

# **WEST VIRGINIA LEGISLATURE**

## **2018 REGULAR SESSION**

**Introduced**

### **Senate Bill 34**

BY SENATOR MAYNARD

[ Introduced January 10, 2018; Referred  
to the Committee on Transportation and Infrastructure; and  
then to the Committee on the Judiciary]

1 A BILL to amend and reenact §17A-4-10 of the Code of West Virginia, 1931, as amended, relating  
2 to removing the requirement that a reconstructed vehicle must be inspected before being  
3 titled or registered provided that no structural parts were replaced on the vehicle.

*Be it enacted by the Legislature of West Virginia:*

#### **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 (h) of this section. The division shall charge a fee of \$22.50 for  
27 each salvage title issued. The Division of Motor Vehicles may adjust the fee for each salvage title  
28 every five years on September 1, based on the U. S. Department of Labor, Bureau of Labor  
29 Statistics most current Consumer Price Index: *Provided*, That an increase in such fee may not  
30 exceed ten percent of the total fee amount in a single year.

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

37 (1) The division shall, without further inspection, issue a title branded "cosmetic total loss"  
38 to the insured or claimant owner if the insured or claimant owner wishes to retain possession of  
39 the vehicle, in lieu of a salvage certificate. The division shall charge a fee of \$22.50 for each  
40 cosmetic total loss title issued. The terms "cosmetically damaged" and "cosmetic total loss" do  
41 not include any vehicle which has been damaged by flood or fire. The designation "cosmetic total  
42 loss" on a title may not be removed. The Division of Motor Vehicles may adjust the fee for each  
43 cosmetic total loss title every five years on September 1, based on the U. S. Department of Labor,  
44 Bureau of Labor Statistics most current Consumer Price Index: *Provided*, That an increase in  
45 such fee may not exceed ten percent of the total fee amount in a single year.

46 (2) If the insured or claimant owner elects not to take possession of the vehicle and the

47 insurance company or insurer retains possession, the division shall issue a cosmetic total loss  
48 salvage certificate to the insurance company or insurer. The division shall charge a fee of \$22.50  
49 for each cosmetic total loss salvage certificate issued. The Division of Motor Vehicles may adjust  
50 the fee for each cosmetic total loss salvage certificate every five years on September 1, based on  
51 the U. S. Department of Labor, Bureau of Labor Statistics most current Consumer Price Index:  
52 *Provided*, That an increase in such fee may not exceed ten percent of the total fee amount in a  
53 single year. The division shall, upon surrender of the cosmetic total loss salvage certificate issued  
54 under the provisions of this paragraph and payment of the five percent motor vehicle sales tax on  
55 the fair market value of the vehicle as determined by the commissioner, issue a title branded  
56 “cosmetic total loss” without further inspection.

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

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

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

72 (h) If the motor vehicle is a “reconstructed vehicle” as defined in this section or §17A-1-1

73 of this code, it may not be titled or registered for operation until it has been inspected by an official  
74 state inspection station and by the Division of Motor Vehicles: Provided, That when no structural  
75 parts were replaced on the motor vehicle, an inspection by the Division of Motor Vehicles is not  
76 required. Following an approved inspection, an application for a new certificate of title may be  
77 submitted to the division. The applicant is required to retain all receipts for component parts,  
78 equipment and materials used in the reconstruction. The salvage certificate shall also be  
79 surrendered to the division before a certificate of title may be issued with the appropriate brand.

80 (i) The owner or title holder of a motor vehicle titled in this state which has previously been  
81 branded in this state or another state as salvage, reconstructed, cosmetic total loss, cosmetic  
82 total loss salvage, flood, fire, an equivalent term under another state's laws or a term consistent  
83 with the intent of the National Motor Vehicle Title Information System established pursuant to  
84 49 U. S. C. §30502 shall, upon becoming aware of the brand, apply for and receive a title from  
85 the Division of Motor Vehicles on which the brand "reconstructed", "salvage", "cosmetic total loss",  
86 "cosmetic total loss salvage", "flood", "fire" or other brand is shown. The division shall charge a  
87 fee of \$10 for each title so issued. The Division of Motor Vehicles may adjust the fee for each  
88 reconstructed, salvage, cosmetic total loss, cosmetic total loss salvage, flood, fire or other brand  
89 title issued every five years on September 1, based on the U. S. Department of Labor, Bureau of  
90 Labor Statistics most current Consumer Price Index: *Provided, That an increase in such fee may*  
91 *not exceed ten percent of the total fee amount in a single year.*

92 (j) If application is made for title to a motor vehicle, the title to which has previously been  
93 branded reconstructed, salvage, cosmetic total loss, cosmetic total loss salvage, flood, fire or  
94 other brand by the Division of Motor Vehicles under this section and said application is  
95 accompanied by a title from another state which does not carry the brand, the division shall, before  
96 issuing the title, affix the brand "reconstructed", "cosmetic total loss", "cosmetic total loss salvage",  
97 "flood", "fire" or other brand to the title. The motor vehicle sales tax paid on a motor vehicle titled  
98 as reconstructed, cosmetic total loss, flood, fire or other brand under the provisions of this section

99 shall be based on fifty percent of the fair market value of the vehicle as determined by a nationally  
100 accepted used car value guide to be used by the commissioner.

101 (k) The division shall charge a fee of \$22.50 for the issuance of each salvage certificate  
102 or cosmetic total loss salvage certificate but shall not require the payment of the five percent motor  
103 vehicle sales tax. The Division of Motor Vehicles may adjust the fee for each salvage certificate  
104 or cosmetic total loss salvage certificate every five years on September 1, based on the U. S.  
105 Department of Labor, Bureau of Labor Statistics most current Consumer Price Index: *Provided,*  
106 That an increase in such fee may not exceed ten percent of the total fee amount in a single year.  
107 However, upon application for a certificate of title for a reconstructed, cosmetic total loss, flood or  
108 fire damaged vehicle or other brand, the division shall collect the five percent privilege tax on the  
109 fair market value of the vehicle as determined by the commissioner unless the applicant is  
110 otherwise exempt from the payment of such privilege tax. A wrecker/dismantler/rebuilder, licensed  
111 by the division, is exempt from the payment of the five percent privilege tax upon titling a  
112 reconstructed vehicle. The division shall collect a fee of \$35 per vehicle for inspections of  
113 reconstructed vehicles. These fees shall be deposited in a special fund created in the State  
114 Treasurer's office and may be expended by the division to carry out the provisions of this article:  
115 *Provided,* That on and after July 1, 2007, any balance in the special fund and all fees collected  
116 pursuant to this section shall be deposited in the State Road Fund. Licensed  
117 wreckers/dismantlers/rebuilders may charge a fee not to exceed \$25 for all vehicles owned by  
118 private rebuilders which are inspected at the place of business of a wrecker/dismantler/rebuilder.

119 (l) As used in this section:

120 (1) "Reconstructed vehicle" means the vehicle was totaled under the provisions of this  
121 section or by the provisions of another state or jurisdiction and has been rebuilt in accordance  
122 with the provisions of this section or in accordance with the provisions of another state or  
123 jurisdiction or meets the provisions of §17A-1-1(n) of this code.

124 (2) "Flood-damaged vehicle" means that the vehicle was submerged in water to the extent

125 that water entered the passenger or trunk compartment.

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

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

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

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

142 (p) Notwithstanding any other provision of law and with respect to a vehicle which the  
143 vehicle owner has not chosen to retain, if an insurance company or insurer is unable to obtain the  
144 properly endorsed certificate of title for a motor vehicle within thirty days of the payment of a total  
145 loss claim, the insurance company or insurer, at any time thereafter, may apply to the Division of  
146 Motor Vehicles for a salvage certificate, a cosmetic total loss salvage certificate or a nonrepairable  
147 motor vehicle certificate as applicable. The application shall be accompanied by evidence that  
148 the insurance company or insurer has paid a total loss claim on the vehicle, a copy of a written  
149 request for the certificate of title sent to the vehicle owner and any known lienholder by the  
150 insurance company or insurer or a designee of the insurance company or insurer, proof that the

151 request was sent by certified mail, return receipt requested, to the last known address of the  
152 vehicle owner and any known lienholder, service to be complete upon the mailing thereof, and  
153 the required fee, if applicable. Upon receipt of a properly completed application, the division shall  
154 issue a salvage certificate, a cosmetic total loss salvage certificate or a nonrepairable motor  
155 vehicle certificate, as applicable, in the name of the insurance company or insurer. Such salvage  
156 certificate, cosmetic total loss salvage certificate or nonrepairable motor vehicle certificate shall  
157 be issued free and clear of all liens and claims of ownership.

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

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

177 (s) The provisions of this article enacted in 2017 take effect on July 1, 2017.

NOTE: The purpose of this bill is to remove the requirement that a reconstructed vehicle must be inspected before being titled or registered provided that no structural parts were replaced on the vehicle.

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