

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **House Bill 4498**

BY DELEGATES HOWELL, WESTFALL, WHITE, B., HAMRICK

AND MOFFATT

[Introduced February 11, 2016; Referred  
to the Committee on Roads and Transportation then  
the Judiciary.]

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 for certain  
3 total loss and abandoned or junked motor vehicles; allowing automobile auctions to obtain  
4 title to abandoned vehicles; creating a process by which an automobile auction may obtain  
5 a salvage certificate or a nonrepairable motor vehicle certificate for vehicles abandoned  
6 on its property; establishing a process by which automobile auctions may obtain title to  
7 and sell certain abandoned vehicles; and allowing an insurance company to obtain a  
8 salvage certificate or a cosmetic total loss salvage certificate after paying a total loss claim  
9 on a vehicle.

*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 assigned

8 to the motor vehicle by the Commissioner of Motor Vehicles and any distinguishing marks;

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

11 (3) Inform the owner and any lienholders of record of their right to reclaim the motor vehicle  
12 within ten days after the date notice was received by the owner or lienholders, upon payment of  
13 all towing, preservation and storage charges resulting from taking and placing the motor vehicle  
14 into custody and possession; and

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

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

32 (c) An enforcement agency which hires any person or entity to take into custody and  
33 possession an abandoned motor vehicle or junked motor vehicle pursuant to this section shall

34 notify the person or entity hired of the name and address of the registered owner of the motor  
35 vehicle, if known, and all lienholders of record, if any, within fifteen days after the vehicle is taken  
36 into custody and possession: *Provided*, That the requirements of this subsection shall not apply  
37 to motor vehicles for which the registered owner cannot be ascertained by due diligence or  
38 investigation.

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

53 (e) For an abandoned motor vehicle or junked vehicle having a loan value of \$7,500 or  
54 less, as ascertained by values placed upon motor vehicles using a standard industry reference  
55 book, a person or entity hired by an enforcement agency to tow the abandoned motor vehicle or  
56 junked motor vehicle may, if the motor vehicle is not claimed by the owner or a lienholder after  
57 notice within the time set forth in subsection (d) of this section or if the identity of the last registered  
58 owner of the abandoned motor vehicle or junked motor vehicle cannot be determined or if the  
59 certificate of registration or certificate of title contains no address of the owner or if it is impossible

to determine with reasonable certainty the identity and address of all lienholders after publication as set forth in subsection (b) of this section, file an application with the Division of Motor Vehicles for a certificate of title and registration which, upon payment of the appropriate fees, shall be issued. The person or entity may then sell the motor vehicle at private sale or public auction.

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

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

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

86           (3) 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; and

88           (4) One of the following situations applies:

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

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

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

94           (g) For purposes of this section motor vehicle repair facilities and towing companies are  
95           not used motor vehicle dealers as that term is defined by subdivision (2), subsection (a), section  
96           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

total loss title issued. The terms “cosmetically damaged” and “cosmetic total loss” do not include any vehicle which has been damaged by flood or fire. The designation “cosmetic total loss” on a title may not be removed.

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

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

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

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

(h) If the motor vehicle is a “reconstructed vehicle” as defined in this section or section



one, article one of this chapter, it may not be titled or registered for operation until it has been inspected by an official state inspection station and by the Division of Motor Vehicles. Following an approved inspection, an application for a new certificate of title may be submitted to the division. The applicant is required to retain all receipts for component parts, equipment and materials used in the reconstruction. The salvage certificate shall also be surrendered to the division before a certificate of title may be issued with the appropriate brand.

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

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

(k) The division shall charge a fee of \$15 for the issuance of each salvage certificate or cosmetic total loss salvage certificate but shall not require the payment of the five percent motor 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

vehicle.

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

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

(q) If an insurance company or insurer requests that an automobile auction take possession of a motor vehicle that is the subject of an insurance claim, and subsequently the

insurance company denies coverage with respect to the motor vehicle or otherwise does not take ownership of the motor vehicle, the automobile auction may proceed as follows. At any time after the automobile auction has had possession of the motor vehicle for forty-five days, it may apply to the division for a salvage certificate or a nonrepairable motor vehicle certificate without surrendering the certificate of title for the motor vehicle. The application shall be accompanied by a copy of a written request, on the automobile auction's letterhead, requesting that, upon payment of applicable charges, the vehicle be removed from the automobile auction's facility, proof that the request was delivered by a nationally-recognized courier service or by certified mail to the vehicle owner and any known lienholder at least fifteen days before the date of the application, and the required fee, if applicable. Upon receipt of a properly completed application, the division shall issue a salvage certificate or a nonrepairable motor vehicle certificate, as applicable, in the name of the automobile auction. Such salvage certificate or nonrepairable motor vehicle certificate shall be issued free and clear of all liens and claims of ownership.

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

NOTE: The purpose of this bill is to allow automobile auctions to obtain title to abandoned motor vehicles.

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