

H. B. 2569

(By Delegates Gearheart and Hamrick)

[By Request of the Division of Motor Vehicles]

[Introduced February 3, 2015; referred to the

Committee on Roads and Transportation then Finance.]

A BILL to amend and reenact §17A-6-2a of the Code of West Virginia, 1931, as amended, relating generally to the Dealer Recovery Fund; 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.

(a) There is hereby created a special fund in the State Treasury which is to be designated the "Dealer Recovery Fund." The fund ~~shall consist~~ consists of ~~certain~~ moneys received from persons engaged in the business of selling new or used motor vehicles, new or used motorcycles, trailers,

1 multitrailers or recreational vehicles or from grants, gifts, bequests or awards arising out of the
2 settlement or adjudication of a claim. The fund is not to be treated by the Auditor and Treasurer as
3 part of the general revenue of the state. The fund is to be a special revolving fund paid out upon
4 order of the Commissioner of Motor Vehicles based on the recommendation of the Dealer Recovery
5 Fund control board created in this section, solely for the purposes specified in this section. The
6 commissioner may use up to one percent of funds from the Dealer Recovery Fund for the
7 administrative expenses of operating the dealer recovery fund program.

8 (b) The Dealer Recovery Fund control board ~~shall consist~~ consists of the Commissioner of
9 Motor Vehicles or his or her designee, the Attorney General's designee representing the Office of
10 Consumer Protection and one representative selected by the Motor Vehicle Dealer's Advisory Board.
11 The Commissioner of Motor Vehicles or his or her designee ~~shall serve~~ serves as chair and the board
12 shall meet at least once a year during the month of July, and as required by the commissioner. The
13 board may hear claims consistent with the purposes specified in this section. The board may
14 recommend rejection or acceptance, in full or in part. The recommendation of the board requires a
15 majority vote. The commissioner may propose rules for promulgation in accordance with article
16 three, chapter twenty-nine-a of this code that are necessary to effectuate the provisions of this
17 section. The commissioner may employ the necessary staff needed to operate the program. The
18 board may prorate the amount paid on claims when the amount of valid claims submitted would
19 exceed thirty-three percent of the fund. However, claims presented by the Division of Motor
20 Vehicles for taxes and fees shall be paid in full. The board may purchase insurance at a cost not to
21 exceed one percent of the fund to cover extraordinary or excess claims from the fund.

22 (c) Every applicant for either an original dealer license or renewal of an existing dealer

1 license of the type enumerated in subsection (a) of this section shall pay, in addition to any other
2 license fee, an annual Dealer Recovery Fund fee of \$150. All dealers shall continue to maintain a
3 surety bond as required by this article and the Dealer Recovery Fund payment unless exempt by one
4 of the following requirements:

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

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

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

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

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

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

- 1 (h) The board shall pay claims in the following order:
- 2 (1) Claims submitted by the Division of Motor Vehicles for unpaid taxes and fees;
- 3 (2) Claims submitted by a retail purchaser of a vehicle from a dealer covered by the fund with
4 an undisclosed lien or a retail purchaser of a vehicle from a dealer covered by the fund who finds that
5 the lien on the vehicle traded in has not been satisfied by the selling dealer if the lien satisfaction was
6 a condition of the purchase agreement;
- 7 (3) Claims submitted by a motor vehicle dealer contributing to the fund, which has purchased
8 a vehicle or vehicles from another dealer covered by the fund with an undisclosed lien;
- 9 (4) Claims submitted by a retail purchaser of third party goods or services from a dealer
10 covered by the fund for the unpaid charges when the dealer fails to pay the third party for the goods
11 or services; or
- 12 (5) Claims submitted by the Division of Motor Vehicles, a retail purchaser or a motor vehicle
13 dealer contributing to the fund, not authorized by subdivisions (1) through (4) of this subsection, but
14 otherwise payable under the bond described in section four of this article, may be considered for
15 payment by the board up to the amount of \$50,000 for each licensing year the West Virginia dealer
16 that is the subject of the complaint did not maintain the bond: *Provided*, That the board may not
17 consider claims submitted by or on behalf of a financial institution for money owed by a dealer upon
18 a loan to a dealer or credit extended to a dealer that is secured by a lien upon the inventory of the
19 dealer, commonly referred to as a floor planner: *Provided, however, That payments under this*
20 *section may not include punitive or exemplary damages, compensation for property damage other*
21 *than to the vehicle, recompense for any personal injury or inconvenience, reimbursement for*
22 *alternate transportation or payment for attorney fees, legal expenses, court costs or accrued interest.*

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

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

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

21 (l) The provisions of this section do not apply to those class DTR dealers in the business of
22 selling manufactured housing and covered by the state manufactured housing recovery fund

1 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.