WEST VIRGINIA CODE: §17a-6-2A

§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 consists of certain moneys received from persons engaged in the business of selling new or used motor vehicles, new or used motorcycles, trailers, multitrailers or recreational vehicles and from grants, gifts, bequests or awards arising out of the settlement or adjudication of a claim. The fund is not to be treated by the Auditor and Treasurer as part of the general revenue of the state. The fund is to be a special revolving fund paid out upon order of the Commissioner of Motor Vehicles based on the recommendation of the Dealer Recovery Fund control board created in this section, solely for the purposes specified in this section. The commissioner may use up to one percent of funds from the Dealer Recovery Fund for the administrative expenses of operating the Dealer Recovery Fund program.

(b) The Dealer Recovery Fund control board consists of the Commissioner of Motor Vehicles or his or her designee, the Attorney General's designee representing the Office of Consumer Protection and one representative selected by the Motor Vehicle Dealer's Advisory Board. The Commissioner of Motor Vehicles or his or her designee serves as chair and the board shall meet at least once a year during the month of July, and as required by the commissioner. The board may hear claims consistent only with the purposes specified in this section. The board may recommend rejection or acceptance of a claim, in full or in part. The recommendation of the board requires a majority vote of the board. The commissioner may propose rules for promulgation in accordance with §29A-3-1 et seq. of this code that are necessary to effectuate the provisions of this section. The commissioner may employ the necessary staff needed to operate the program. The board may prorate the amount paid on claims when the aggregate amount of valid claims submitted would exceed 33 percent of the fund. However, claims presented by the Division of Motor Vehicles for taxes and fees shall be paid in full. The board may purchase insurance at a cost not to exceed one percent of the fund to cover extraordinary or excess claims from the fund.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(k) On payment by the board to a claimant from the fund, the board shall immediately notify the licensee against whom a claim was paid and request full reimbursement within thirty days of notification. If a dealer fails to fully reimburse the board within the specified period of time, the commissioner shall immediately and without prior hearing revoke the dealer license of dealer against whom the claim was paid. No applicant with an unpaid claim is eligible for renewal or relicensure until the full amount of the reimbursement plus interest as determined by the board is paid to the fund. This section does not limit the authority of the commissioner to suspend, revoke or levy civil penalties against a dealer, nor does full repayment of the amount owed to the fund necessarily nullify or modify the effect of any action by the commissioner.

(l) This section does not limit the right of any person to seek relief though civil action against any other person.

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

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