WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2001

ENROLLED

COMMITTEE SUBSTITUTE FOR
House Bill No. 2961

(By Delegates Warner and Shelton)

Passed April 14, 2001

In Effect Ninety Days from Passage
AN ACT to amend and reenact sections two, four, six, eight and eighteen, article six, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated two-a, all relating to the establishment of a dealer recovery fund; setting forth legislative findings; creating a dealer recovery fund control board; promulgation of rules; providing for an annual dealer recovery fund fee; providing exemptions; requiring surety bonds; and providing for payment of claims.

Be it enacted by the Legislature of West Virginia:

That sections two, four, six, eight and eighteen, article six, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding a new section, designated two-a, all to read as follows:
§17A-6-2. Legislative findings, declaration of public policy and dealer recovery fund.

(a) The Legislature hereby determines and finds that in the past some persons engaged in the business of selling new or used motor vehicles, house trailers, trailers, recreational vehicles, motorcycles, or used motor vehicle parts, and in the business of wrecking or dismantling motor vehicles, have not had the necessary qualifications, staff, equipment or facilities to adequately serve the public; that some persons engaged in the businesses have made false and deceptive claims and advertisements to the public and have engaged in fraud and other illegal conduct; that certain citizens of this state have sustained financial losses as a result thereof; and that in some of the cases there has been no adequate means to prevent the conduct or protect the interests of the citizens of West Virginia. It is, therefore, declared to be the public policy of this state that the business of new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, recreational vehicle dealer, motorcycle dealer, used parts dealer, or wrecker or dismantler, affects the general welfare of this state and its citizens; that persons without the necessary qualifications, staff, equipment or facilities to adequately serve the public, and persons not of good character or who have or are likely to attempt to misrepresent their product or engage in fraudulent or other illegal conduct should not engage in these businesses; and that the evils may best be prevented and the interests of the public best served by requiring persons in the businesses to meet the qualifications set forth in this article and to be licensed by the commissioner of motor vehicles as provided in this article.
(b) The Legislature further determines and finds that there exists a significant problem when a motor vehicle dealer goes out of business or engages in business practices that cause citizens or businesses of the affected community, as well as this state substantial financial loss. It is, therefore determined, that the creation of a dealer recovery fund is necessary as a remedial measure to allow both the state and the citizens of this state to recover any taxes which have not been properly remitted to the state and to provide financial relief to citizens, businesses and other motor vehicle dealers who have suffered financial harm through the failure of a motor vehicle dealer to properly fulfill its responsibilities such as failure to properly release liens and deliver clear title in motor vehicle transactions.

§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 of certain moneys received from persons engaged in the business of selling new or used motor vehicles, new or used motorcycles, trailers, semi-trailers or recreational vehicles or 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 shall consist 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
The commissioner of motor vehicles or his or her designee shall serve as chair and the board shall meet at least once a year during the month of July, and as required by the commissioner. The commissioner may propose rules for promulgation in accordance with article three, chapter twenty-nine-a 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 amount of valid claims submitted would exceed thirty-three 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 one hundred and fifty dollars. 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.

(2) If the dealer recovery fund reaches or exceeds the amount of three million dollars as of the first day of July 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 the first
day of April of any year, drop below three million dollars, all
dealers, regardless of any previous exemption shall pay the
annual dealer recovery fee of one hundred fifty dollars. 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 two hundred fifty thousand
dollars, 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 the first day of July, two-
thousand and two.

(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; or
(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.

(i) 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.

(j) 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. Nothing in this section shall limit the authority of the commissioner to suspend, revoke or levy civil penalties against a dealer, nor shall full repayment of the amount owed to the fund necessarily nullify or modify the effect of any action by the commissioner.

(k) Nothing in this section shall limit the right for any person to seek relief though civil action against any other person.
(l) 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.

§17A-6-4. Application for license certificate; insurance; bonds; investigation; information confidential.

(a) Application for any license certificate required by section three of this article shall be made on a form prescribed by the commissioner. There shall be attached to the application a certificate of insurance certifying that the applicant has in force an insurance policy issued by an insurance company authorized to do business in this state insuring the applicant and any other person, as insured, using any vehicle or vehicles owned by the applicant with the express or implied permission of the named insured, against loss from the liability imposed by law for damages arising out of the ownership, operation, maintenance or use of the vehicle or vehicles, subject to minimum limits, exclusive of interest and costs, with respect to each vehicle, as follows: Twenty thousand dollars because of bodily injury to or death of one person in any one accident and, subject to the limit for one person, forty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and ten thousand dollars because of injury to or destruction of property of others in any one accident.

(b) In the case of an application for a license certificate to engage in the business of new motor vehicle dealer, used motor vehicle dealer or house trailer dealer, the application shall disclose, but not be limited to, the following:

(1) The type of business for which a license certificate is sought;
(2) If the applicant is an individual, the full name and address of the applicant and any trade name under which he or she will engage in the business;

(3) If the applicant is a copartnership, the full name and address of each partner in the copartnership, the name of the copartnership, its post-office address and any trade name under which it will engage in the business;

(4) If the applicant is a corporation, its name, the state of its incorporation, its post-office address and the full name and address of each officer and director of the corporation;

(5) The location of each place in this state at which the applicant will engage in the business and whether the business is owned or leased by the applicant;

(6) Whether the applicant, any partner, officer or director of the business has previously engaged in the business or any other business required to be licensed under the provisions of this article and if so, with or for whom, at what location and for what periods of time;

(7) Whether the applicant, any partner, officer, director or employer of the business has previously applied for a license certificate under the provisions of this article or a similar license certificate in this or any other state, and if so, whether the license certificate was issued or refused, and, if issued, whether it was ever suspended or revoked;

(8) A statement of previous general business experience and the past history of the applicant; and

(9) Any other information that the commissioner may reasonably require which may include information relating to any contracts, agreements or understandings between the applicant and other persons respecting the transaction of the
business, and any criminal record of the applicant if an individual, or of each partner if a copartnership, or of each officer and director, if a corporation.

(c) In the case of an application for a license certificate to engage in the business of new motor vehicle dealer, the application shall, in addition to the matters outlined in subsection (b) of this section disclose:

1. The make or makes of new motor vehicles which the applicant will offer for sale in this state during the ensuing fiscal year; and

2. The exact number of new and used motor vehicles, if any, sold at retail and wholesale by the applicant or his or her predecessor, if any, during the preceding fiscal year, and if no new and used motor vehicles were sold at retail and wholesale by the applicant or his or her predecessor, if any, during the preceding fiscal year, the number of new and used motor vehicles the applicant reasonably expects to sell at retail and wholesale during the ensuing fiscal year.

(d) In the case of an application for a license certificate to engage in the business of used motor vehicle dealer, the application shall in addition to the matters outlined in subsection (b) of this section, disclose the exact number of used motor vehicles, if any, sold at retail and wholesale by the applicant or his or her predecessor, if any, during the preceding fiscal year, and if no used motor vehicles were sold at retail and wholesale by the applicant or his or her predecessor, if any, during the preceding fiscal year, the number of used motor vehicles the applicant reasonably expects to sell at retail and wholesale during the ensuing fiscal year.

(e) In the case of an application for a license certificate to engage in the business of trailer dealer, recreational vehicle dealer, motorcycle dealer, used parts dealer or wrecker/
dismantler/rebuilder, the application shall disclose any information that the commissioner may reasonably require.

(f) The application shall be verified by the oath or affirmation of the applicant, if an individual, or if the applicant is a copartnership or corporation, by a partner or officer thereof, as the case may be. Except as provided in section two-a of this article, the application shall be accompanied by a bond of the applicant in the penal sum of ten thousand dollars, in the form prescribed by the commissioner, conditioned that the applicant will not in the conduct of his or her business practice any fraud which, or make any fraudulent representation which, shall cause a financial loss to any purchaser, seller or financial institution or agency, or the state of West Virginia, with a corporate surety thereon authorized to do business in this state. The bond shall be effective as of the date on which the license certificate sought is issued.

(g) Upon receipt of any fully completed application, together with any bond required under subsection (f) of this section, the certificate of insurance as required in subsection (a) of this section and the appropriate fee provided for in section ten of this article, the commissioner may conduct any investigation he or she considers necessary to determine the accuracy of any statements contained in the application and the existence of any other facts which he or she considers relevant in considering the application. To facilitate the investigation, the commissioner may withhold issuance or refusal of the license certificate for a period not to exceed twenty days.

(h) Any application for a license certificate under the provisions of this article and any information submitted with the application is confidential for the use of the division. No person shall divulge any information contained in any application or any information submitted with the application except
in response to a valid subpoena or subpoena duces tecum issued pursuant to law.

§17A-6-6. Refusal or issuance of license certificate; license certificate not transferable.

(a) Upon the basis of the application and all other information before him or her, the commissioner shall make and enter an order denying the application for a license certificate and refusing the license certificate sought. The denial and refusal are final and conclusive unless an appeal is taken in accordance with the provisions of section twenty-one of this article, if the commissioner finds that the applicant (individually, if an individual, or the partners, if a copartnership, or the officers and directors, if a corporation):

(1) Has failed to furnish the required bond unless otherwise exempt under the provisions of section two-a of this article;

(2) Has failed to furnish the required certificate of insurance;

(3) Has knowingly made false statement of a material fact in his or her application;

(4) Has habitually defaulted on financial obligations in this state or any other state or jurisdiction;

(5) Has been convicted of a felony: Provided, That upon appeal, the motor vehicle dealers advisory board established pursuant to the provisions of section eighteen-a of this article may grant as exemption of this restriction if the felony did not involve financial matters, the motor vehicle industry or matters of moral turpitude.

(6) So far as can be ascertained, has not complied with and will not comply with the registration and title laws of this state or any other state or jurisdiction;
(7) Does not or will not have or maintain at each place of
business (subject to the qualification contained in subdivision
(17), subsection (a), section one of this article with respect to a
new motor vehicle dealer) an established place of business as
defined for the business in question in that section;

(8) Has been convicted of any fraudulent act in connection
with the business of new motor vehicle dealer, used motor
vehicle dealer, house trailer dealer, trailer dealer, recreational
vehicle dealer, motorcycle dealer, used parts dealer, or wrecker
or dismantler in this state or any other state or jurisdiction;

(9) Has done any act or has failed or refused to perform any
duty for which the license certificate sought could be suspended
or revoked were it then issued and outstanding;

(10) Is not age eighteen years or older;

(11) Is delinquent in the payment of any taxes owed to the
United States, the state of West Virginia or any political
subdivision thereof;

(12) Has been denied a license in another state or has been
the subject of license revocation or suspension in another state;

(13) Has committed any action in another state which, if it
had been committed in this state, would be grounds for denial
and refusal of the application for a license certificate;

(14) Has failed to pay any civil penalty assessed by this
state or any other state; or

(15) Has failed to reimburse when ordered, any claim
against the dealer recovery fund as prescribed in section two-a
of this article.

Otherwise, the commissioner shall issue to the applicant the
appropriate license certificate which entitles the licensee to
engage in the business of new motor vehicle dealer, used motor
vehicle dealer, house trailer dealer, trailer dealer, recreational vehicle dealer, motorcycle dealer, used parts dealer, or wrecker or dismantler, as the case may be, during the period, unless sooner suspended or revoked, for which the license certificate is issued.

(b) A license certificate issued in accordance with the provisions of this article is not transferable.

§17A-6-8. Form and display of license certificate or certified copy thereof; obtaining certified copy of license certificate; bond.

(a) The commissioner shall prescribe the form of license certificate for each type of business required to be licensed under the provisions of this article, and each license certificate shall have printed on it the seal of the division and any other information prescribed by the commissioner, and shall show as to any licensee the location of each place of business of the licensee. The license certificates for each type of business shall show the year for which issued and shall be serially numbered. The license certificate shall be delivered or mailed to the licensee.

(b) When a licensee conducts his or her licensed business at more than one location, he or she shall, upon application therefor, obtain from the commissioner for each place of business one certified copy of his or her license certificate. A fee of one dollar shall be paid for each certified copy. Each licensee shall keep his or her license certificate or certified copy of the license certificate conspicuously posted at each place of business.

(c) A licensee shall keep the bond, unless otherwise exempt by section two-a of this article, and liability insurance required by section four of this article in full force and effect at all times. The aggregate liability of the surety in no event shall exceed the
principal sum of the bond. The surety on the bond shall have the right to cancel the bond upon giving thirty days' notice to the commissioner and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of the cancellation.

(d) In the event of the loss or destruction of a license certificate or a certified copy of a license certificate, the licensee shall immediately make application for a certified copy of the license certificate. A fee of one dollar shall be required for any certified copy.

§17A-6-18. Investigation; matters confidential; grounds for suspending or revoking license or imposing fine; suspension and revocation generally.

(a) The commissioner may conduct an investigation to determine whether any provisions of this chapter have been or are about to be violated by a licensee. Any investigation shall be kept in strictest confidence by the commissioner, the division, the licensee, any complainant and all other persons, unless and until the commissioner suspends or revokes the license certificate of the licensee involved or fines the licensee: Provided, That the commissioner may advise the motor vehicle dealers advisory board of pending actions and may disclose to the motor vehicle dealers advisory board any information that enables it to perform its advisory function in imposing penalties. The commissioner may suspend or revoke a license certificate, suspend a special dealer plate or plates, impose a fine or take any combination of these actions, if the commissioner finds that the licensee:

(1) Has failed or refused to comply with the laws of this state relating to the registration and titling of vehicles and the giving of notices of transfers, the provisions and requirements of this article, or any reasonable rules authorized in section
nine, article two of this chapter and promulgated to implement
the provisions of this article by the commissioner in accordance
with the provisions of article three, chapter twenty-nine-a of
this code;

(2) Has given any check in the payment of any fee required
under the provisions of this chapter which is dishonored;

(3) In the case of a dealer, has knowingly made or permit-
ted any unlawful use of any dealer special plate or plates issued
to him or her;

(4) In the case of a dealer, has a dealer special plate or
plates to which he or she is not lawfully entitled;

(5) Has knowingly made false statement of a material fact
in his or her application for the license certificate then issued
and outstanding;

(6) Has habitually defaulted on financial obligations;

(7) Does not have and maintain at each place of business,
subject to the qualification contained in subdivision seventeen,
subsection-a, section one of this article with respect to a new
motor vehicle dealer) an established place of business as
defined for the business in question in section one of this
article;

(8) Has been guilty of any fraudulent act in connection with
the business of new motor vehicle dealer, used motor vehicle
dealer, house trailer dealer, trailer dealer, motorcycle dealer,
used parts dealer, or wrecker or dismantler;

(9) Has defrauded or is attempting to defraud any buyer or
any other person, to the damage of the buyer or other person, in
the conduct of the licensee’s business;
(10) Has defrauded or is attempting to defraud the state or any political subdivision of the state of any taxes or fees in connection with the sale or transfer of any vehicle;

(11) Has committed fraud in the registration of a vehicle;

(12) Has knowingly purchased, sold or otherwise dealt in a stolen vehicle or vehicles;

(13) Has advertised by any means, with intent to defraud, any material representation or statement of fact which is untrue, misleading or deceptive in any particular relating to the conduct of the licensed business;

(14) Has willfully failed or refused to perform any legally binding written agreement with any buyer;

(15) Has made a fraudulent sale or purchase;

(16) Has failed or refused to assign, reassign or transfer a proper certificate of title;

(17) Has a license certificate to which he or she is not lawfully entitled;

(18) Has misrepresented a customer’s credit or financial status to obtain financing; or

(19) Has failed to reimburse when ordered, any claim against the dealer recovery fund as prescribed in section two-a of this article.

The commissioner shall also suspend or revoke the license certificate of a licensee if he or she finds the existence of any ground upon which the license certificate could have been refused, or any ground which would be cause for refusing a license certificate to the licensee were he or she then applying for the license certificate.
(b) Whenever a licensee fails or refuses to keep the bond, unless exempt from the requirement pursuant to section two-a of this article, or liability insurance required by section four of this article in full force and effect, the commissioner shall automatically suspend the license certificate of the licensee unless and until a bond or certificate of insurance as required by section four of this article is furnished to the commissioner. When the licensee furnishes the bond or certificate of insurance to the commissioner, the commissioner shall vacate the suspension.

(c) Suspensions under this section shall continue until the cause for the suspension has been eliminated or corrected. Revocation of a license certificate shall not preclude application for a new license certificate. The commissioner shall process the application for a new license certificate in the same manner and issue or refuse to issue the license certificate on the same grounds as any other application for a license certificate is processed, considered and passed upon, except that the commissioner may give any previous suspension and the revocation such weight in deciding whether to issue or refuse the license certificate as is correct and proper under all of the circumstances.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 1st day of May, 2001.

Governor