

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

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for

Senate Bill 382

BY SENATOR BOSO

[Originating in the Committee on Government

Organization; reported on March 20, 2017.]

1 A BILL to amend and reenact §17-24A-4 of the Code of West Virginia, 1931, as amended; and to
2 amend and reenact §17A-4-10 of said code, all relating to certificates of title and
3 registration for motor vehicles; allowing licensed automobile auctions to obtain title to
4 abandoned or junked motor vehicles; making technical corrections; allowing insurance
5 companies to obtain salvage certificates, cosmetic total loss salvage certificates or
6 nonrepairable motor vehicle certificates to motor vehicles for which a total loss claim was
7 paid; allowing licensed automobile auction to obtain salvage certificates or nonrepairable
8 motor vehicle certificates to certain vehicles; specifying application requirements that
9 require the Division of Motor Vehicles to issue certificates; and requiring applicant to
10 indemnify and hold harmless the division from liability due to error or misrepresentation of
11 applicant.

Be it enacted by the Legislature of West Virginia:

1 That §17-24A-4 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted; and that §17A-4-10 of said code be amended and reenacted, 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-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 this
68 code, a licensed automobile auction as defined in section one, article six-c of said chapter, or a
69 motor vehicle repair facility or a towing company registered with the Public Service Commission
70 pursuant to section two-a, article two, chapter twenty-four-a of this code may ~~if a motor vehicle is~~
71 ~~abandoned on the property or place of business of the dealer or a motor vehicle repair facility or~~
72 ~~towing company and is not claimed by the owner or a lienholder after notice within the time set~~
73 ~~forth in subsection (d) of this section or if the identity of the last registered owner of the abandoned~~
74 ~~motor vehicle cannot be determined or if the certificate of registration or certificate of title contains~~
75 ~~no address of the owner or if it is impossible to determine with reasonable certainty the identity~~
76 ~~and address of all lienholders after publication as set forth in subsection (b) of this section file an~~
77 application with the Division of Motor Vehicles for a certificate of title and registration for an
78 abandoned motor vehicle or junked motor vehicle if:

79 (1) The vehicle has a loan value of \$9,500 or less, as ascertained by values placed upon
80 motor vehicles using a standard industry reference book;

81 (2) This amount will be increased every five years on September 1 of the fifth year based
82 on the U. S. Department of Labor, Bureau of Labor Statistics most current Consumer Price Index;

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

85 (4) One of the following situations applies:

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

88 (B) The identity of the last registered owner of the abandoned motor vehicle cannot be
89 determined; or

90 (C) The certificate of registration or certificate of title contains no address of the owner; or

91 (D) It is impossible to determine with reasonable certainty the identity and address of all
92 lienholders after publication as set forth in subsection (b) of this section. ~~which, upon payment of~~
93 the appropriate fees, shall be issued. The dealer or motor vehicle repair facility or towing company
94 may then Upon payment of the appropriate fees, the Division of Motor Vehicles shall issue the
95 certificate of title and registration, and the dealer, licensed automobile auction, motor vehicle
96 repair facility or towing company may sell the motor vehicle at private sale or public auction.

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

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
38 any vehicle which has been damaged by flood or fire. The designation "cosmetic total loss" on a
39 title 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
63 one, article one of this chapter, it may not be titled or registered for operation until it has been
64 inspected by an official state inspection station and by the Division of Motor Vehicles. Following
65 an approved inspection, an application for a new certificate of title may be submitted to the
66 division. The applicant is required to retain all receipts for component parts, equipment and
67 materials used in the reconstruction. The salvage certificate shall also be surrendered to the
68 division before a 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
76 fee of \$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

83 as 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) With respect to a motor vehicle that the vehicle owner has not chosen to retain, if an
124 insurance company or insurer is unable to obtain the properly endorsed certificate of title for a
125 motor vehicle within thirty days of the payment of a total loss claim, the insurance company or
126 insurer, at any time thereafter, may apply to the Division of Motor Vehicles for a salvage certificate,
127 a cosmetic total loss salvage certificate or a nonrepairable motor vehicle certificate, as applicable.
128 Upon payment of the appropriate fees and receipt of a properly completed application, the division
129 shall issue a salvage certificate, a cosmetic total loss salvage certificate or a nonrepairable motor
130 vehicle certificate, as applicable, in the name of the insurance company or insurer. The insurance
131 company or insurer may then sell the motor vehicle at private sale or public auction. For purposes
132 of this subsection, a properly completed application is an application that includes:

133 (1) Evidence that the insurance company or insurer has paid a total loss claim on the
134 motor vehicle and that the vehicle owner has chosen not to retain the motor vehicle;

135 (2) A copy of the written request for the certificate of title sent by the insurance company
136 or insurer to the vehicle owner and any known lienholder; and

137 (3) Proof that the request for the certificate of title was delivered to the last known address
138 of the vehicle owner and any known lienholder at least thirty days prior to the application.

139 (g) A licensed automobile auction may apply to the Division of Motor Vehicles for a salvage
140 certificate or a nonrepairable motor vehicle certificate without surrendering the certificate of title
141 for a motor vehicle subject to an insurance total loss claim for which the insurance company or
142 insurer denied insurance coverage or otherwise does not take ownership. Upon payment of the
143 appropriate fees and receipt of a properly completed application, the division shall issue a salvage
144 certificate or a nonrepairable motor vehicle certificate, as applicable, in the name of the licensed
145 automobile auction for such motor vehicle. The licensed automobile auction may then sell the
146 motor vehicle at private sale or public auction. For purposes of this subsection, a properly
147 completed application is an application that includes:

148 (1) A copy of the written request on the automobile auction's letterhead to the vehicle
149 owner and any known lienholder that the motor vehicle be removed from the automobile auction's
150 facility upon payment of applicable charges;

151 (2) Proof that the request was delivered to the last known address of the vehicle owner
152 and any known lienholder at least thirty days prior to the application; and

153 (3) An affidavit signed by an employee or officer or director of the licensed automobile
154 auction that the licensed automobile auction has had possession of the motor vehicle for which
155 the certificate is sought for at least forty-five days, that applicable charges have not been paid to
156 the licensed automobile auction for the motor vehicle, and that the licensed automobile auction
157 has no reasonable expectation that a vehicle owner, insurance company, insurer or lienholder will
158 remove the motor vehicle from the automobile auction's facility upon payment of applicable
159 charges within a reasonable time.

160 (r) An applicant pursuant to subsection (p) or (q) of this section shall indemnify and hold
161 harmless the Division of Motor Vehicles from any liability arising from an error or
162 misrepresentation made by such applicant in a submission to the division pursuant to said
163 subsections.

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