

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2975**

4 (By Delegates Martin, Skaff, Stowers, Hall,
5 Wells and Stagers)

6 (Originating in the Committee on the Judiciary)

7
8 [February 22, 2011]

9
10 A BILL to amend and reenact §17A-4-10 of the Code of West Virginia,
11 1931, as amended, relating to vehicles scraped, compressed,
12 dismantled or destroyed; providing an additional means to
13 notify the division; and prescribing form and providing for
14 the use of additional brands used by other jurisdictions that
15 are consistent with the National Motor Vehicle Title
16 Information System.

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

18 That §17A-4-10 of the Code of West Virginia, 1931, as amended,
19 be amended and reenacted to read as follows:

20 **ARTICLE 4. TRANSFERS OF TITLE OR INTEREST.**

21 **§17A-4-10. Salvage certificates for certain wrecked or damaged**
22 **vehicles; fee; penalty.**

23 (a) In the event a motor vehicle is determined to be a total
24 loss or otherwise designated as "totaled" by ~~any~~ an insurance

1 company or insurer, and upon payment of a total loss claim to ~~any~~
2 an insured or claimant owner for the purchase of the vehicle, the
3 insurance company or the insurer, as a condition of the payment,
4 shall require the owner to surrender the certificate of title:
5 *Provided*, That an insured or claimant owner may choose to retain
6 physical possession and ownership of a total loss vehicle. If the
7 vehicle owner chooses to retain the vehicle and the vehicle has not
8 been determined to be a cosmetic total loss in accordance with
9 subsection (d) of this section, the insurance company or insurer
10 shall also require the owner to surrender the vehicle registration
11 certificate. The term "total loss" means a motor vehicle which has
12 sustained damages equivalent to seventy-five percent or more of the
13 market value as determined by a nationally accepted used car value
14 guide or meets the definition of a flood-damaged vehicle as defined
15 in this section.

16 (b) The insurance company or insurer shall, prior to the
17 payment of the total loss claim, determine if the vehicle is
18 repairable, cosmetically damaged or nonrepairable. Within ten days
19 of payment of the total loss claim, the insurance company or
20 insurer shall surrender the certificate of title, a copy of the
21 claim settlement, a completed application on a form prescribed by
22 the commissioner and the registration certificate if the owner has
23 chosen to keep the vehicle to the Division of Motor Vehicles.

24 (c) If the insurance company or insurer determines that the

1 vehicle is repairable, the division shall issue a "salvage
2 certificate", on a form prescribed by the commissioner, in the name
3 of the insurance company, ~~or~~ the insurer or the vehicle owner if
4 the owner has chosen to retain the vehicle. The certificate shall
5 contain, on the reverse, ~~thereof~~ spaces for one successive
6 assignment before a new certificate at an additional fee is
7 required. Upon the sale of the vehicle, the insurance company, ~~or~~
8 insurer or ~~the~~ vehicle owner if the owner has chosen to retain the
9 vehicle, shall complete the assignment of ownership on the salvage
10 certificate and deliver it to the purchaser. The vehicle ~~shall~~ may
11 not be titled or registered for operation on the streets or
12 highways of this state unless there is compliance with subsection
13 (g) of this section. The division shall charge a fee of \$15 for
14 each salvage title issued.

15 (d) If the insurance company or insurer determines the damage
16 to a totaled vehicle is exclusively cosmetic and no repair is
17 necessary in order to legally and safely operate the motor vehicle
18 on the roads and highways of this state, the insurance company or
19 insurer shall, upon payment of the claim, submit the certificate of
20 title to the division. Neither the insurance company nor the
21 division may require the vehicle owner to surrender the
22 registration certificate in the event of a cosmetic total loss
23 settlement.

24 (1) The division shall, without further inspection, issue a

1 title branded "cosmetic total loss" to the insured or claimant
2 owner if the insured or claimant owner wishes to retain possession
3 of the vehicle, in lieu of a "salvage certificate". The division
4 shall charge a fee of \$5 for each "cosmetic total loss" title
5 issued. The terms "cosmetically damaged" and "cosmetic total loss"
6 do not include any vehicle which has been damaged by flood or fire.
7 The designation "cosmetic total loss" on a title may not be
8 removed.

9 (2) If the insured or claimant owner elects not to take
10 possession of the vehicle and the insurance company or insurer
11 retains possession, the division shall issue a cosmetic total loss
12 salvage certificate to the insurance company or insurer. The
13 division shall charge a fee of \$15 for each cosmetic total loss
14 salvage certificate issued. The division shall, upon surrender of
15 the cosmetic total loss salvage certificate issued under the
16 provisions of this paragraph and payment of the five percent
17 ~~privilege~~ motor vehicle sales tax on the fair market value of the
18 vehicle as determined by the commissioner, issue a title branded
19 "cosmetic total loss" without further inspection.

20 (e) If the insurance company or insurer determines that the
21 damage to a totaled vehicle renders it nonrepairable, incapable of
22 safe operation for use on roads and highways and ~~which has~~ as
23 having no resale value except as a source of parts or scrap, the
24 insurance company or vehicle owner shall, in the manner prescribed

1 by the commissioner, request that the division issue a
2 nonrepairable motor vehicle certificate in lieu of a salvage
3 certificate. The division shall issue a nonrepairable motor
4 vehicle certificate without charge.

5 (f) Any owner who scraps, compresses, dismantles or destroys
6 a vehicle without further transfer or sale for which a certificate
7 of title, nonrepairable motor vehicle certificate or salvage
8 certificate has been issued shall, within ~~twenty~~ forty-five days,
9 surrender the certificate of title, nonrepairable motor vehicle
10 certificate, or salvage certificate to the division for
11 cancellation.

12 (g) Any person who purchases or acquires a vehicle as salvage
13 or scrap, to be dismantled, compressed or destroyed, shall, within
14 ~~twenty~~ forty-five days, ~~surrender the certificate to the division.~~
15 to the division the certificate of title, nonrepairable motor
16 vehicle certificate, salvage certificate or a statement of
17 cancellation signed by the seller, on a form prescribed by the
18 commissioner. Subsequent purchasers of salvage or scrap are not
19 required to comply with the notification requirement.

20 ~~(g)~~ (h) If the motor vehicle is a "reconstructed vehicle" as
21 defined in this section or section one, article one of this
22 chapter, it may not be titled or registered for operation until it
23 has been inspected by an official state inspection station and by
24 the Division of Motor Vehicles. Following an approved inspection,

1 an application for a new certificate of title may be submitted to
2 the division. ~~however,~~ The applicant ~~shall be~~ is required to retain
3 all receipts for component parts, equipment and materials used in
4 the reconstruction. The salvage certificate shall also be
5 surrendered to the division before a certificate of title may be
6 issued with the appropriate brand.

7 ~~(h)~~ (i) The owner or title holder of ~~any~~ a motor vehicle
8 titled in this state which has previously been branded in this
9 state or another state as "salvage", "reconstructed", "cosmetic
10 total loss", "cosmetic total loss salvage", "flood" or "fire", ~~or~~
11 an equivalent term under another state's laws or a term consistent
12 with the intent of the National Motor Vehicle Title Information
13 System established pursuant to 49 U.S.C. §30502 shall, upon
14 becoming aware of the brand, apply for and receive a title from the
15 Division of Motor Vehicles on which the brand "reconstructed",
16 "salvage", "cosmetic total loss", "cosmetic total loss salvage",
17 "flood", ~~or~~ "fire" or other brand is shown. The division shall
18 charge a fee of \$5 for each title so issued.

19 ~~(i)~~ (j) If application is made for title to a motor vehicle,
20 the title to which has previously been branded "reconstructed",
21 "salvage", "cosmetic total loss", "cosmetic total loss salvage",
22 "flood", ~~or~~ "fire" or other brand by the Division of Motor Vehicles
23 under this section and said application is accompanied by a title
24 from another state which does not carry the brand, the division

1 shall, before issuing the title, affix the brand "reconstructed",
2 "cosmetic total loss", "cosmetic total loss salvage", "flood", ~~or~~
3 "fire" or other brand to the title. The ~~privilege~~ motor vehicle
4 sales tax paid on a motor vehicle titled as "reconstructed",
5 "cosmetic total loss", "flood", ~~or~~ "fire" or other brand under the
6 provisions of this section shall be based on fifty percent of the
7 fair market value of the vehicle as determined by a nationally
8 accepted used car value guide to be used by the commissioner.

9 ~~(j)~~ (k) The division shall charge a fee of \$15 for the
10 issuance of each salvage certificate or cosmetic total loss salvage
11 certificate but shall not require the payment of the five percent
12 ~~privilege~~ motor vehicle sales tax. However, upon application for
13 a certificate of title for a reconstructed, cosmetic total loss,
14 flood or fire damaged vehicle or other brand, the division shall
15 collect the five percent privilege tax on the fair market value of
16 the vehicle as determined by the commissioner unless the applicant
17 is otherwise exempt from the payment of such privilege tax. A
18 wrecker/dismantler/rebuilder, licensed by the division, is exempt
19 from the payment of the five percent privilege tax upon titling a
20 reconstructed vehicle. The division shall collect a fee of \$35 per
21 vehicle for inspections of reconstructed vehicles. These fees
22 shall be deposited in a special fund created in the State
23 Treasurer's Office and may be expended by the division to carry out
24 the provisions of this article: *Provided*, That on and after the

1 first day of July, 2007, any balance in the special fund and all
2 fees collected pursuant to this section shall be deposited in the
3 State Road Fund. Licensed wreckers/dismantlers/rebuilders may
4 charge a fee not to exceed \$25 for all vehicles owned by private
5 rebuilders which are inspected at the place of business of a
6 wrecker/dismantler/rebuilder.

7 ~~(k)~~ (l) As used in this section:

8 (1) "Reconstructed vehicle" means the vehicle was totaled
9 under the provisions of this section or by the provisions of
10 another state or jurisdiction and has been rebuilt in accordance
11 with the provisions of this section or in accordance with the
12 provisions of another state or jurisdiction or meets the provisions
13 of subsection (m), section one, article one of this chapter.

14 (2) "Flood-damaged vehicle" means that the vehicle was
15 submerged in water to the extent that water entered the passenger
16 or trunk compartment.

17 (3) "Other brand" means a brand consistent with the intent of
18 the National Motor Vehicle Title Information System established
19 pursuant to 49 U.S.C. §30502 and rules promulgated by the United
20 States Department of Justice to alert consumers, motor vehicle
21 dealers or the insurance industry of the history of a vehicle.

22 ~~(l)~~ (m) Every vehicle owner shall comply with the branding
23 requirements for a totaled vehicle whether or not the owner
24 receives an insurance claim settlement for a totaled vehicle.

1 ~~(m)~~ (n) A certificate of title issued by the division for a
2 reconstructed vehicle shall contain markings in bold print on the
3 face of the title that it is for a reconstructed, flood or fire
4 damaged vehicle.

5 ~~(n)~~ (o) Any person who knowingly provides false or fraudulent
6 information to the division that is required by this section in an
7 application for a title, a cosmetic total loss title, a
8 reconstructed vehicle title or a salvage certificate or who
9 knowingly fails to disclose to the division information required by
10 this section to be included in the application or who otherwise
11 violates the provisions of this section ~~shall be~~ is guilty of a
12 misdemeanor and, upon conviction thereof, shall for each incident
13 be fined not less than \$1,000 nor more than \$2,500, or imprisoned
14 in jail for not more than one year, or both fined and imprisoned.