

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Committee Substitute

for

House Bill 4196

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[Originating in the Committee on the Judiciary,
February 24, 2016.]

1 A BILL to amend and reenact §17-24A-1 and §17-24A-4 of the Code of West Virginia, 1931, as
2 amended; to amend and reenact §17A-4-10 of said code; and to amend said code by
3 adding thereto a new section, designated §17-24A-6a, all relating to abandoned antique
4 vehicles; adding new definitions; allowing automobile auctions to obtain title to abandoned
5 vehicles; creating a process by which an automobile auction may obtain a salvage
6 certificate or a nonrepairable motor vehicle certificate for vehicles abandoned on its
7 property; establishing a process by which automobile auctions may obtain title to and sell
8 certain abandoned vehicles; allowing an insurance company to obtain a salvage certificate
9 or a cosmetic total loss salvage certificate after paying a total loss claim on a vehicle;
10 creating a special procedure for a person in possession of an abandoned antique vehicle
11 to apply for and receive title to the vehicle; creating a procedure for the Division of Motor
12 Vehicles to search for the owner of the vehicle and provide notice of the application for
13 title to vehicle; creating a procedure for the owner to reclaim the vehicle within 30 days of
14 notice of an application for title to the vehicle; establishing fees to accompany an
15 application for title to the vehicle; establishing fees for reclamation of the vehicle by owner;
16 creating a misdemeanor and imposing fines for interfering with an owner's attempt to
17 reclaim a vehicle; and directing the division to promulgate rules and forms to effectuate
18 new procedure.

Be it enacted by the Legislature of West Virginia:

1 That §17-24A-1 and §17-24A-4 of the Code of West Virginia, 1931, as amended; to amend
2 and reenact §17A-4-10 of said code; and to amend said code by adding thereto a new section,
3 designated §17-24A-6a, all to read as follows:

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 24A. DISPOSAL OF ABANDONED MOTOR VEHICLES, JUNKED MOTOR VEHICLES, AND ABANDONED OR INOPERATIVE HOUSEHOLD APPLIANCES.

§17-24A-1. Definitions.

1 Unless the context clearly indicates a different meaning, as used in this article:

2 (1) "Commissioner" means the Commissioner of the Division of Highways or his or her
3 designee.

4 (2) "Abandoned household appliance" means a refrigerator, freezer, range, stove,
5 automatic dishwasher, clothes washer, clothes dryer, trash compactor, television set, radio, air
6 conditioning unit, commode, bed springs, mattress or other furniture, fixtures or appliances to
7 which no person claims ownership and which is not in an enclosed building, a licensed salvage
8 yard or the actual possession of a demolisher.

9 (3) "Abandoned motor vehicle" means any motor vehicle, or major part thereof, which is
10 inoperative and which has been abandoned on public property for any period over five days, other
11 than in an enclosed building or in a licensed salvage yard or at the business establishment of a
12 demolisher; or any motor vehicle, or major part thereof, which has remained on private property
13 without consent of the owner or person in control of the property for any period over five days; or
14 any motor vehicle, or major part thereof, which is unattended, discarded, deserted and unlicensed
15 and is not in an enclosed building, a licensed salvage yard or the actual possession of a
16 demolisher: *Provided*, That a motor vehicle, or major part thereof, is not an abandoned motor
17 vehicle if: (a) The owner of the motor vehicle is storing the motor vehicle on the owner's property;
18 (b) the motor vehicle is being stored for the purpose of using its parts on other motor vehicles
19 owned by the owner; (c) the owner owns other motor vehicles similar to the motor vehicle being
20 stored; and (d) the owner is a business licensed to do business in the State of West Virginia and
21 not in the primary business of offering motor vehicles or parts thereof for sale.

22 (4) "Antique motor vehicle" means a vehicle that was manufactured more than twenty-five
23 years before the current date.

24 ~~(4)~~ (5) "Demolisher" means any person licensed by the Commissioner of the Division of
25 Highways whose business, to any extent or degree, is to convert a motor vehicle or any part

26 thereof or an inoperative household appliance into processed scrap or scrap metal or into saleable
27 parts or otherwise to wreck or dismantle vehicles or appliances.

28 (6) The "Division" means the West Virginia Division of Motor Vehicles.

29 ~~(5)~~ (7) "Enclosed building" means a structure surrounded by walls or one continuous wall
30 and having a roof enclosing the entire structure and includes a permanent appendage thereto.

31 ~~(6)~~ (8) "Enforcement agency" means any of the following or any combination of the
32 following:

33 (a) Public law-enforcement officers of this state, including natural resources police officers;

34 (b) Public law-enforcement officers of any county, city or town within this state; and

35 (c) The Commissioner of the Division of Highways, his or her duly authorized agents and
36 employees.

37 ~~(7)~~ (9) "Inoperative household appliance" means a refrigerator, freezer, range, stove,
38 automatic dishwasher, clothes washer, clothes dryer, trash compactor, television set, radio, air
39 conditioning unit, commode, bed springs, mattress or other furniture, fixture or appliance which
40 by reason of mechanical or physical defects can no longer be used for its intended purpose and
41 which is either not serving a functional purpose or use or is not in an enclosed building, a licensed
42 salvage yard or the actual possession of a demolisher.

43 ~~(8)~~ (10) "Junked motor vehicle" means a motor vehicle, or any part thereof which: (a) Is
44 discarded, wrecked, ruined, scrapped or dismantled; (b) cannot pass the state inspection required
45 by article sixteen, chapter seventeen-c of this code; and (c) is either not serving a functional
46 purpose or use or is not in an enclosed building, a licensed salvage yard or the actual possession
47 of a demolisher: *Provided*, That a motor vehicle, or major part thereof, is not a junked motor
48 vehicle if: (a) The owner of the motor vehicle is storing the motor vehicle on the owner's property;
49 (b) the motor vehicle is being stored for the purpose of using its parts on other motor vehicles
50 owned by the owner; (c) the owner owns other motor vehicles similar to the motor vehicle being

51 stored; and (d) the owner is a business licensed to do business in the State of West Virginia and
52 not in the primary business of offering motor vehicles or parts thereof for sale.

53 ~~(9)~~ (11) "Licensed salvage yard" means a salvage yard licensed under article twenty-three
54 of this chapter.

55 ~~(40)~~ (12) "Motor vehicle" means a vehicle which is or was self-propelled, including, but not
56 limited to, automobiles, trucks, buses and motorcycles.

57 ~~(44)~~ (13) "Person" means a natural person, corporation, firm, partnership, association or
58 society and the plural as well as the singular.

59 (14) "Vehicle Identification Number" means a unique number or mark placed on a vehicle
60 or part thereof by the manufacturer so as to identify it particularly and distinguish the vehicle or
61 part from all other such vehicles or parts.

**§17-24A-4. Abandoned or junked motor vehicles; notification to motor vehicle owner and
lienholder; charges and fees; exceptions.**

1 (a) The enforcement agency which takes into custody and possession an abandoned
2 motor vehicle or junked motor vehicle shall, within fifteen days after taking custody and
3 possession thereof, notify the last-known registered owner of the motor vehicle and all lienholders
4 of record that the motor vehicle has been taken into custody and possession, the notification to
5 be by registered or certified mail, return receipt requested. The notice shall:

6 (1) Contain a description of the motor vehicle, including the year, make, model,
7 manufacturer's serial or identification number or any other number which may have been
8 assigned to the motor vehicle by the Commissioner of Motor Vehicles and any distinguishing
9 marks;

10 (2) Set forth the location of the facility where the motor vehicle is being held and the
11 location where the motor vehicle was taken into custody and possession;

12 (3) Inform the owner and any lienholders of record of their right to reclaim the motor vehicle
13 within ten days after the date notice was received by the owner or lienholders, upon payment of

14 all towing, preservation and storage charges resulting from taking and placing the motor vehicle
15 into custody and possession; and

16 (4) State that the failure of the owner or lienholders of record to exercise their right to
17 reclaim the motor vehicle within the ten-day period shall be deemed a waiver by the owner and
18 all lienholders of record of all right, title and interest in the motor vehicle and of their consent to
19 the sale or disposal of the abandoned motor vehicle or junked motor vehicle at a public auction
20 or to a licensed salvage yard or demolisher.

21 (b) If the identity of the last registered owner of the abandoned motor vehicle or junked
22 motor vehicle cannot be determined or if the certificate of registration or certificate of title contains
23 no address for the owner or if it is impossible to determine with reasonable certainty the identity
24 and addresses of all lienholders, notice shall be published as a Class I legal advertisement in
25 compliance with the provisions of article three, chapter fifty-nine of this code, the publication area
26 shall be the county wherein the motor vehicle was located at the time the enforcement agency
27 took custody and possession thereof and the notice shall be sufficient to meet all requirements of
28 notice pursuant to this article. Any notice by publication may contain multiple listings of abandoned
29 motor vehicles and junked motor vehicles. The notice shall be published within fifteen days after
30 the motor vehicle is taken into custody and possession and shall have the same contents required
31 for a notice pursuant to subsection (a) of this section, except that the ten-day period shall run from
32 the date the notice is published as aforesaid.

33 (c) An enforcement agency which hires any person or entity to take into custody and
34 possession an abandoned motor vehicle or junked motor vehicle pursuant to this section shall
35 notify the person or entity hired of the name and address of the registered owner of the motor
36 vehicle, if known, and all lienholders of record, if any, within fifteen days after the vehicle is taken
37 into custody and possession: *Provided*, That the requirements of this subsection shall not apply
38 to motor vehicles for which the registered owner cannot be ascertained by due diligence or
39 investigation.

40 (d) The person or entity hired by an enforcement agency to take into custody or possession
41 an abandoned motor vehicle or junked motor vehicle shall, within thirty days after the possession,
42 notify the registered owner of the vehicle and all lienholders of record, if any, as identified by the
43 enforcement agency pursuant to subsection (c) of this section, by registered mail, return receipt
44 requested, that the motor vehicle has been taken into custody and possession. The notice shall
45 have the same contents required for a notice pursuant to subsection (a) of this section, including
46 the ten-day period the owner or lienholder has to reclaim the motor vehicle. Upon the issuance of
47 the notice, the identified owner of the motor vehicle is liable and responsible for all costs for
48 towing, preservation and storage of the motor vehicle: *Provided*, That failure to issue the notice
49 required by this subsection within thirty days after possession of the motor vehicle relieves the
50 identified owner of the motor vehicle of any liability for charges for towing, preservation and
51 storage in excess of the sum of the first five days of the charges: *Provided, however*, That the
52 requirements of this subsection do not apply to motor vehicles for which the registered owner
53 thereof cannot be ascertained by due diligence or investigation.

54 (e) For an abandoned motor vehicle or junked vehicle having a loan value of \$7,500 or
55 less, as ascertained by values placed upon motor vehicles using a standard industry reference
56 book, a person or entity hired by an enforcement agency to tow the abandoned motor vehicle or
57 junked motor vehicle may, if the motor vehicle is not claimed by the owner or a lienholder after
58 notice within the time set forth in subsection (d) of this section or if the identity of the last registered
59 owner of the abandoned motor vehicle or junked motor vehicle cannot be determined or if the
60 certificate of registration or certificate of title contains no address of the owner or if it is impossible
61 to determine with reasonable certainty the identity and address of all lienholders after publication
62 as set forth in subsection (b) of this section, file an application with the Division of Motor Vehicles
63 for a certificate of title and registration which, upon payment of the appropriate fees, shall be
64 issued. The person or entity may then sell the motor vehicle at private sale or public auction.

65 ~~(f) For an abandoned motor or junked motor vehicle having a loan value of \$7,500 or less,~~
66 ~~as ascertained by values placed upon motor vehicles using a standard industry reference book,~~
67 A licensed motor vehicle dealer, as defined in section one, article one, chapter seventeen-a of
68 this code, a licensed automobile auction as defined in section one, article six-c, chapter
69 seventeen-a of this code, or a motor vehicle repair facility or a towing company registered with
70 the Public Service Commission pursuant to section two-a, article two, chapter twenty-four-a of
71 this code may ~~if a motor vehicle is abandoned on the property or place of business of the dealer~~
72 ~~or a motor vehicle repair facility or towing company and is not claimed by the owner or a lienholder~~
73 ~~after notice within the time set forth in subsection (d) of this section or if the identity of the last~~
74 ~~registered owner of the abandoned motor vehicle cannot be determined or if the certificate of~~
75 ~~registration or certificate of title contains no address of the owner or if it is impossible to determine~~
76 ~~with reasonable certainty the identity and address of all lienholders after publication as set forth~~
77 ~~in subsection (b) of this section~~ file an application with the Division of Motor Vehicles for a
78 certificate of title and registration. ~~which, upon payment of the appropriate fees, shall be issued.~~
79 ~~The dealer or motor vehicle repair facility or towing company may then~~ Upon payment of the
80 appropriate fees, the certificate of title and registration shall be granted and the dealer, licensed
81 automobile auction, motor vehicle repair facility or towing company may sell the motor vehicle at
82 private sale or public auction, if:

83 (1) The vehicle has a loan value of \$7,500 or less, as ascertained by values placed upon
84 motor vehicles using a standard industry reference book; and

85 (2) The motor vehicle is abandoned on the property or place of business of the dealer,
86 licensed automobile auction, motor vehicle repair facility or towing company; and

87 (3) The motor vehicle is not claimed by the owner or a lienholder after notice within the
88 time set forth in subsection (d) of this section; and

89 (4) One of the following situations applies:

90 (A) The identity of the last registered owner of the abandoned motor vehicle cannot be
91 determined; or

92 (B) The certificate of registration or certificate of title contains no address of the owner; or

93 (C) It is impossible to determine with reasonable certainty the identity and address of all
94 lienholders after publication as set forth in subsection (b) of this section.

95 (g) For purposes of this section motor vehicle repair facilities and towing companies are
96 not used motor vehicle dealers as that term is defined by subdivision (2), subsection (a), section
97 one, article six, chapter seventeen-a of this code

§17-24A-6a. Title to abandoned antique motor vehicle; special procedure; notice to owner;
fees; criminal penalties.

1 (a) Application for Title to Abandoned Antique Vehicle. —

2 (1) A person may apply to the division for ownership and title to an abandoned antique
3 vehicle if that person:

4 (A) Is the owner of private property on which the vehicle is located; or

5 (B) Has obtained a valid Vehicle Removal Certificate from the division.

6 (2) Upon application for title to an abandoned antique vehicle, the applicant shall pay a
7 fee of \$100 to the division.

8 (b) Vehicle Removal Certificate.— In a manner prescribed by the division, a person may
9 obtain a Vehicle Removal Certificate at no fee, by presenting records sufficient to demonstrate to
10 a reasonable certainty that the owner of the private property on which an abandoned antique
11 vehicle is located has given the person written permission to remove the vehicle from the private
12 property.

13 (c) Search for Owner; Notice.—

14 (1) Upon receipt of an application for title to an abandoned antique vehicle, the division
15 shall initiate a search for the last owner of record of the vehicle, using the year, make, model.
16 Vehicle Identification Number and any other identifying marks on the vehicle. The division shall,
17 at a minimum, search:

18 (A) Its own records;

19 (B) The records of a nationally recognized crime database; and

20 (C) Records of a nationally recognized motor vehicle title database for owner information.

21 (2) If in the course of a search, the division discovers that the vehicle has been reported
22 as stolen, the division shall notify the appropriate law-enforcement agency of that fact.

23 (3) If the division determines the identity and address of the owner, the division shall, by
24 certified mail with return receipt requested, notify the owner of the application for title to their
25 vehicle and the contact information for the owner of the property on which the vehicle is located.
26 Such notice, when sent in accordance with these requirements, shall be sufficient regardless of
27 whether or not it was ever received. The owner will then have the following options, which shall
28 be detailed in the division's letter of notice:

29 (A) The owner may pay a \$100 fee to the division, \$50 of which shall be awarded to the
30 applicant, and reclaim and remove the vehicle from private property within 30 days of the date of
31 receiving notice at a time and in a manner arranged with the owner of the private property; or

32 (B) If the owner does not comply with all requirements of paragraph (A) of this subdivision
33 within 30 days of receiving notice, the owner will waive all right, title, and interest in the motor
34 vehicle, and the right, title, and interest in the vehicle shall be transferred to the applicant, free of
35 all liens and encumbrances.

36 (4) If the division performs a search pursuant to this subsection and the identity and
37 address of the owner cannot be determined with reasonable certainty, the division shall
38 immediately transfer all right, title, and interest in the vehicle to the applicant, free of all liens and
39 encumbrances.

40 (d) Rules and Forms. —

41 (1) The division shall promulgate rules necessary to carry out this section, and shall
42 create the following forms:

43 (A) A form to apply for the title to an abandoned antique vehicle, which shall require an
44 applicant to provide the following information:

45 (i) The applicant's legal name and contact information;

46 (ii) The Vehicle Identification Number; *Provided*, that if the vehicle does not have a
47 Vehicle Identification Number, the applicant shall follow the procedure set forth in subdivisions (2)
48 and (3) of this subsection;

49 (iii) The year, make and model of the vehicle;

50 (iv) The current location of the vehicle; and

51 (v) The current contact information for the owner of the private property on which the
52 vehicle is located.

53 (B) A Vehicle Removal Certificate, which shall be issued to a person who presents the
54 records required by subsection (b) of this section and shall require the following information:

55 (i) The applicant's legal name and contact information;

56 (ii) The Vehicle Identification Number; *Provided*, that if the vehicle does not have a
57 Vehicle Identification Number, the applicant shall follow the procedure set forth in subdivisions (2)
58 and (3) of this subsection;

59 (iii) The year, make and model of the vehicle;

60 (iv) The current location of the vehicle; and

61 (v) The current contact information for the owner of the private property on which the
62 vehicle is located.

63 (2) If an applicant or person requesting a Vehicle Removal Certificate cannot, after
64 reasonable efforts, determine the Vehicle Identification Number of the vehicle, the person may
65 pay a \$100 fee to the State Police Division to inspect the vehicle and determine the Vehicle
66 Identification Number.

67 (3) If the State Police cannot locate a Vehicle Identification Number on an abandoned
68 antique vehicle, the State Police shall verify in writing that the vehicle has no Vehicle Identification

69 Number. The applicant may then present the written verification to the division, which shall then
70 issue a new Vehicle Identification Number for the vehicle pursuant to section twenty, article three,
71 chapter seventeen-a of this code.

72 (e) Obstruction of removal prohibited. — No person shall knowingly interfere with a
73 vehicle owner's attempt to reclaim and remove a vehicle from private property, pursuant to
74 procedures in this section. Any person violating this subsection is guilty of a misdemeanor and,
75 upon conviction thereof, shall be fined \$500.

CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, REGISTRATION, CERTIFICATE OF TITLE, AND ANTITHEFT PROVISIONS.

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

12 (b) The insurance company or insurer shall, prior to the payment of the total loss claim,
13 determine if the vehicle is repairable, cosmetically damaged or nonrepairable. Except as provided
14 in subsection (p) of this section, within ten days of payment of the total loss claim, the insurance

15 company or insurer shall surrender the certificate of title, a copy of the claim settlement, a
16 completed application on a form prescribed by the commissioner and the registration certificate if
17 the owner has chosen to keep the vehicle to the Division of Motor Vehicles.

18 (c) If the insurance company or insurer determines that the vehicle is repairable, the
19 division shall issue a salvage certificate, on a form prescribed by the commissioner, in the name
20 of the insurance company, the insurer or the vehicle owner if the owner has chosen to retain the
21 vehicle. The certificate shall contain, on the reverse, spaces for one successive assignment
22 before a new certificate at an additional fee is required. Upon the sale of the vehicle, the insurance
23 company, insurer or vehicle owner if the owner has chosen to retain the vehicle, shall complete
24 the assignment of ownership on the salvage certificate and deliver it to the purchaser. The vehicle
25 may not be titled or registered for operation on the streets or highways of this state unless there
26 is compliance with subsection ~~(g)~~ (h) of this section. The division shall charge a fee of \$15 for
27 each salvage title issued.

28 (d) If the insurance company or insurer determines the damage to a totaled vehicle is
29 exclusively cosmetic and no repair is necessary in order to legally and safely operate the motor
30 vehicle on the roads and highways of this state, the insurance company or insurer shall, upon
31 payment of the claim, submit the certificate of title to the division. Neither the insurance company
32 nor the division may require the vehicle owner to surrender the registration certificate in the event
33 of a cosmetic total loss settlement.

34 (1) The division shall, without further inspection, issue a title branded cosmetic total loss
35 to the insured or claimant owner if the insured or claimant owner wishes to retain possession of
36 the vehicle, in lieu of a salvage certificate. The division shall charge a fee of \$5 for each cosmetic
37 total loss title issued. The terms cosmetically damaged and cosmetic total loss do not include any
38 vehicle which has been damaged by flood or fire. The designation cosmetic total loss on a title
39 may not be removed.

40 (2) If the insured or claimant owner elects not to take possession of the vehicle and the
41 insurance company or insurer retains possession, the division shall issue a cosmetic total loss
42 salvage certificate to the insurance company or insurer. The division shall charge a fee of \$15 for
43 each cosmetic total loss salvage certificate issued. The division shall, upon surrender of the
44 cosmetic total loss salvage certificate issued under the provisions of this paragraph and payment
45 of the five percent motor vehicle sales tax on the fair market value of the vehicle as determined
46 by the commissioner, issue a title branded cosmetic total loss without further inspection.

47 (e) If the insurance company or insurer determines that the damage to a totaled vehicle
48 renders it nonrepairable, incapable of safe operation for use on roads and highways and as having
49 no resale value except as a source of parts or scrap, the insurance company or vehicle owner
50 shall, in the manner prescribed by the commissioner, request that the division issue a
51 nonrepairable motor vehicle certificate in lieu of a salvage certificate. The division shall issue a
52 nonrepairable motor vehicle certificate without charge.

53 (f) Any owner who scraps, compresses, dismantles or destroys a vehicle without further
54 transfer or sale for which a certificate of title, nonrepairable motor vehicle certificate or salvage
55 certificate has been issued shall, within forty-five days, surrender the certificate of title,
56 nonrepairable motor vehicle certificate or salvage certificate to the division for cancellation.

57 (g) Any person who purchases or acquires a vehicle as salvage or scrap, to be dismantled,
58 compressed or destroyed, shall, within forty-five days, surrender to the division the certificate of
59 title, nonrepairable motor vehicle certificate, salvage certificate or a statement of cancellation
60 signed by the seller, on a form prescribed by the commissioner. Subsequent purchasers of
61 salvage or scrap are not required to comply with the notification requirement.

62 (h) If the motor vehicle is a reconstructed vehicle as defined in this section or section one,
63 article one of this chapter, it may not be titled or registered for operation until it has been inspected
64 by an official state inspection station and by the Division of Motor Vehicles. Following an approved
65 inspection, an application for a new certificate of title may be submitted to the division. The

66 applicant is required to retain all receipts for component parts, equipment and materials used in
67 the reconstruction. The salvage certificate shall also be surrendered to the division before a
68 certificate of title may be issued with the appropriate brand.

69 (i) The owner or title holder of a motor vehicle titled in this state which has previously been
70 branded in this state or another state as salvage, reconstructed, cosmetic total loss, cosmetic
71 total loss salvage, flood, fire, an equivalent term under another state's laws or a term consistent
72 with the intent of the National Motor Vehicle Title Information System established pursuant to 49
73 U. S. C. §30502 shall, upon becoming aware of the brand, apply for and receive a title from the
74 Division of Motor Vehicles on which the brand reconstructed, salvage, cosmetic total loss,
75 cosmetic total loss salvage, flood, fire or other brand is shown. The division shall charge a fee of
76 \$5 for each title so issued.

77 (j) If application is made for title to a motor vehicle, the title to which has previously been
78 branded reconstructed, salvage, cosmetic total loss, cosmetic total loss salvage, flood, fire or
79 other brand by the Division of Motor Vehicles under this section and said application is
80 accompanied by a title from another state which does not carry the brand, the division shall, before
81 issuing the title, affix the brand reconstructed, cosmetic total loss, cosmetic total loss salvage,
82 flood, fire or other brand to the title. The motor vehicle sales tax paid on a motor vehicle titled as
83 reconstructed, cosmetic total loss, flood, fire or other brand under the provisions of this section
84 shall be based on fifty percent of the fair market value of the vehicle as determined by a nationally
85 accepted used car value guide to be used by the commissioner.

86 (k) The division shall charge a fee of \$15 for the issuance of each salvage certificate or
87 cosmetic total loss salvage certificate but shall not require the payment of the five percent motor
88 vehicle sales tax. However, upon application for a certificate of title for a reconstructed, cosmetic
89 total loss, flood or fire damaged vehicle or other brand, the division shall collect the five percent
90 privilege tax on the fair market value of the vehicle as determined by the commissioner unless
91 the applicant is otherwise exempt from the payment of such privilege tax. A

92 wrecker/dismantler/rebuilder, licensed by the division, is exempt from the payment of the five
93 percent privilege tax upon titling a reconstructed vehicle. The division shall collect a fee of \$35
94 per vehicle for inspections of reconstructed vehicles. These fees shall be deposited in a special
95 fund created in the State Treasurer's Office and may be expended by the division to carry out the
96 provisions of this article: *Provided*, That on and after July 1, 2007, any balance in the special fund
97 and all fees collected pursuant to this section shall be deposited in the State Road Fund. Licensed
98 wreckers/dismantlers/rebuilders may charge a fee not to exceed \$25 for all vehicles owned by
99 private rebuilders which are inspected at the place of business of a wrecker/dismantler/rebuilder.

100 (l) As used in this section:

101 (1) Reconstructed vehicle means the vehicle was totaled under the provisions of this
102 section or by the provisions of another state or jurisdiction and has been rebuilt in accordance
103 with the provisions of this section or in accordance with the provisions of another state or
104 jurisdiction or meets the provisions of subsection ~~(m)~~ (n), section one, article one of this chapter.

105 (2) Flood-damaged vehicle means that the vehicle was submerged in water to the extent
106 that water entered the passenger or trunk compartment.

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

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

113 (n) A certificate of title issued by the division for a reconstructed vehicle shall contain
114 markings in bold print on the face of the title that it is for a reconstructed, flood- or fire damaged
115 vehicle.

116 (o) Any person who knowingly provides false or fraudulent information to the division that
117 is required by this section in an application for a title, a cosmetic total loss title, a reconstructed

118 vehicle title or a salvage certificate or who knowingly fails to disclose to the division information
119 required by this section to be included in the application or who otherwise violates the provisions
120 of this section is guilty of a misdemeanor and, upon conviction thereof, shall for each incident be
121 fined not less than \$1,000 nor more than \$2,500, or imprisoned in jail for not more than one year,
122 or both fined and imprisoned.

123 (p) Notwithstanding any other provision of law and with respect to a vehicle which the
124 vehicle owner has not chosen to retain, if an insurance company or insurer is unable to obtain the
125 properly endorsed certificate of title for a motor vehicle within thirty days of the payment of a total
126 loss claim, the insurance company or insurer, at any time thereafter, may apply to the Division of
127 Motor Vehicles for a salvage certificate, a cosmetic total loss salvage certificate or a nonrepairable
128 motor vehicle certificate, as applicable. The application shall be accompanied by evidence that
129 the insurance company or insurer has paid a total loss claim on the vehicle, a copy of a written
130 request for the certificate of title sent to the vehicle owner and any known lienholder by the
131 insurance company or insurer or a designee of the insurance company or insurer, proof that the
132 request was delivered by a nationally-recognized courier service to the last known address of the
133 vehicle owner and any known lienholder, and the required fee, if applicable. Upon receipt of a
134 properly completed application, the division shall issue a salvage certificate, a cosmetic total loss
135 salvage certificate or a nonrepairable motor vehicle certificate, as applicable, in the name of the
136 insurance company or insurer. Such salvage certificate, cosmetic total loss salvage certificate or
137 nonrepairable motor vehicle certificate shall be issued free and clear of all liens and claims of
138 ownership.

139 (q) If an insurance company or insurer requests that an automobile auction take
140 possession of a motor vehicle that is the subject of an insurance claim, and subsequently the
141 insurance company denies coverage with respect to the motor vehicle or otherwise does not take
142 ownership of the motor vehicle, the automobile auction may proceed as follows. At any time after
143 the automobile auction has had possession of the motor vehicle for forty-five days, it may apply

144 to the division for a salvage certificate or a nonrepairable motor vehicle certificate without
145 surrendering the certificate of title for the motor vehicle. The application shall be accompanied by
146 a copy of a written request, on the automobile auction's letterhead, requesting that, upon payment
147 of applicable charges, the vehicle be removed from the automobile auction's facility, proof that
148 the request was delivered by a nationally-recognized courier service or by certified mail to the
149 vehicle owner and any known lienholder at least fifteen days before the date of the application,
150 and the required fee, if applicable. Upon receipt of a properly completed application, the division
151 shall issue a salvage certificate or a nonrepairable motor vehicle certificate, as applicable, in the
152 name of the automobile auction. Such salvage certificate or nonrepairable motor vehicle
153 certificate shall be issued free and clear of all liens and claims of ownership.

154 (r) An applicant pursuant to subsection (p) or (q) of this section shall indemnify and hold
155 harmless the Division of Motor Vehicles from any liability arising from an error or
156 misrepresentation made by such applicant in a submission to the division pursuant to subsection
157 (p) or (q) of this section.

Strike-throughs indicate language that would be stricken from a heading or the present law
and underscoring indicates new language that would be added.