vehicle from
21 a dealer covered by the fund with an undisclosed lien or a retail
22 purchaser of a vehicle from a dealer covered by the fund who finds
23 that the lien on the vehicle traded in has not been satisfied by
24 the selling dealer if the lien satisfaction was a condition of the

1 purchase agreement;

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

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

9 (5) Claims submitted by the Division of Motor Vehicles, a
10 retail purchaser or a motor vehicle dealer contributing to the
11 fund, not authorized by subdivisions (1) through (4) of this
12 subsection, but otherwise payable under the bond described in
13 section four of this article, may be considered for payment by the
14 board up to the amount of \$50,000 for each licensing year the West
15 Virginia dealer that is the subject of the complaint did not
16 maintain the bond: *Provided*, That the board may not consider
17 claims submitted by or on behalf of a financial institution for
18 money owed by a dealer upon a loan to a dealer or credit extended
19 to a dealer that is secured by a lien upon the inventory of the
20 dealer, commonly referred to as a floor planner: *Provided*,
21 *however*, That payments under this section may not include punitive
22 or exemplary damages, compensation for property damage other than
23 to the vehicle, recompense for any personal injury or
24 inconvenience, reimbursement for alternate transportation or

1 payment for attorney fees, legal expenses, court costs or accrued
2 interest.

3 (i) The maximum claim against the fund for any unpaid lien of
4 a used vehicle is the unpaid balance of the lien up to the loan
5 value of the vehicle as of the date of the sale or other
6 transaction as shown by a generally accepted motor vehicle value
7 guide. The maximum claim against the fund for any new or unused
8 vehicle is the amount of the invoice less any amounts rebated or to
9 be rebated to the dealer from the manufacturer. Payment is only to
10 be made to a secured party who agrees to accept payment from the
11 dealer recovery fund and who accepts the payment in full settlement
12 of any claims, and who releases the lien and the title, if
13 applicable, prior to receiving payment. Any dealer who agrees to
14 accept payment from the dealer recovery fund shall release the
15 title prior to receiving payment.

16 (j) On payment by the board to a claimant from the fund, the
17 board shall immediately notify the licensee against whom a claim
18 was paid and request full reimbursement within thirty days of
19 notification. If a dealer fails to fully reimburse the board
20 within the specified period of time, the commissioner shall
21 immediately and without prior hearing revoke the dealer license of
22 dealer against whom the claim was paid. No applicant with an
23 unpaid claim is eligible for renewal or relicensure until the full
24 amount of the reimbursement plus interest as determined by the

1 board is paid to the fund. ~~Nothing in~~ This section ~~shall~~ does not
2 limit the authority of the commissioner to suspend, revoke or levy
3 civil penalties against a dealer, nor ~~shall~~ does full repayment of
4 the amount owed to the fund necessarily nullify or modify the
5 effect of any action by the commissioner.

6 (k) ~~Nothing in~~ This section ~~shall~~ does not limit the right ~~for~~
7 of any person to seek relief though civil action against any other
8 person.

9 (l) The provisions of this section do not apply to those class
10 DTR dealers in the business of selling manufactured housing and
11 covered by the state manufactured housing recovery fund established
12 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.