

**Before the United States Senate Committee
on Commerce, Science and Transportation;
Subcommittee on Consumer Affairs,
Product Safety and Insurance**

“Protecting the Public from Flooded and Salvage Vehicle Fraud”
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I. Introduction

On behalf of Iowa Attorney General Tom Miller, thank you very much for inviting me to participate in this hearing. I have worked in the area of motor vehicle fraud enforcement for over 18 years with the Iowa Attorney General’s office and authored Iowa’s motor vehicle damage disclosure law. Among the responsibilities of the Consumer Protection Division is enforcing Iowa laws governing used motor vehicle sales.

Nothing affects used vehicle values more than prior salvage or flood history. While the unfortunate results of Hurricanes Katrina and Rita have brought the flood vehicle issue to the forefront, consumers have faced the prospect of unknowingly purchasing former flood or salvage vehicles for a number of years.

The successful effort in the 1970's and 1980's against vehicle odometer fraud under federal and state law has driven scam artists to perhaps this even more lucrative means of defrauding used car buyers. It begins when they purchase damaged vehicles, most often at auction, for well below average retail. Then, they repair the vehicles to hide the prior damage and sell them to unsuspecting buyers with no disclosure of the prior damage. The resulting sale price is several times more than the vehicle is worth, given that the retail value of a former salvage or flood vehicle diminishes by 50% or more than the average retail value for the same

year, make, and model vehicle.¹ This not only hurts consumers, but steals business away from dealers who sell honestly by making full disclosure.

To a great degree, this has occurred because consumers generally do not receive adequate notice of the damage history of a motor vehicle prior to purchase. That is not to say there are no tools available to consumers. Some states have enacted used auto damage disclosure laws akin to the federal odometer law, requiring pre-sale disclosures.² Additionally, companies like Carfax, AutoCheck, and others provide vehicle history information for a fee. However helpful, these tools have not been sufficient to prevent the scam from growing.

Nationwide pre-sale consumer notice of prior salvage or flood history is essential for the marketplace to work. Our free market system presumes informed buyers making rational choices. Unfortunately, when it comes to vehicles which have been flood-damaged or involved in significant collisions, consumers do not get the information they need to choose whether to purchase a used vehicle or how much to pay for it. Millions of American consumers are purchasing used vehicles every year they would not have purchased, or for which they'd have paid much less, had they known of the vehicle's true prior history. Thus, too much consumer money is flowing into the hands of unscrupulous operators, resulting in higher prices than warranted and the unwitting operation of potentially unsafe vehicles on America's roadways.

Although, law enforcement officials have actively pursued scam artists who sell these vehicles without notice, the problem remains acute. However, there is much we can do to provide greater protection to the car buying public and to ensure that our used vehicle marketplace operates more efficiently and fairly.

II. Current State and Federal Laws Are Not Adequate to Prevent Vehicle Salvage and Flood Fraud

A. Differences in Nomenclature Make it More Difficult for Consumers Across the

¹ *Consumer Reports*, March 2003 issue, "Wrecks in Disguise."

² Those states include Hawaii, Iowa, Kentucky, Maine, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, South Dakota and Wisconsin.

Country to Receive Notice

Nearly every state issues salvage titles or the equivalent. Unfortunately, the states use a variety of differing terms to describe the titles for salvage vehicles including salvage, damaged, junk, unrepairable and others.³ These descriptive terms generally appear on auto titles. While most states have “salvage” titles, in some states that includes both vehicles which are significantly damaged but can be repaired for road use and those that cannot be repaired and can only be sold for scrap or parts, while in others it refers to vehicles which can be repaired for road use but does not include vehicles which can only be sold for scrap or parts. The lack of consistency across the states in describing damaged vehicles on auto titles is unnecessarily confusing for consumers and for state officials who have to learn and interpret these differing title brands. In addition, scam artists are able to pick and choose among differing state laws to attempt to title a vehicle in a jurisdiction which will not brand it.

There currently is no federal law which requires standardization of state title brands. However, Congress has recognized the problem of auto title fraud as long ago as 1992, when it enacted the Anti Car Theft Act.⁴ A portion of that Act included a requirement that the Department of Transportation work with states to establish the National Motor Vehicle Title Information Service (“NMVTIS”), a means by which law enforcement and consumers could get information about the past histories of specific motor vehicles. Unfortunately, for a number of reasons, including lack of funding, NMVTIS has taken a great deal of time to become established and, after nearly 15 years of trying, only about half the states are currently submitting data and consumers still do not have access to it.

³ Two states, South Dakota and Washington, do not have a salvage title or the equivalent. South Dakota relies on its auto damage disclosure law to provide information to car buyers about past damage. The title for a vehicle in Washington which has a certain degree of damage and is less than six model years old at the time of the loss will receive a “WA Rebuilt” brand if the vehicle is repaired for road use.

⁴ Pub.L. 102-519, 102nd Congress, October 25, 1992.

B. The Failure of State Laws to Uniformly Mandate Recognition and Carrying Forward of the Title Brands of Other States Exacerbates the Problem

In addition, while state motor vehicle titling officials are very aware of each other's title brands and definitions, the laws of some states do not permit the states to recognize each other's title brands and carry them forward on new titles. In addition, the brands can differ to such a great degree that it is very difficult to determine whether there is an equivalent brand in a state receiving a vehicle from another state. Some titling anomalies are even more difficult to understand. For example, Iowa will carry forward a flood brand from another state but lacks its own separate flood brand (the vehicle is either branded salvage or not). These titling differences make understanding their meaning more difficult for consumers and frustrate state officials who would prefer to provide as much information about the vehicle to consumers as possible.

Private companies which sell vehicle history information for a fee, such as Carfax and AutoCheck, have established themselves in the used car marketplace in the interim. But, because some states do not promptly report title transfers and brands, even these services are lacking to some degree in being able to provide the information consumers need in time for them to use it.

C. Auto Insurance Providers Do Not Uniformly Report Totaled Vehicles

The situation is further exacerbated by the lack of reporting by auto insurance providers. Insurance companies and law enforcement agencies are able to learn about vehicles that insurance companies have totaled, but similar information is not made generally available to the buying public. There is a legal obligation for insurance companies to report to the NMVTIS system when they total a vehicle.⁵ However, it is my understanding that this requirement has never been implemented and that insurance companies have not been reporting this information to NMVTIS. And, further, this reporting requirement does not apply to the likely thousands of

⁵ 49 U.S.C. section 30504(b).

instances where insurance companies allow their policyholders to retain title. In many states, if the insurance company doesn't take title, there is no requirement the owner obtain a salvage title. Thus, in states lacking an auto damage disclosure law, a totaled, owner-retained vehicle may be sold with no disclosure to buying consumers. While such an act may violate state laws against deceptive and unfair practices, proving a violation often comes down to the buyer's word against the seller's, which is quite difficult to prove.

D. Auto Title Branding Laws, In and Of Themselves, Are Not Totally Effective In States Permitting Secured Parties to Retain Titles

Additionally, title branding laws, alone, are not totally effective in that most states permit entities holding security interests in vehicles, in most cases, lenders to trade-in customers, to retain the vehicle's title until the loan is paid. Thus, even if a title is branded "Prior Salvage" as would be the case under Iowa law, the consumer would not see that title brand at the time of sale and may not see it for many years if the consumer obtained a loan to purchase the vehicle. We have been faced with that situation in numerous consumer complaints in our office and we know it is a problem elsewhere across the country. Iowa addresses this, in part, by requiring a separate written disclosure on a secure form when the title is unavailable. But, this still results in false disclosures not being discovered until the title is released to the buyer.

III. Potential Solutions Exist and Congress Can Help

A. Establish Uniform National Nomenclature

One part of the solution could be requiring the states to adopt uniform language. A title for a vehicle that has been in a major collision and has not been repaired should have the same name throughout the country. This would greatly enhance consumer knowledge and foster better recognition by the states of each other's title brands. The same approach could be taken for flood-damaged vehicles and for reconstructed vehicles -- those which have been damaged and repaired. For example, the national uniform title terms could be "salvage," "flood," and "reconstructed." The potential downside to this approach is the costs that states would incur in phasing out non-uniform title brands and establishment of the new, uniform national brands.

B. Establish Uniform Federal Minimum Standards Within the Different Title Descriptions

Presuming the states used uniform nomenclature to define salvage, flood and reconstructed vehicles, the question remains when the states will require that those titles be obtained. For example, some states require salvage titles only when insurance companies take ownership due to collision damage. Others use percentage thresholds, such that if the cost to repair a vehicle exceeds a certain percentage of its retail value at the time of the damage a salvage title must be obtained. One way to deal with this would be for Congress to require that salvage titles be obtained when collision damage exceeds a certain minimum threshold, say 75% of retail value, but permit states to adopt a more expansive standard, for example, 50% of retail value. In addition, all states should require salvage titles to be obtained when insurance companies total a vehicle, regardless of whether the insurance company takes title or the title is owner-retained. By adopting a national minimum definition, consumers and dealers seeing the title brand will know that the vehicle has incurred at least the amount of damage required by the state with the least expansive standard.

C. Require Uniform Recognition by States of Each Other's Title Brands

Perhaps the most vital piece of the puzzle, and one that could stand on its own if the others prove not achievable, is requiring all states to recognize all of each other's title brands. Under this proposal, states would not be required to analyze the meaning of each other's title brands in an attempt to discern state equivalence. Instead, they would simply include a brand on the face of the title with the title brand from the other state and the two-letter abbreviation for that state. This would provide substantial assistance to consumers and would reduce costs for states which currently carry forward title brands but are required to convert them to their own state's nomenclature, a sometimes difficult endeavor. An expansion of NMVTIS to all states would also help in this regard.

D. Require insurance companies to report all totaled vehicles to national databases,

whether government-established or private

Insurance companies should be required to report all totaled vehicles to NMVTIS, and make the information available, for a reasonable fee, to private auto title information providers as well. This should apply, regardless of whether the policyholder retains ownership or the insurance company takes title. In the event it is not possible to adopt some of the other proposals suggested in these comments, ensuring that consumers and auto dealers have easy access to information regarding whether a vehicle has been previously totaled by an insurance provider would assist the market to operate efficiently and ensure that consumers and dealers get this vital information before deciding whether to purchase a vehicle or take it in trade.

E. Establish Disclosure Requirements Akin to Federal Odometer Law – at a Minimum, Pre-sale Written Disclosure of Title Status If Title Is Not Present at Time of Transfer to Buyer

The federal Odometer Act⁶ has very effectively reduced odometer fraud, in great part, by requiring auto sellers to issue buyers written mileage disclosures. While auto title brands can effectively communicate past damage, as noted above, titles are often not required to be present at the time of sale. Therefore, consumers do not see titles and the brands which appear upon them. This problem could be eliminated by requiring a pre-sale written disclosure of title status in the event the title is not present at or before the time of sale. The disclosure statement could be handled in much the same way as the odometer statement. In fact, in Iowa we have combined the odometer and damage disclosure statements on the separate disclosure form required to be used when the title is not present at the time of sale. Written disclosures protect not only buyers and dealers who take vehicles in trade, but sellers who wish to retain written evidence of having made the disclosure.

F. Establish Remedies for Enforcement If Vehicle Owners Do Not Obtain Required Titles

⁶ 49 U.S.C. sections 32701-32711, more formerly titled the Motor Vehicle Information and Costs Savings Act.

or Required Disclosures are Not Made or are False

A law requiring action is only as good as its enforcement mechanisms. The federal odometer law has been effective because it has provided various enforcement possibilities. For auto salvage and flood vehicles the same must be true. There must be a strong means of deterring vehicle sellers from concealing or misrepresenting prior salvage or flood history. I recommend providing for federal criminal and civil remedies, and civil remedies for state Attorneys General, akin to the odometer law, national telemarketing law, and others. Federal laws that authorize state Attorneys General to act in state or federal courts to obtain injunctive relief, restitution for consumers, civil penalties, and attorney fees are vital to ensuring there are enough “cops on the beat” to deter auto title fraud. Enabling the federal government to act is also vital to addressing large operators. I know our state departments of transportation or motor vehicles officials stand ready to assist state Attorneys General in bringing these actions, given the successful working relationship we’ve had with them in the odometer enforcement area.

G. Consider Additional Funding to Help Bring All States Online with NMVTIS

NMVTIS has taken a great deal of time to get going, yet it shows tremendous promise. Iowa Department of Transportation officials have described for me the benefits they’ve seen in being able to access title history information at the point the citizen seeks a title transfer, including whether the vehicle had been previously titled as salvage or flood. Making that same information available to consumers prior to their decision whether to purchase a vehicle is vital. The reason for the delay in the establishment of NMVTIS appears to be the cost incurred by states having to upgrade their computer auto titling systems in order to participate in NMVTIS. Perhaps Congress could consider additional funding to the states to assist in this vital endeavor.

IV. Conclusion

Consumers unknowingly purchasing vehicles which have incurred substantial past collision or flood damage is the greatest consumer problem regarding used vehicle sales. Other than their homes, automobiles are the most expensive items most consumers purchase in their lifetimes. Beyond their cost is the importance of motor vehicles to our lives, including our

means of getting to work and school. Lack of a dependable, safe motor vehicle can mean loss of jobs and fewer opportunities, especially for the millions of Americans who live in places lacking access to mass transit. Consumers are unknowingly paying millions of dollars more in the aggregate for these vehicles than they are truly worth. Those excess payments line the pockets of scam artists who are all too willing to take advantage of a system of auto titling which is in substantial need of improvement.

Congress can help reduce the incidence of salvage and flood fraud and assist the marketplace to work more fairly and efficiently. Congress can do this by working with the states to establish uniform descriptive terms for auto titles, recognition by the states of each other's title brands and carrying forward those brands on subsequent titles, and require written disclosures when titles are not present. In addition, Congress can act to ensure that motor vehicle history information systems like NMVTIS, and those of private companies, have the information consumers, auto dealers, and law enforcement officials require, including title histories and notice of insurance company totaled vehicles. Finally, Congress can act to ensure that whatever steps are taken can be enforced by the federal government and by the states.