

ENGROSSED

Senate Bill No. 304

(By Senators Beach, Klempa and Unger)

[Introduced January 27, 2011; referred to
the Committee on Transportation and Infrastructure.]

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. TRANSFERS OF TITLE OR INTEREST.

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

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

20 (b) The insurance company or insurer shall, prior to the
21 payment of the total loss claim, determine if the vehicle is
22 repairable, cosmetically damaged or nonrepairable. Within

23 ten days of payment of the total loss claim, the insurance
24 company or insurer shall surrender the certificate of title, a
25 copy of the claim settlement, a completed application on a
26 form prescribed by the commissioner and the registration
27 certificate if the owner has chosen to keep the vehicle to the
28 Division of Motor Vehicles.

29 (c) If the insurance company or insurer determines that the
30 vehicle is repairable, the division shall issue a “salvage
31 certificate”, on a form prescribed by the commissioner, in the
32 name of the insurance company, ~~or~~ the insurer or the vehicle
33 owner if the owner has chosen to retain the vehicle. The
34 certificate shall contain, on the reverse, ~~thereof~~ spaces for
35 one successive assignment before a new certificate at an
36 additional fee is required. Upon the sale of the vehicle, the
37 insurance company, ~~or~~ insurer or ~~the~~ vehicle owner if the
38 owner has chosen to retain the vehicle, shall complete the
39 assignment of ownership on the salvage certificate and
40 deliver it to the purchaser. The vehicle ~~shall~~ may not be
41 titled or registered for operation on the streets or highways
42 of this state unless there is compliance with subsection (g) of
43 this section. The division shall charge a fee of \$15 for each
44 salvage title issued.

45 (d) If the insurance company or insurer determines the
46 damage to a totaled vehicle is exclusively cosmetic and no
47 repair is necessary in order to legally and safely operate the
48 motor vehicle on the roads and highways of this state, the
49 insurance company or insurer shall, upon payment of the
50 claim, submit the certificate of title to the division. Neither
51 the insurance company nor the division may require the
52 vehicle owner to surrender the registration certificate in the
53 event of a cosmetic total loss settlement.

54 (1) The division shall, without further inspection, issue a
55 title branded “cosmetic total loss” to the insured or claimant
56 owner if the insured or claimant owner wishes to retain
57 possession of the vehicle, in lieu of a “salvage certificate”.
58 The division shall charge a fee of \$5 for each “cosmetic total
59 loss” title issued. The terms “cosmetically damaged” and
60 “cosmetic total loss” do not include any vehicle which has
61 been damaged by flood or fire. The designation “cosmetic
62 total loss” on a title may not be removed.

63 (2) If the insured or claimant owner elects not to take
64 possession of the vehicle and the insurance company or
65 insurer retains possession, the division shall issue a cosmetic
66 total loss salvage certificate to the insurance company or

67 insurer. The division shall charge a fee of \$15 for each
68 cosmetic total loss salvage certificate issued. The division
69 shall, upon surrender of the cosmetic total loss salvage
70 certificate issued under the provisions of this paragraph and
71 payment of the five percent ~~privilege~~ motor vehicle sales tax
72 on the fair market value of the vehicle as determined by the
73 commissioner, issue a title branded "cosmetic total loss"
74 without further inspection.

75 (e) If the insurance company or insurer determines that the
76 damage to a totaled vehicle renders it nonrepairable,
77 incapable of safe operation for use on roads and highways
78 and ~~which has~~ as having no resale value except as a source
79 of parts or scrap, the insurance company or vehicle owner
80 shall, in the manner prescribed by the commissioner, request
81 that the division issue a nonrepairable motor vehicle certifi-
82 cate in lieu of a salvage certificate. The division shall issue
83 a nonrepairable motor vehicle certificate without charge.

84 (f) Any owner who scraps, compresses, dismantles or
85 destroys a vehicle without further transfer or sale for which
86 a certificate of title, nonrepairable motor vehicle certificate
87 or salvage certificate has been issued shall, within ~~twenty~~
88 forty-five days, surrender the certificate of title, nonrepair-

89 able motor vehicle certificate, or salvage certificate to the
90 division for cancellation.

91 ~~(g)~~ Any person who purchases or acquires a vehicle as
92 salvage or scrap, to be dismantled, compressed or destroyed,
93 shall, within ~~twenty~~ forty-five days, surrender ~~the certificate~~
94 ~~to the division.~~ to the division the certificate of title,
95 nonrepairable motor vehicle certificate, salvage certificate or
96 a statement of cancellation signed by the seller, on a form
97 prescribed by the commissioner. Subsequent purchasers of
98 salvage or scrap are not required to comply with the notifi-
99 cation requirement.

100 ~~(g)~~ (h) If the motor vehicle is a “reconstructed vehicle” as
101 defined in this section or section one, article one of this
102 chapter, it may not be titled or registered for operation until
103 it has been inspected by an official state inspection station
104 and by the Division of Motor Vehicles. Following an ap-
105 proved inspection, an application for a new certificate of title
106 may be submitted to the division. ~~however,~~ The applicant
107 ~~shall be~~ is required to retain all receipts for component parts,
108 equipment and materials used in the reconstruction. The
109 salvage certificate shall also be surrendered to the division
110 before a certificate of title may be issued with the appropri-
111 ate brand.

112 ~~(h)~~ (i) The owner or title holder of ~~any~~ a motor vehicle
113 titled in this state which has previously been branded in this
114 state or another state as “salvage”, “reconstructed”, “cos-
115 metic total loss”, “cosmetic total loss salvage”, “flood” or
116 “fire”, ~~or~~ an equivalent term under another state’s laws or a
117 term consistent with the intent of the National Motor Vehicle
118 Title Information System established pursuant to 49 U.S.C.
119 §30502 shall, upon becoming aware of the brand, apply for
120 and receive a title from the Division of Motor Vehicles on
121 which the brand “reconstructed”, “salvage”, “cosmetic total
122 loss”, “cosmetic total loss salvage”, “flood”, ~~or~~ “fire” or
123 other brand is shown. The division shall charge a fee of \$5
124 for each title so issued.

125 ~~(i)~~ (j) If application is made for title to a motor vehicle, the
126 title to which has previously been branded “reconstructed”,
127 “salvage”, “cosmetic total loss”, “cosmetic total loss
128 salvage”, “flood”, ~~or~~ “fire” or other brand by the Division of
129 Motor Vehicles under this section and said application is
130 accompanied by a title from another state which does not
131 carry the brand, the division shall, before issuing the title,
132 affix the brand “reconstructed”, “cosmetic total loss”,
133 “cosmetic total loss salvage”, “flood”, ~~or~~ “fire” or other

134 brand to the title. The ~~privilege~~ motor vehicle sales tax paid
135 on a motor vehicle titled as “reconstructed”, “cosmetic total
136 loss”, “flood”, ~~or~~ “fire” or other brand under the provisions
137 of this section shall be based on fifty percent of the fair
138 market value of the vehicle as determined by a nationally
139 accepted used car value guide to be used by the commis-
140 sioner.

141 (j) ~~(k)~~ The division shall charge a fee of \$15 for the issuance
142 of each salvage certificate or cosmetic total loss salvage
143 certificate but shall not require the payment of the five
144 percent ~~privilege~~ motor vehicle sales tax. However, upon
145 application for a certificate of title for a reconstructed,
146 cosmetic total loss, flood or fire damaged vehicle or other
147 brand, the division shall collect the five percent privilege tax
148 on the fair market value of the vehicle as determined by the
149 commissioner unless the applicant is otherwise exempt from
150 the payment of such privilege tax. A wrecker/dismantler/
151 rebuilder, licensed by the division, is exempt from the
152 payment of the five percent privilege tax upon titling a
153 reconstructed vehicle. The division shall collect a fee of \$35
154 per vehicle for inspections of reconstructed vehicles. These
155 fees shall be deposited in a special fund created in the State

156 Treasurer's Office and may be expended by the division to
157 carry out the provisions of this article: *Provided*, That on and
158 after the first day of July, 2007, any balance in the special
159 fund and all fees collected pursuant to this section shall be
160 deposited in the State Road Fund. Licensed wreck-
161 ers/dismantlers/rebuilders may charge a fee not to exceed
162 \$25 for all vehicles owned by private rebuilders which are
163 inspected at the place of business of a wrecker/dismantler/
164 rebuilder.

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

166 (1) "Reconstructed vehicle" means the vehicle was totaled
167 under the provisions of this section or by the provisions of
168 another state or jurisdiction and has been rebuilt in accor-
169 dance with the provisions of this section or in accordance
170 with the provisions of another state or jurisdiction or meets
171 the provisions of subsection (m), section one, article one of
172 this chapter.

173 (2) "Flood-damaged vehicle" means that the vehicle was
174 submerged in water to the extent that water entered the
175 passenger or trunk compartment.

176 (3) "Other brand" means a brand consistent with the
177 intent of the National Motor Vehicle Title Information

178 System established pursuant to 49 U.S.C. §30502 and rules
179 promulgated by the United States Department of Justice to
180 alert consumers, motor vehicle dealers or the insurance
181 industry of the history of a vehicle.

182 (†) (m) Every vehicle owner shall comply with the branding
183 requirements for a totaled vehicle whether or not the owner
184 receives an insurance claim settlement for a totaled vehicle.

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

189 ~~(n)~~ (o) Any person who knowingly provides false or
190 fraudulent information to the division that is required by
191 this section in an application for a title, a cosmetic total loss
192 title, a reconstructed vehicle title or a salvage certificate or
193 who knowingly fails to disclose to the division information
194 required by this section to be included in the application or
195 who otherwise violates the provisions of this section ~~shall be~~
196 is guilty of a misdemeanor and, upon conviction thereof,
197 shall for each incident be fined not less than \$1,000 nor more
198 than \$2,500, or imprisoned in jail for not more than one year,
199 or both fined and imprisoned.