

ENGROSSED

## Senate Bill No. 304

(By Senators Beach, Klempa and Unger)

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

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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 ~~(m)~~ (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.