

**PROTECTING THE CONSUMER FROM FLOODED
AND SALVAGE VEHICLE FRAUD**

HEARING

BEFORE THE

SUBCOMMITTEE ON CONSUMER AFFAIRS, PRODUCT
SAFETY, AND INSURANCE

OF THE

COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION

UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

NOVEMBER 16, 2005

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ONE HUNDRED NINTH CONGRESS

FIRST SESSION

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PROTECTING THE CONSUMER FROM FLOODED AND SALVAGE VEHICLE FRAUD

WEDNESDAY, NOVEMBER 16, 2005

U.S. SENATE,
SUBCOMMITTEE ON CONSUMER AFFAIRS, PRODUCT
SAFETY, AND INSURANCE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:34 p.m. in room SD-562, Dirksen Senate Office Building, Hon. George Allen, Chairman of the Subcommittee, presiding.

OPENING STATEMENT OF HON. GEORGE ALLEN, U.S. SENATOR FROM VIRGINIA

Senator ALLEN. Good afternoon to everyone and welcome to this hearing of the Senate Subcommittee on Consumer Affairs, Product Safety, and Insurance. I call this hearing to order. While the impetus of today's hearing was unfortunately the devastation caused by the recent hurricanes, we hope to examine ways to protect consumers from further harm brought by the illegal and fraudulent transfer of flooded and salvage vehicles.

The Ranking Member of this Subcommittee, Senator Mark Pryor of Arkansas, personally conveyed to me his concern about this and his commitment to preventing the sale of flooded cars to unsuspecting buyers and I thank him for his interest and his experienced leadership. He has experienced this in Arkansas when he was Attorney General. He will be here forthwith. He is on his way. But I wanted to get the hearing started in a timely fashion.

We are promoting this as a forum to actually learn, to listen from all of you who have come here. I very much thank each and every one of our witnesses, some who have flown in this morning, for being here. Your insight, your knowledge, will be very, very helpful to us and we thank you for your testimony and your preparation.

After Hurricanes Katrina and Rita hit the Gulf Coast, questions arose about what the Federal Government should do. There are a lot of things the Federal Government is doing appropriately along with the states and private industry, and we all want to help people rebuild their lives and their communities and get back on their feet. We also want to protect victims from fraud and illegal activities.

In addition to the tremendous economic loss that was caused by this year's hurricanes, a window has been opened that may create circumstances for fraudulent and illegal activities. One way that could happen is through fraudulent transfer of the flooded and

salvaged vehicles without the seller fully disclosing the vehicle's damage history. This tragedy has left an estimated 500,000 motor vehicles flooded in Alabama, Mississippi, and Louisiana. This hearing is an attempt to show malefactors that we are remaining vigilant and are aware that fraud can take many forms, particularly associated with flooded vehicles, and to develop solutions to deter any further deceptive behavior.

The damage history of a car is an important information factor for a consumer to know when purchasing or making a decision to purchase a vehicle. In addition to financial considerations, a vehicle's safety can also be diminished after having sustained flood damage. Fraud can occur through what is known as title washing or the process of physically transferring a flooded or salvaged vehicle to a state that does not require the other State's brand on that particular vehicle to carry forward. In other words, all indication on a vehicle's title of prior damage is removed from that title. This is when problems can occur, as potential buyers of that vehicle are not aware of that vehicle's damage history.

Lack of public disclosure of a used car's previous damage can lead to financial problems. The cars are usually reinsured after a new owner takes possession. If some problem develops with the car, the insurance company is going to get hit again for a claim on that car. Many lawsuits and litigation can result, which is hardly productive, but that can ensue. And even worse, it can lead to an unsafe vehicle being on the roads and causing wrecks and physical harm.

So in hopes of averting any further harm caused by unsafe flooded and salvaged vehicles, we have invited these witnesses here today who will describe the problems that we face, which can unfortunately occur when a car has been significantly damaged. We look to all of you, all six of you, and the organizations and associations that you represent, to offer us possible solutions as well.

We look forward to hearing from each of our witnesses on the prudence of Federal involvement. I am not one who is always claiming for Federal jurisdiction, but this is interstate commerce and there may be an appropriate Federal role and that is what we want to hear from you in addressing this vehicle fraud issue stemming from an event like a flood, as well as options for decreasing fraud in the used car market.

With that, the person who I was extolling the virtues of earlier on this issue, who has a great deal of experience and knowledge on this subject. If you would like to make an opening statement, Senator Pryor, then I will introduce our witnesses.

I will also say that—I do not know; have votes started? All right, we have three votes. Three votes. What we are going to have to do is kind of run this like a tag team. So what we are going to try to do is not have to recess and start up back and forth. So one of us will always be here while the other is voting.

Senator PRYOR. If you want to go vote now—

Senator ALLEN. Well, I will introduce the witnesses.

Senator PRYOR. OK, great.

Senator ALLEN. Go ahead.

**STATEMENT OF HON. MARK PRYOR,
U.S. SENATOR FROM ARKANSAS**

Senator PRYOR. Let me make a very brief statement and let me just thank all of you for being here and thank you for your attention to this issue. I want to thank the Chairman for his leadership on this and helping pull this hearing together. We all know that there is a real problem with flooded cars and the issue of a branded title or salvaged title. On the Federal level, some sort of uniform standard I think is probably in order. We need to get input from you about what is the best approach and get your thoughts on the plusses and minuses of various approaches on this.

But you know the numbers and know the facts on this better than anyone. But basically, if consumers in this country buy a car that has been flooded, they are almost guaranteed to have problems with that car one way or the other. It is going to be rust, it is going to be the engine, it is going to be the electrical system, it is going to be safety, like the air bags do not work, or something. You know that it is going to happen.

This is a major headache for not just consumers, but car dealers and insurance companies, and really is something that I think we need to take a serious look at.

I want to thank the Chairman for his leadership in having this hearing today and assembling the witnesses. Mr. Chairman, thank you for doing this.

Senator ALLEN. Thank you. Thank you again, Senator Pryor, for your leadership on this very important issue.

Before we listen to the testimony of our witnesses, our panelists, let me introduce them, all gathered here. First we have Bill Brauch, who has flown in from Iowa to join us today. Mr. Brauch is a Special Assistant Attorney General in the Iowa Attorney General's Office, and the Director of the Consumer Protection Division. He is known for his work on automobile salvage safety issues. We are glad you are able to make it and we look forward to your testimony.

Next we will hear from Karen Chappell, who is the Chief Deputy Commissioner for the Virginia Department of Motor Vehicles. She holds many responsibilities with the Virginia DMV and can help us understand what the states are currently doing to combat vehicle fraud. Her institutional knowledge of motor vehicle practices in the Commonwealth is very much appreciated and we thank you for attending today.

We then will hear from Bob Bryant, the President and CEO of the National Insurance Crime Bureau. The NICB has taken the lead in developing sources for combatting vehicle fraud, including a new online database in coordination with their members, some of which are the largest property and casualty insurance companies. Mr. Bryant has been instrumental in trying to prevent flooded cars from being sold to unsuspecting buyers. We thank you for testifying today, Mr. Bryant.

Next we have Rosemary Shahan, from the organization, Consumers for Auto Reliability and Safety. Ms. Shahan has been deeply involved in California's past motor vehicle legislation, including initiation of the State's lemon law. She has also played a leading role in the adoption of a motor vehicle safety standards approach

nationwide, and in working to protect all consumers, Ms. Shahan is to be commended. Thank you again for agreeing to testify.

Then we will hear from Alan Fuglestad, Vice President of Operations and Technology at Experian Automotive. Mr. Fuglestad has firsthand knowledge of Experian's extensive database that assists dealers and consumers in learning all the relevant information of a vehicle's history before buying or selling it. Experian also has an online database that is helpful in determining whether a vehicle has ever been damaged. Mr. Fuglestad's technical expertise will be enlightening and we thank you for testifying.

Finally, we will listen to Don Hall, President and CEO of the Virginia Automobile Dealers Association, testifying on behalf of the National Auto Dealers Association. Mr. Hall has an extensive career in the automobile retailing business and he and I have had a chance to discuss important issues pertaining to auto dealers in the past. He is a well-respected leader and in his current capacity as the Virginia Auto Dealers Association leader, he represents dealers throughout Virginia on an assortment of issues, and we appreciate, Mr. Hall, your attendance today and look forward to your insight.

Now, Mr. Brauch, you can begin.

**STATEMENT OF WILLIAM L. BRAUCH, SPECIAL ASSISTANT
ATTORNEY GENERAL/DIRECTOR, CONSUMER PROTECTION
DIVISION, IOWA ATTORNEY GENERAL'S OFFICE**

Mr. BRAUCH. Thank you, Mr. Chairman and Senator Pryor. On behalf of Attorney General Tom Miller of Iowa, thank you for inviting me here today.

Senator ALLEN. Mr. Brauch, I am going to go vote first. I am going to turn over the chair to Senator Pryor. I will be back as quickly as possible.

Mr. BRAUCH. Thank you.

Well, this is a very timely issue. The Chair was right that Hurricanes Katrina and Rita and half a million flooded vehicles bring this to us today. But this is a problem that has been with us for a while. It has been with us because it is so lucrative. Scam artists are able to obtain vehicles which have been substantially wrecked or flooded, clean them up to the point where it is hard to notice the problem, and then sell the vehicle to unsuspecting consumers, who pay far more than the vehicle is worth.

Nothing diminishes the value of a vehicle more than past collision or flood history, nothing. And consumers with the information, knowing it is a flood, knowing it is a collision vehicle, will make a choice either not to purchase the vehicle or to pay much less for it than they would a comparable vehicle that does not have that background.

We have made significant efforts in the past 10 or so years to deal with this situation. We have passed laws at State levels and enforced them. We have the National Motor Vehicle Title Information Service, or NMVTIS, up and running, at least in some states at this point. And we have the development of Carfax and Experian's service, AutoCheck, online and other companies to provide information to consumers.

But we are not there yet. We have a long way to go. The scam artists are still making money and consumers are still being tar-

geted. It is not just a value issue, of course, but it is a safety issue as well.

Some of the contributing factors, some of the things that maybe we need to improve, are as follows: First of all, we have a lack of uniform nomenclature among the states. Most states now over the past 10 years have adopted the word "salvage" to describe these titles, although not all states have. But even that is not consistent. In many States it has different meanings from other states. "Salvage" might mean cars that are damaged but can be repaired and put back on the road. It might mean both those types of vehicles and vehicles which have to be parted out, sold for parts, or destroyed because they cannot be operated on the road any more. So we do not have a consistent nomenclature out there.

We, as the Chair noted, we do not have uniform recognition by the states of each other's brands. They are not all carrying the brands forward from other states, and therefore we have the title washing problem that he described.

We also have a lack of reporting by insurance companies when they total out a vehicle. Under NMVTIS they were required to report that to the title information service. However, the Department of Justice has never adopted the regulations to put that in place and therefore it is my understanding that is not being done. Even beyond that requirement, that requirement does not apply when insurance companies total out a vehicle but allow their policyholder to retain ownership. That is a problem as well.

We also have a problem in disclosure in that in many states the title is not present at the time of sale because there is a lien on that vehicle, and in most States the lienholder holds that title until that lien, that loan, is paid off. So even if you have disclosure on titles, the title might not be there, and that consumer might not see that title for years after they purchase the vehicle, until they pay off their loan. That is a problem.

We also need to get NMVTIS up and running across the country. It provides substantial benefits if we can fund it and we can get all the states contributing to it.

Some other solutions that we need to pursue: Establishing uniform title terms as much as we can possibly do; requiring all states to recognize and carry forward each other's brands is vitally important. One thing we might look at as far as a uniform definition, might be to set minimums, to say that a state must at least adopt a salvage law that says, for example, the damage is 75 percent of the market value, but then let that be the floor and let the States go beyond it. For example, if a state wants to have a 50 percent standard, therefore be more inclusive and pick up more vehicles, states should be allowed to do that. But setting a Federal minimum would be very important here.

Also, making sure that we require the insurance companies to report totaled vehicles, so that consumers get notice of it. There really is no reason that cannot happen and it really has to happen, because those vehicles may not show up in the titling process. They may not show up in the system. We need to get that information out to consumers, out to dealers who take vehicles in trade, to other insurance companies and to others in the process.

When the title is not present, we ought to think about a written disclosure requirement, much like the odometer law. We have done something like that in Iowa, where we have combined the odometer statement and the damage disclosure statement under our damage disclosure law in one form which is used when the title is not present at the time of sale. That could be done with this as well.

We also need more effective enforcement mechanisms. If we are going to look at a potentially nationwide process here, we need to take a look at giving authority to Federal agencies that enforce it, DOJ criminal and FTC civil, as well as providing enforcement authority to State Attorneys General to bring action, much like we can under the odometer law or other Federal laws that allow us to enforce them in State or Federal court.

The odometer law has the capability of State or Federal court for the State AGs. Laws like the Do-Not-Call law that we can enforce as well as the FTC allow us to enforce in Federal court. Better to give us the discretion to choose, but in any event to give us a cause of action so we can get money back for consumers under that law if we do not have an equivalent State law.

Also, additional Federal funding for NMVTIS is vitally important.

Everybody agrees there is a problem here and I am very pleased to see the way that this is being handled, that instead of having a bill to shoot at right away and everybody tearing it down, we are working together to put information together. From what I have seen, many of us are singing the same tune here, from industry and from government. That is important. We are able to see, by handling it this way how much we have in common and how much interest everyone has in making sure that this process is one where consumers and dealers and others can see the history of that vehicle and make an informed choice, so the marketplace can work properly.

That is really my final point. It is key that the marketplace work well because our laws, our consumer protection laws, are designed not just to protect consumers, but to ensure that the marketplace operates fairly. In order for it to operate fairly, consumers need the information, as do others, to make informed choices so that the true value of that vehicle is reflected in what people pay.

Thank you, Senator.

[The prepared statement of Mr. Brauch follows:]

PREPARED STATEMENT OF WILLIAM L. BRAUCH, SPECIAL ASSISTANT ATTORNEY GENERAL/DIRECTOR, CONSUMER PROTECTION DIVISION, IOWA ATTORNEY GENERAL'S OFFICE

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 1970s and 1980s 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 percent 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 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,

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.

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.

after nearly 15 years of trying, only about half the states are currently submitting data and consumers still do not have access to it.

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 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.

⁵ 49 U.S.C. section 30504(b).

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 percent of retail value, but permit states to adopt a more expansive standard, for example, 50 percent 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 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

⁶49 U.S.C. sections 32701–32711, more formerly titled the Motor Vehicle Information and Costs Savings Act.

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.

Senator PRYOR. Thank you very much. By the way, I am a big fan of your boss. We served together as attorney general. He is fantastic.

Ms. Chappell.

**STATEMENT OF KAREN CHAPPELL, DEPUTY COMMISSIONER,
VIRGINIA DEPARTMENT OF MOTOR VEHICLES; ON BEHALF
OF THE AMERICAN ASSOCIATION OF MOTOR VEHICLE
ADMINISTRATORS**

Ms. CHAPPELL. Thank you, Senator. I am the Deputy Commissioner of the Virginia Department of Motor Vehicles, but today I am speaking on behalf of the American Association of Motor Vehicle Administrators, or AAMVA.

I would like to thank you for the opportunity to discuss two solutions that AAMVA and the State departments of motor vehicles believe will help protect consumers from motor vehicle fraud: first, increased participation in the federally-mandated National Motor Ve-

hicle Title Information System, or NMVTIS; and second, uniform salvage branding legislation.

Congress recognized the consumer value in a system like NMVTIS and in 1992 passed the Anti-Car Theft Act. This Act directed the States to begin the development and the rollout of a national online real-time motor vehicle title history system. A 2001 cost benefit analysis commissioned by the Justice Department indicated that once fully implemented nationwide, NMVTIS has the potential to save consumers from \$4 to \$11.3 billion annually.

When Senator Allen was Governor of Virginia, the Commonwealth became one of the first states to join NMVTIS. Because of that progressive step, Virginians began to realize consumer benefits such as the reduction in brand washing, the ability to carry forward brands from other states that did not appear on the paper title that we were presented, and the detection of stolen motor vehicles.

States participating in NMVTIS today can detect fraudulent titles by verifying the paper title data against what is on the electronic record, identify odometer rollbacks by verifying odometer readings, determine if a vehicle is stolen, and view the brand history and carry forward all state brands.

Although this system is built, some components that Congress stipulated are still not realized, for instance the provision of title history reporting by insurance companies and junk and salvage yards into NMVTIS. This function is critical in noting where insurance claims have been paid on vehicles that have been deemed salvaged, not repairable, or flooded. If reported directly to the system, this vehicle history would be available to participating DMVs as well as to consumers in a timely manner. But due to a lack of funding, today NMVTIS represents 52 percent of the vehicle population in the United States.

Until the objectives set by Congress in the Anti-Car Theft Act are fully realized and every state is online and sharing vehicle history data with each other, the consumer will not have the information they need to make informed purchase decisions.

Also, consumers need consistency in how each state defines all vehicle brands, including salvage, nonrepairable, and flood. Criminals can exploit this loophole and vehicle brands get lost or washed with an outdated paper title. Lack of consistency in branding definitions leaves the consumer at a major disadvantage when purchasing a new or used vehicle.

AAMVA has supported a number of efforts to help establish national salvage branding legislation, but to date none have been successful. In the absence of Federal legislation, many states have enacted additional laws or strengthened existing laws governing the titling, or branding of salvage vehicles, and in addition, those State DMVs that participate in NMVTIS have a useful tool that helps compensate for the lack of uniform salvage branding requirements.

State DMVs and AAMVA are doing their part to protect consumers and we ask that you help us to do more to ensure consumers have complete protection from motor vehicle fraud.

I would like to thank you for this opportunity to share our members' concerns and welcome any questions you may have.

[The prepared statement of Ms. Chappell follows:]

PREPARED STATEMENT OF KAREN CHAPPELL, DEPUTY COMMISSIONER, VIRGINIA
DEPARTMENT OF MOTOR VEHICLES; ON BEHALF OF AMERICAN ASSOCIATION OF
MOTOR VEHICLE ADMINISTRATORS

Good afternoon, Mr. Chairman and distinguished members of the Committee. I am Karen Chappell, Deputy Commissioner of the Virginia Department of Motor Vehicles and today I am speaking on behalf of the American Association of Motor Vehicle Administrators (AAMVA).

AAMVA Background

Founded in 1933, AAMVA is a state-based, nonprofit association representing motor vehicle agency administrators, senior law enforcement officials, and the industry in the United States and Canada. Our members are the recognized experts who administer the laws governing motor vehicle operation, driver credentialing, and highway safety enforcement. AAMVA plays an integral role in the development, deployment and monitoring of both the commercial driver's license (CDL) and motor carrier safety programs. The Association's members are responsible for administering these programs at the state and provincial levels. As a non-regulatory organization, AAMVA uses motor vehicle expertise to develop standards, specifications and best practices to foster the enhancement of driver licensing administration and vehicle titling and registration.

Consumer Concerns

AAMVA and its members place the concerns of consumers first. AAMVA has long realized the potential danger motor vehicle title fraud presents and has worked to combat the problem for years. Motor vehicle fraud costs consumers billions of dollars a year with life-threatening consequences. It endangers human life by putting unsafe vehicles back onto our roads. Title fraud dupes hard-working consumers into buying vehicles that look good on paper, but are not safe and reliable. Perhaps the most important issue concerning title fraud is the adverse effect it has on the consumer. For instance:

- In 2003, over 450,000 cases of odometer fraud cost consumers more than \$1 billion.
- Roughly 50,000 to 100,000 vehicles have had their Vehicle Identification Numbers (VINs) stolen or cloned. Consumers won't realize this until after the vehicles have been purchased or their numbers have been duplicated.
- Each year 200,000 stolen vehicles are shipped overseas where law enforcement organizations believe they are being used or resold to fund terrorist activities.
- Each year, 1.5 million motor vehicles are reported stolen at an average cost of \$5,000 per vehicle, amounting to total costs of \$8 billion.
- Over 30,000 vehicles were flood-damaged after Hurricane Floyd ravaged eastern North Carolina in 1999. An untold number of these vehicles were destined to be resold to the unsuspecting consumer.
- Most recently, the hurricanes that battered the Gulf Coast region caused flood damage to an estimated 500,000 motor vehicles. Unfortunately, many of these vehicles will be resold to unsuspecting consumers.

Addressing the Concerns

I would like to discuss two solutions that AAMVA, and the state Departments of Motor Vehicles, believe will help protect consumers from motor vehicle fraud: increased state participation in the federally-mandated National Motor Vehicle Title Information System or NMVTIS and uniform salvage branding legislation.

Congress recognized the consumer value in a system like NMVTIS, and passed the Anti-Car Theft Act in 1992. To comply with this Act the states began the development and roll-out of this national online, real-time motor vehicle title history system.

The Anti-Car Theft Act also directed the Secretary of Transportation to establish the Motor Vehicle Titling, Registration and Salvage Advisory Committee to study problems which relate to motor vehicle titling, vehicle registration, and controls over motor vehicle salvage which may affect the motor vehicle theft problem. The Advisory Committee, which included motor vehicle administrators and other stakeholders, developed recommendations in 1994 which AAMVA continues to support. While AAMVA realizes that a number of efforts to establish national standards have been unsuccessfully attempted, the Association feels that NMVTIS helps alleviate some of the concerns this lack of uniformity presents. While national standards for title branding at the time the Advisory Committee was established were of paramount importance, years later, the capability of NMVTIS to communicate a vehicle's

title history between jurisdictions helps mitigate the need for identical matches on brands among jurisdictions.

The importance of NMVTIS as a reporting mechanism can best be illustrated by the fact that a 2001 Justice Department cost-benefit analysis indicated that, once fully implemented nationwide, NMVTIS has the potential to save consumers from \$4 to \$11.3 billion annually.

A pilot evaluation report of NMVTIS conducted by AAMVA in 1999 further indicates that:

- NMVTIS can be used to instantly and reliably verify information on the previous state's title document prior to issuing a new title. During the pilot period, data verification occurred 97 percent of the time within the performance requirement of 7 seconds.
- NMVTIS deters fraud by reducing the occurrence of title washing. Brands are washed from titles when the state that issues the new title does not carry forward a brand issued by some previous state. Since NMVTIS maintains brands on a central file, they are available to any inquirer and are never washed from titles. Using data from the pilot, NMVTIS could prevent approximately 57,000 titles from being washed per year.
- NMVTIS reduces the issuance of stolen titles to stolen vehicles. Many state DMVs do not conduct NCIC checks prior to vehicle titling. Pilot data show that use of NMVTIS could effect a cost avoidance of almost \$214 million per year in insurance payoffs on stolen vehicles.
- Law enforcement officials believe that NMVTIS provides significant value as well. Law enforcement agencies, such as auto theft task forces, can use NMVTIS to investigate thefts and recover vehicles. AAMVA is also analyzing possible enhancements to NMVTIS, such as inclusion of export data, which will provide even more assistance to auto theft investigators.

Senator Allen, when you were Governor, the Commonwealth became one of the first states to join NMVTIS. And because of that progressive step, Virginians began to realize such consumer benefits as a reduction in brand washing, the ability to carry forward brands that did not appear on the paper title and the detection of stolen motor vehicles.

States participating in the system today:

- detect fraudulent titles by verifying paper title data against electronic records,
- identify odometer rollbacks by verifying odometer readings,
- determine if a vehicle is stolen, and
- view the brand history and carry forward all state brands.

Although this system is built, some components that Congress stipulated are still not realized; specifically, these include the provision of data by insurance companies and junk and salvage yards into NMVTIS. This function is critical in noting where insurance claims have been paid on vehicles deemed salvage, total loss or flooded. If reported directly to the system, this vehicle condition would be available to participating DMVs, as well as consumers, in a timely manner, preventing them from becoming victims of inaccurate or untimely title information. If this reporting mechanism had been in place before hurricanes struck the Gulf, the concerns about the current situation would not be as great.

But due to lack of Federal funding, today NMVTIS represents 52 percent of the vehicle population in the United States. Until the objectives, set by Congress in the Anti-Car Theft Act, are fully realized and every state is online and sharing vehicle title history data with each other, consumers will not have the up-to-date information they need to make informed purchase decisions.

Also, consumers need to know how each state defines *all* vehicle brands, including: salvage, junk and flood. Criminals can exploit the loophole created by an absence of standardized vehicle brands. In addition, vehicle brands get lost, or washed, when outdated paper titles are used to create new titles. Lack of consistency in branding definitions leaves the consumer at a major disadvantage when purchasing a new or used motor vehicle.

AAMVA has supported a number of efforts to help establish national salvage branding legislation. But to date, none have been successful. In the absence of Federal legislation, many states have enacted additional laws or strengthened existing laws governing the titling or branding of salvaged motor vehicles. In addition, state DMVs participating in NMVTIS have a useful tool that helps compensate for the lack of uniform salvage branding legislation.

AAMVA also works to help DMV employees more quickly and accurately spot fake titles by continuing to advance its Vehicle Document Examiner Certification Program (VDEC). This program provides instruction on:

- Fraud prevention and employee responsibility,
- How to effectively examine features of vehicle documents,
- Alteration and counterfeit detection techniques,
- Basic interviewing techniques used in customer service, and
- Recognition of jurisdictional policies and procedures.

This national training program increases vigilance for fraudulent documents among title examiners as well as educating them about statutes, policies and procedures. The VDEC program provides better service and security in state DMVs and will deter fraudulent enterprises.

State DMVs and AAMVA are doing their part to help protect consumers from motor vehicle fraud. Please help us do more to ensure consumers have better protection from motor vehicle fraud.

Mr. Chairman, thank you for the opportunity to share our members' concerns. AAMVA applauds your efforts in addressing the issue of motor vehicle title fraud and feels strongly that with the support of Congress, the solution is well within reach.

I welcome your questions.

Senator PRYOR. Thank you very, very much.

I know the Chairman does not want to take any recesses, but we are about 5 minutes past due on this vote, so let me do this. Let me just take a very brief recess. Hopefully, it will be less than a minute because he will walk in. Let me race down and vote and then come right back. So if you do not mind, just hold tight for a couple of minutes here until Senator Allen gets back. Thank you. I will be back.

[Recess from 2:54 p.m. to 2:56 p.m.]

Senator ALLEN [presiding]. I call the Subcommittee back to order. I ran into Senator Pryor on the elevator in passing. We are going to have 10-minute votes, which is going to make this really, really difficult, but it should not be too much.

As I understand it, Mr. Brauch and Ms. Chappell have testified. Mr. Bryant, you have not started.

**STATEMENT OF ROBERT M. BRYANT, PRESIDENT/CEO,
NATIONAL INSURANCE CRIME BUREAU**

Mr. BRYANT. That is correct.

Senator ALLEN. OK. Well, we would now like to hear from you, Mr. Bryant.

Mr. BRYANT. I am delighted. Good afternoon, Chairman Allen. My name is Bob Bryant and for the last 6 years I have been President and Chief Executive Officer of the National Insurance Crime Bureau. Prior to this position I was a Special Agent with the Federal Bureau of Investigation, retiring as Deputy Director in 1999.

NICB was created in 1912 and is the Nation's premier nonprofit organization dedicated exclusively to fighting insurance fraud and vehicle theft, crimes that impose about \$30 billion annually in losses to the property and casualty industry and the American public and the policyholders. Our more than 350 employees strive every day to prevent and detect such crimes as car theft and fraudulent sale of damaged vehicles to the American consumer. With the support of more than 1,000 member insurers and self-insured companies, NICB offers the most complete array of expert fraud solu-

tions from any single source in the world, including investigating all types of property and casualty insurance fraud.

It is within this context that salvage and flooded vehicles present an economic and safety concern for the Nation's consumers. The entire problem with salvage and flooded vehicle fraud can be condensed into two words: title disclosure. Disclosing the condition of a vehicle as salvage or flood-damaged is all that is necessary to defeat this problem. However, there is a vast amount of money to be made by selling these vehicles to unsuspecting consumers.

For example, let us take a 2004 Chevy Tahoe that has a resale value of \$28,000. If that same vehicle was damaged in the floods of Hurricane Katrina, it might now be worth only around \$5,000 as salvage. If you take that same Tahoe and spend \$3,000 to detail it and remove any obvious signs of water damage, you may be able to sell it for close to \$28,000. In one transaction, you have made a net gain of \$20,000. If you multiply that by the potential given by the thousands of vehicles affected by Hurricanes Katrina, Rita, and Wilma, including recent floods in the Northeast, you can quickly appreciate what makes this fraud so pervasive and enticing.

However, beyond the gain to the perpetrator and the criminal, is the economic and personal harm to innocent people. While stealing a vehicle requires a certain amount of stealth, daring, and knowledge, passing it off as a clean resale is an art form. People who traffic in stolen vehicles know what it takes to obtain a clean title and how to produce counterfeit vehicle identification numbers, or VIN. These two items are the core of the problem with salvage, flood-damaged vehicles, and stolen vehicle traffic.

A title to a vehicle is its birth certificate, while its VIN is its fingerprint. When a new vehicle is sold by a dealer, the state issues a title. That title follows the vehicle from owner to owner, state to state. The VIN remains with the vehicle forever. Each VIN is unique to the vehicle to which it was issued by the manufacturer, but both these items are fraudulently duplicated, altered, or otherwise manipulated to enable the fraudulent resale of defective or stolen vehicles.

In a perfect scenario, once a vehicle is declared salvaged or flood-damaged and the title is branded as such, that description should never be removed. However, there are states where the titling process does not pick this up, and many times a clean or new title is issued for such vehicles, and sometimes it is a simple procedure. That process is known as "title washing" and it occurs by simply taking a branded title through a state with lax titling requirements and having a clean title issued in return. A clean title is the "Holy Grail" for those who make a living selling defective or damaged vehicles to innocent people.

One other area I would like to add is on cloning. In addition to salvage and flooded vehicle fraud, cloning is a trend that NICEB finds with increasing regularity.

[Bell rings.]

Mr. BRYANT. Is my time up?

Senator ALLEN. Keep going.

Mr. BRYANT. OK.

Senator ALLEN. No, that is not for you.

Mr. BRYANT. That is for you, right?

[Laughter.]

Mr. BRYANT. I am glad I do not have to vote.

Cloning is the auto theft of the new millennium. Unlike VIN switching, where a person applies a VIN plate from one vehicle, usually a salvage vehicle, to another, usually a stolen one, cloning occurs when a person applies a counterfeit VIN from another vehicle to an identical stolen vehicle. Thus, there are two vehicles carrying the same vehicle identification number.

We see many cases where we have five vehicles registered in five different states, all with the same vehicle identification number, and this is really an increasing issue we see all the time.

I guess the one thing I would just say, certainly more important than preventing economic losses resulting from these types of flood potential, are serious injury or death due to mechanical failure of flood-damaged vehicles. Every flood-damaged or salvage vehicle that is fraudulently sold to an unsuspecting buyer is a potential coffin-on-wheels for that person and their family. A vehicle that has been under water for any period of time is bound to experience severe electrical and mechanical difficulties. It is only a matter of time before that vehicle is liable to fail.

NICB and our member companies and law enforcement recognize the unprecedented magnitude of the flood-damaged vehicles that the recent hurricanes brought about. Along with the flooding that resulted from the levee failures around New Orleans, the number of flood-damaged vehicles were estimated at between 300,000 and 500,000. We acted quickly to try to get in front of the fraud that these numbers would surely bring. With the total support of our member companies and working side-by-side with law enforcement professionals in Alabama, Louisiana, Mississippi, and Texas, NICB sent teams of special agents into the region to begin collecting the vehicle identification numbers for the creation of a database storing all of the vehicles damaged by the hurricanes or floods.

It was not long after this process that we decided to offer a way for consumers to query this database at no cost to prevent them from buying a lemon. On October 17, this feature was activated on our website, *nicb.org*. Presently a consumer can simply place a vehicle identification number in the search feature and see if that specific vehicle was affected by the storms.

The Katrina database has proved to be a very popular feature with our colleagues in the industry, law enforcement, consumer groups, and the media. As of today, it has been linked through the websites of several states to allow direct access. My principal concern is that I do not want anyone buying one of these cars if it is going to harm them.

The recommendation is that loopholes in State titling procedures have been apparent for decades. As we confront the challenges posed by this season's hurricanes, the need for Federal action is beyond urgent. First, if insurers or other owners terminate a vehicle's title, it should not be re-issued. As long as a single state is willing to re-title a non-repairable vehicle, then plates will be bought or reproduced, and slapped on the stolen or salvaged vehicles.

Second, where vehicles can be restored to safe operating condition, any brand indicating that a vehicle is a salvage or flooded ve-

hicle should be carried forward in any title record. Consumers can then make choices.

Finally, all crucial vehicle titling information should be electronically available, not only to law enforcement, but to every insurer and consumer.

Thank you, Senator.

[The prepared statement of Mr. Bryant follows:]

PREPARED STATEMENT OF ROBERT M. BRYANT, PRESIDENT/CEO,
NATIONAL INSURANCE CRIME BUREAU

Good afternoon Chairman Allen, Ranking Member Pryor, and distinguished members of the Subcommittee. My name is Bob Bryant, and for the last six years, I have been President and Chief Executive Officer of the National Insurance Crime Bureau. Prior to this position, I was a Special Agent of the Federal Bureau of Investigation, retiring as Deputy Director in 1999.

The National Insurance Crime Bureau (NICB) was created in 1912, and is the nation's premiere nonprofit organization dedicated exclusively to fighting insurance fraud and vehicle theft; crimes that impose more than \$30 billion annually in losses to insurance companies and their policyholders. Our more than three hundred employees strive every day to prevent, detect and deter such crimes as car theft and the fraudulent sale of damaged vehicles to American consumers. With support from more than one thousand member insurers and self-insured companies, NICB offers the most complete array of expert fraud solutions from any single source in the world, including investigating all kinds of property and casualty insurance fraud.

It is within this context that salvage and flood vehicles present an economic and safety concern for the nation's consumers. The entire problem with salvage and flood vehicle fraud can be condensed into one word—"disclosure." Disclosing the condition of a vehicle as salvage or flood-damaged is all that is necessary to defeat this problem. However, there is a vast amount of money to be made by selling these vehicles to unsuspecting consumers.

For example, let's say a 2004 Chevy Tahoe has a resale value today of \$28,000. If that same vehicle was under water in New Orleans, it might now be worth only \$5,000 as salvage. If you take that same Tahoe and spend \$3,000 to detail it and remove any obvious signs of water damage, you may be able to sell it close to its \$28,000 value. In one transaction, you have a net gain of \$20,000. If you multiply that activity by the potential given the thousands of vehicles affected by Hurricanes Katrina, Rita, and Wilma, including the recent floods in the Northeast, you can quickly appreciate what makes this kind of fraud so pervasive and enticing. However, beyond the pure gain to the perpetrator of this kind of fraud is the economic cost to innocent people.

A person engaging in this kind of activity is not going to obtain replacement parts from a legitimate supplier. More than likely, the source of parts required to make salvage or flood vehicles appear pristine is a stolen identical vehicle.

While stealing a vehicle requires a certain amount of stealth, daring, and knowledge, passing it off as a clean resale is an art form. People who traffic in stolen vehicles know what it takes to obtain a clean title and how to produce a counterfeit vehicle identification number or VIN. Those two items are at the core of the problem with salvaged, flood-damaged, and stolen vehicle trafficking.

Title Washing

A title is a vehicle's birth certificate, while a VIN is its fingerprint. When a new vehicle is first sold by a dealer, the state issues a title. That title follows the vehicle from owner to owner, state to state. The VIN remains with a vehicle forever. Each VIN is unique to the vehicle to which it was issued by the manufacturer, but both of these items are fraudulently duplicated, altered, or otherwise manipulated to enable the fraudulent resale of defective or stolen vehicles.

In a perfect scenario, once a vehicle is declared salvage or flood-damaged and its title "branded" as such, that description should never be removed. However, there are states where the titling process is lax that having a new, clean title issued for such vehicles is a simple procedure. That is the process known as "title washing," and it occurs by simply taking a branded title through a state with lax titling requirements, and having a clean title issued in return. A clean title is the Holy Grail for those who make a living selling defective or damaged vehicles to innocent consumers because once you have that clean title, there is nothing to prevent selling that vehicle for market value as a perfectly fine used vehicle.

Cloning

In addition to salvage and flood vehicle fraud, cloning is a trend that NICB finds with increasing regularity. Cloning is auto theft for the new millennium. Unlike VIN switching, where a person applies a VIN plate from one vehicle (usually a salvaged vehicle) to another (usually a stolen one), cloning occurs when a person applies a counterfeit VIN from another vehicle to an identical stolen vehicle. Thus, there are two vehicles carrying the same VIN. NICB has investigated situations involving five vehicles—all with the same VIN—meaning that four of them were stolen.

Consumer/Public Safety

Certainly more important than preventing economic losses resulting from these kinds of fraud is preventing potential serious injuries or even death, due to mechanical failure of a flood-damaged vehicle.

Every flood-damaged or salvaged vehicle that is fraudulently sold to an unsuspecting buyer is a potential coffin on wheels for that person and their family. A vehicle that has been under water for any period of time is bound to experience severe electrical and mechanical failures. It is only a matter of time, and should that failure occur while on the interstate, well you can imagine the terrible consequences.

Similarly, a salvaged vehicle made whole for fraudulent resale is not likely to sport original equipment manufacturer replacement parts, or even new after-market parts, as the motive for these people is profit (not safety) and there is less profit in using good parts. Thus, that salvage resale has a high potential for mechanical or electrical failure, and should that occur at high speed on an interstate, the consequences are grim.

NICB Katrina Database

NICB, our member insurance companies, and law enforcement recognized the unprecedented magnitude of flood-damaged vehicles that Hurricanes Katrina, Rita and, more recently, Wilma left in their paths. Along with the flooding that resulted from the levee failures around New Orleans, the number of flood-damaged vehicles was estimated to be between 300,000 to 500,000.

NICB acted quickly to try and get in front of the fraud that these numbers would surely bring. With the total support of our member companies and working side-by-side with law enforcement professionals in Alabama, Louisiana, Mississippi and Texas, NICB sent teams of Special Agents into the region to begin collecting VINs for the creation of a database storing all of the vehicles damaged by the hurricanes or floods.

It was not long after this process began that I decided to offer a way for consumers to query this database—at no cost—to prevent them from buying a lemon. On October 17, this feature was activated on our website www.nicb.org. Presently, a consumer can simply place a VIN into the search feature and see if that specific vehicle was affected by these storms.

The Katrina Database has proved to be a very popular feature with our colleagues in the industry, law enforcement, consumer groups, the media and the states. As of today, several states have linked their websites with ours to allow their residents direct access.

Recommendations

The loopholes in state titling procedures have been apparent for decades. As we confront the challenges imposed by this season's hurricanes, the need for Federal action is beyond urgent. Our efforts and the efforts of those engaged in the fight against fraud would be far more effective if Congress would assure the following improvements.

First, if insurers or other owners terminate a vehicle's title, it should not be re-issued. As long as a single state is willing to re-title a non-repairable vehicle, VIN plates will get bought or reproduced, and slapped onto stolen or salvaged vehicles, and rebuilt wrecks will endanger the lives of everyone on the highway.

Second, where vehicles can be restored to safe operating condition, any brand indicating that a vehicle was a salvage or flood vehicle should carry forward to any new title record. Consumers then can make intelligent choices about the value of that vehicle, and thieves cannot use the titling records for those vehicles in their illegal operations.

Finally, all of the crucial vehicle titling information should be electronically available not only to law enforcement, but to every insurer and consumer.

We look forward to working with the Committee in our joint efforts to keep Hurricane Katrina and other disasters from haunting American car buyers for years to come. Thank you.

Senator ALLEN. Thank you, Mr. Bryant. We appreciate your testimony.

We would like to hear from Ms. Shahan.

**STATEMENT OF ROSEMARY SHAHAN, PRESIDENT,
CONSUMERS FOR AUTO RELIABILITY AND SAFETY**

Ms. SHAHAN. Thank you, Mr. Chairman. I am Rosemary Shahan, President of Consumers for Auto Reliability and Safety, which is a nonprofit consumer group based in Sacramento. Since 1979, I have worked on behalf of consumers on the State and Federal level, and I really appreciate your and the Committee's interest in working with everyone to help protect consumers from flooded and salvage fraud.

I think everyone agrees that there is a problem, that we need some Federal assistance to address it. I would like to enter into the record, if I could, this article. It is a report from the 2002 January issue of *Consumer Reports* magazine and it has—

Senator ALLEN. It will be entered in the record. By the way, I do not know if Senator Pryor said. All of you, to the extent you may summarize your statements, your full statements will be put in the record, as well, of course any documentation that any of you so desire.

[The information referred to follows:]

Consumer Reports, January 2002

WRECKS IN DISGUISE

When a car or truck has been so badly damaged in an accident that an insurance company declares it a total loss, it usually means the labor and parts required for proper repair would cost too much, given the vehicle's worth. You might think that would put severely damaged vehicles on a one-way trip to the junkyard for parts or scrap.

Instead, hundreds of thousands of these wrecks make a U-turn each year and get right back on the road. One big reason: Insurance companies, which own the piles of twisted metal after they pay off a total-loss claim, have discovered they can get more bucks for the bang-ups if they sell the wrecks at salvage auctions. The practice has fostered a thriving industry that rebuilds severely damaged vehicles—craftily enough to hide their traumatic pasts yet cheaply enough to turn a sizable profit.

Some of the new breed of rebuilders are refugees from criminal pursuits, says Bill Brauch, director of the consumer-protection division of the Iowa attorney general's office. "Instead of rolling back odometers, people who wanted to defraud consumers turned to rebuilding damaged cars whose history could be concealed," he says.

This shadow auto industry now annually beats, bends, and bangs out as many as 400,000 rebuilt wrecks that are five or fewer model-years old, *Consumer Reports* estimates; no authority keeps track of the total. That represents 3 percent of the 13 million used vehicles sold in that model-year group in 2001. But the number looms large, because rebuilt wrecks, like all used vehicles, are not subject to Federal safety standards.

Insurers say that as much as they disdain shoddy rebuilding, they cannot stop it. "Once we sell the vehicle to a salvage yard, there's very little we can do to influence the process," says Mary Beth McDade, a spokeswoman for Progressive Insurance, the nation's fourth largest auto insurer.

The Highway Loss Data Institute (HLDI), a leading highway-safety institute funded by the insurance industry, and several other data providers hold key information that could help reveal the scope of the problem. But industry officials say they cannot release their data, citing confidentiality concerns and contractual prohibitions. As a result, the full extent of this murky enterprise is largely unknown.

But according to a *Consumer Reports* study using data from the National Highway Traffic Safety Administration (NHTSA) and the database of Carfax, a company that sells vehicle history reports to consumers and businesses, 20 percent of vehicles that were damaged severely enough to be “totaled”—that is, labeled by an insurer as not worth repairing—after fatal accidents in the U.S. from 1993 through 1999 were rebuilt, reregistered, and put right back on the road.

Our six-month investigation also found the following:

- There’s no way for consumers to know for sure the history of a used vehicle. States have widely differing laws concerning rebuilding practices and damage disclosure, and critical oversight is lacking in most states. It’s not uncommon for rebuilt wrecks to hopscotch from state to state, receiving new titles “washed” of any hint of past problems.
- Overall, 30 percent of vehicles that had been totaled after a fatal accident and then put back on the road with a title that disclosed the damage had that disclosure subsequently removed, our study found.
- Wrecked cars can be rebuilt safely, experts say. But there are strong financial incentives to cut corners. Consumers should especially steer clear of newer-model vehicles that have been totaled and rebuilt, unless a trusted mechanic can vouch for the repairs. The damage is usually severe, which can encourage rebuilders to skimp on repairs to make a profit.

This report tells you the best way to identify such vehicles before you buy a used car and what to do if, after reading this, you think you may own one.

Flawed Disclosure

Used-car buyers have always had to be wary of unscrupulous individuals fobbing off a “cream puff” previously creamed in an accident. In all states except Wyoming and the District of Columbia, the used car’s certificate of title is supposed to tell about severe accident damage. But title disclosure is incomplete. For starters, accident disclosure is required only if damage exceeds typically 70 percent or more of the vehicle’s pre-accident book value or the insurer declares the vehicle a total loss. Lesser damage is not disclosed on the title.

In most cases, when an insurance company declares a total loss, it pays off the policyholder’s claim and takes title to the vehicle. Often, the insurer must then apply for a different type of title for that vehicle, one generically known as “salvage,” though different states use other designations, including “junk,” “unrebuildable,” “scrap,” and “parts only.” Whatever it’s called, a salvage title’s key distinction is that it declares the wreck not worth repairing, as far as the insurer is concerned, and doesn’t allow the vehicle to be operated on public roads.

At this point, the wreck itself usually sits at a salvage auction company, which often obtains the salvage title and handles other paperwork as agent for the insurer. Three national chains, ADESA Impact, Copart, and Insurance Auto Auctions, sell insurance salvage vehicles almost exclusively at auctions throughout the country and handle about half of the estimated 2.5 million vehicles totaled each year. (Other auction chains sell unwrecked fleet, auto-rental company, and off-lease vehicles.)

From here, the car or truck might be sold to a dismantler for parts, a scrap processor, or a rebuilder or used-car dealer who works with a rebuilder to put the vehicle back together. In any event, the salvage title is transferred from the insurer to the buyer. If the wreck is rebuilt, it must regain a type of title that allows it to again operate on public roads. That’s almost easier done than said because the majority of states require no special inspection of rebuilt wrecks. When inspection is required, it’s often cursory, industry experts say.

Consider this red-letter warning on California salvage titles: “The vehicle described herein has been declared a total loss salvage vehicle” and “may not be registered without a brake and light inspection.” The title says nothing, for example, about the frame, suspension, or air bags.

When a new title is issued for a rebuilt wreck, disclosure about prior damage leaves much to be desired. Every state uses different designations and methods of notice. Among the worst: Colorado, which alerts consumers that the vehicle was rebuilt with an “R” on the title in front of the vehicle’s identified “make,” in same-size type. Among the best: Washington state, which requires “WA REBUILT” in big letters running diagonally across the title.

The lack of uniform titling is made worse by the fact that states can’t easily share information with one another. The National Motor Vehicle Title Information System, a computerized database designed to connect all state motor vehicle departments, may alleviate the problem, but it has been bogged down in development and may not be fully operational for several years.

Do the Math

Salvage disclosure leaves another mark on a vehicle: It diminishes book value—even if the car or truck is rebuilt as good as new.

Say you have a choice between two used cars, which you know are identical except for this: Car #1 had been totaled and rebuilt; Car #2 was never so much as dinged by a shopping cart. Which would you want?

Of course you'd prefer Car #2, because Car #1 comes with the uncertainty of hidden damage. If the title does not divulge the accident, Car #1 can be sold for its regular book value. But if the damage becomes known, book value diminishes dramatically. "At best, a vehicle that's had a salvage title would be worth half its Blue Book value, even after repair," says Charlie Vogelheim, executive editor of Kelley Blue Book, a leading publisher of used-car prices.

That's because the market of potential buyers shrinks to only those willing to buy uncertain quality. And for that gamble, informed buyers demand a steep discount.

But that puts a squeeze on rebuilders. If you rebuild a total-loss vehicle by the book—with salvage titling, repairs that might be specified by an insurer, full disclosure to the consumer, and a sale price based on the diminished book value—you'd be hard-pressed to make a profit.

Consider an extended-cab 1993 Chevrolet K1500 pickup we found in Florida. It had a book value of \$18,150 as of March 8, 1995. That was just before it sustained more than \$14,520 in damage in a fatal rollover on Interstate 4 near Tampa, according to the application for salvage title filed by Progressive Insurance. With a salvage title, the book value of the rebuilt pickup drops to \$9,075.

So how could a rebuilder afford to spend several thousand dollars to buy the wreck, plus \$14,520 more that Progressive certified it needed in repairs? Even if the rebuilder's labor costs were far lower than Progressive estimated, there would be little room for a profit.

The Chevy pickup was rebuilt. We tracked it to Kentucky, where it was sold for \$16,775, records show. More on that later.

The Safety Threat

Rebuilders have been around for as long as there have been car accidents. And many do high-quality work. Some use their mechanical know-how to create labor-of-love bargains for family and friends. Collision repair shops often keep a rebuild project on premises to occupy employees during slack times. And car buffs like Bill Plain—"Plain Old Bill" to folks around Ocala, Fla.—save money on the cost of parts by specializing in one favorite model; Plain rebuilds pre-1992 Mazdas.

But a different group of rebuilders elbowed their way into salvage auction yards in the 1990s. These rebuilders were on the prowl for quick, high profits.

"Backyarders," as they are called, often have neither the expertise nor the equipment to do the job right. "They'll take the car to their backyard, tie it to two trees, and pull out the frame that way," says George Menchen, a rebuilder and retired collision-repair-shop owner from Santa Rosa, Calif.

Supply is no problem, since insurers realized they can make far more money selling wrecks at auto auctions than to junkyards. "State Farm has always tried to recover as much as we can from salvage," says Dave Hurst, spokesman for State Farm, the Nation's largest insurer. Kim Hazelbaker, senior vice president at HLDI, the insurance-industry research group, says insurers have been intent on extracting more dollars from wrecks in recent years because of thin industry profits. "They're trying to lower costs; one way to do that is to reclaim significant value from salvage vehicles," Hazelbaker says.

According to a 1997 HLDI study, insurers recovered \$2,756 on average per totaled 1995-97 model-year car or passenger van sold as salvage, or 18 percent of what they paid out in total-loss claims for those vehicles. And they received \$4,293 per totaled pickup, sport-utility vehicle, or large van. That's 23 percent of total-loss claim payouts for those vehicles. Those prices were for one- and two-year-old, low-mileage vehicles, the cream of the rebuilding crop. Many more older cars and trucks—more than five years old—are totaled and salvaged, too, but their high mileage, age, and lower book value make them less attractive for rebuilding. By contrast, insurers are paid only a few hundred dollars to a thousand dollars or so for parts-only vehicles and maybe \$50 for those destined for the scrap shredder.

We estimate that insurers recover about \$1 billion a year from the salvage sale of wrecks five or fewer model-years old and \$2.5 billion annually from wrecks of all ages, based on information from State Farm; analysts at A.M. Best, which rates the financial soundness of insurance companies; and ADESA Corp., owner of the third-largest salvage auction chain.

Are rebuilt wrecks safe?

“It is possible to make repairs to a vehicle that had been involved in a severe crash in such a way that the resulting vehicle has a structure that is similar to an uncrashed vehicle,” says Bob Lange, executive director for safety integration at General Motors. “But if it’s not properly repaired, the safety performance of the original product could be compromised.”

To understand how easily safety can be shortchanged, you have to consider new-car design and development. Today’s unibody vehicles are engineered as a single crash-protection unit. All individual components are aligned to work together to one end: Dissipate the fantastic crash energy created when 3,000 to 5,000 pounds of machinery rapidly decelerates from 55, 35, or 20 mph to zero so that the people inside can safely “ride down” the same deceleration with minimal injury.

New vehicles must comply with Federal safety standards. To test and refine their design, automakers conduct up to 100 crashes using 50 or more prototypes that cost \$300,000 to \$800,000 each.

By contrast, the rebuilding industry is subject to almost none of that rigor.

Cutting Corners

If rebuilders replace all damaged parts, the level of safety should be the same, because the repairer would be simply replicating the original safety engineering. That, however, can be expensive, so even reputable mechanics take shortcuts. Experienced hands can do that without shortchanging safety. The problem comes when such repairs are made by rebuilders out to make a fast buck. By so doing, they can create a vehicle very different from the one Detroit intensively tested.

Potential problem areas include:

Sectioning. Instead of replacing a damaged critical structural component with a new one, rebuilders cut out only the damaged section and splice in a new piece. This procedure has the blessing of automakers and of the Allstate subsidiary Tech-Cor, a repair facility that develops “cost-effective repair procedures,” according to a company bulletin, and shows anyone with a computer and Internet access how to do it.

But a Tech-Cor bulletin warns that sectioning must be performed only by a properly-trained technician, requires the use of accepted procedures, and must maintain the vehicle’s “original energy management characteristics intact to ensure the proper functioning of passenger safety devices.”

“We regularly conduct rigorous testing procedures, including crash tests, to validate the effectiveness of replacement procedures,” Jack Ribbens, Tech-Cor’s engineering manager, wrote in an e-mail exchange with *Consumer Reports*. When asked for details, and for comment on the issue of untrained rebuilders using such techniques, Allstate and Tech-Cor declined to be interviewed.

Bending, banging, cutting, welding. Pry bars, hammers, and welding torches provide cheaper fixes than replacement with a whole new part. The problem is that when high-strength steel alloys are torched, some lose their strength and rigidity while others lose their flexibility. “If the rigidity of the metal changes, the crash pulse that the air-bag sensor has to feel may change and the air bag may fire too soon or too late,” says Priya Prasad, manager of safety research and development at Ford Motor Co.

Clipping. This procedure involves cutting two smashed vehicles of the same make and model in half and welding the undamaged half of one to the undamaged half of the other.

“Clipping can be done in a safe manner, provided it’s done properly,” says Lou DiLisio Jr., Chairman of the Collision Industry Conference, a repair-shop education and training group. But without Federal safety standards and government inspections, who’s to know whether this intricate procedure is done properly?

Cheating on air bags. Air bags are expensive, so “a lot of lower-cost vehicles get totaled because of air-bag deployment,” says John Eager, senior director of claims services for the National Association of Independent Insurers. He added: “You can spend \$3,300 just for the air-bag system alone.”

Rebuilders can save thousands by forgetting the air bags. “There are cars out there right now that had air bags deployed and were rebuilt and never had a new bag put in,” says Richard Morse, who chaired NHTSA’s Motor Vehicle Titling Registration and Salvage Advisory Committee.

Alternatively, rebuilders can use recycled air bags, which are cheaper than factory-fresh replacements. But Robert Redding, the Washington, D.C., lobbyist for the Automotive Service Association, a trade group comprising 15,000 collision repair shops, says the risks of using recycled air bags is an important issue that has been ignored by safety regulators. “These things are very sophisticated pieces of electronic equipment, and when you see 60 used air-bag modules sitting on the ground

underneath a tin shed in a salvage yard, that's a little scary," says Redding, who notes they can be damaged by exposure to the elements.

The Insurance Institute for Highway Safety (IIHS) recommends against recycled air bags because of the risk that they may come from the hundreds to thousands of cars that are flooded each year. The air-bag system's electronic diagnostics "cannot check whether the module itself, the folded air bag, gets damp or wet," says Brian O'Neill, IIHS president. "If it does get wet, that can impede the way the air bag unfolds."

Not replacing safety belts. The most effective piece of safety equipment is also the most easily overlooked by a rebuilder and used-car buyer. Belts protect passengers and help them gradually decelerate by stretching, which permanently damages the belt. The belt retractors have metal spikes that become permanently damaged as well, as they bite into the belt to hold the load constant. Belts and retractors should be replaced after a frontal crash at speeds of 15 mph or higher or if the belts are frayed or their fibers have been partially melted together by friction, advises Prasad of Ford.

Internal corrosion. This can be created by sloppy welds or failure to apply zinc-based undercoating—though generous undercoating is a favorite cover-up for shoddy workmanship. But the biggest corrosion problems start with vehicles that have been submerged above the door sill in floodwaters—especially salt water—that invade the sensitive electronic components in the dashboard and engine. Air-bag sensors and electronics can be harmed as well.

Flood cars can be properly restored, says Plain, the Ocala, Fla., rebuilder, but it takes about 75 hours to strip the car down to its shell, replace all electronics, wash the upholstery, and dry up and protect wiring and connections. Such work isn't cheap, either.

Because much of that work can be left undone and undetected, other collision repairers and experts recommend that consumers avoid vehicles that have slept with the fishes. When only a cosmetic mop-up and air fresheners are used, flood cars can literally corrode from the inside out, causing mystery problems and electrical failures.

With no standards and no inspections, there's no way to know whether a rebuilt car is safe. "Our repairers tell us they can rebuild these cars from the ground up, and they can make them safe," Redding says. "Whether they're all safe? How in the world will we know unless they're inspected? The majority of states have no inspection."

Questionable Titles

Used-car buyers are at a further disadvantage when a vehicle's salvage history is not disclosed.

In Indiana, for example, State Farm Insurance sold, exchanged, or transferred hundreds of totaled vehicles in the 1990s without getting the required salvage titles, according to Jeffrey Modisett, the Indiana attorney general, who reached a settlement with State Farm in 1998. Consumers who ultimately bought these vehicles "did so without knowledge of the damage, safety, reliability, and true value of these vehicles," he said.

Hurst, the State Farm spokesman, says the insurer offered to buy back 437 improperly titled vehicles as part of the settlement. He says the problem stemmed from a misunderstanding by a salvage dealer who disposed of the cars and trucks for State Farm.

Christopher Gridley of Louisiana had a different problem involving State Farm, according to a lawsuit filed in June 2000. He purchased a 1998 Volvo S70 with a clean title in November 1999, he says, but when he brought it in for repair after an accident of his own, the repair shop told him the car had previously been wrecked and improperly rebuilt. According to the lawsuit, which is still pending, State Farm declared the car totaled a month before Gridley bought it, but the company didn't apply for a salvage title. Hurst says the allegations are "without foundation."

In California, three plaintiffs say in a class-action lawsuit that National Car Rental System did not obtain the proper salvage title after their cars were wrecked by rental customers, rebuilt, and subsequently sold to them with clean titles. Because the lawsuit is ongoing, National said that it wouldn't comment.

No one knows exactly how many rebuilt wrecks are for sale whose titles hide their histories. To get an idea, however, *Consumer Reports* analyzed some 10,000 cars and trucks offered for sale at 35 locations in 23 states one week last summer. They were being auctioned by Insurance Auto Auctions, one of the nation's leading auction chains, which says it sells insurer-totaled vehicles almost exclusively. Twenty percent of the vehicles we analyzed had clean titles. Wide differences in state salvage-

titling regulations may partly explain why. At any rate, the numbers suggest the relative ease with which damage too great for insurers to repair can remain hidden from consumers.

But even if a vehicle gets a salvage title, that title can easily be washed by registering the car in a state with more lenient thresholds for salvage- or rebuilt-branding. For example, in Oklahoma, a salvage title is required when damage equals only 60 percent of the car's book value. For a car with more damage, a rebuilder can simply retitle the car in Texas, where a salvage title isn't required until damage hits 75 percent of book value.

Remember the Chevy pickup wrecked in Florida? Progressive Insurance's office in Brandon, Fla., declared it "unrebuildable" because it required more than \$14,520 worth of repairs, or at least 80 percent of book value, the Sunshine State's salvage threshold.

The wreck was then shipped to Kentucky, which has a lower salvage threshold than Florida (75 percent of book value), but other loopholes. Whoever rebuilt this pickup produced two notarized estimates from two body shops swearing that the rebuilding cost had fallen to as little as \$4,969, or a mere 27 percent of book value—a \$9,550 cost saving.

The pickup was rebuilt and given a new title with an inconspicuous "Rebuilt Vehicle" notation near the bottom of the certificate.

Kentucky says the state issues 40,000 rebuilt titles a year. The Chevy pickup was still on the road in the vicinity of Canada, Ky., as of July 2000, Carfax's last notation.

Recommendations

Before you buy any used vehicle, have a mechanic whom you trust inspect it thoroughly; at a minimum, cover the checkpoints (TelItales Signs of a Rebuilt Wreck) on pages 27 and 28.

Used cars that show evidence of prior repairs are not inherently unsafe; that depends on the severity and type of damage, the quality of the repair, and the age of the vehicle. (A totaled older-model car actually may have had relatively minor damage, given that it wasn't worth a lot to begin with.)

But avoid a newer-model vehicle that was totaled and rebuilt (or an older vehicle rebuilt years ago when it was newer) unless you have the assurance of your mechanic that repairs are proper and safe. Because of their higher book values, newer vehicles must sustain significant crash damage to be totaled. (An exception would be vehicles totaled because of extensive cosmetic damage from, say, hail.) The high cost of repairing extensive damage provides rebuilders with plenty of incentive to cut corners. But the biggest problem is that the majority of states require no safety inspection on the repair work.

If you believe you may have inadvertently bought a rebuilt wreck, ask your local or state consumer-affairs department about the applicable laws in your state. The National Association of Consumer Advocates' website, www.naca.net, maintains a list of lawyers who are experienced in these matters.

Insurers should support meaningful legislation to regulate rebuilding. And Congress and states should require the following:

Claims reporting. Since accident damage is the first event that leads to all other problems involving rebuilt vehicles, insurers should be required to report to state motor-vehicle authorities the vehicle identification number of every vehicle that is totaled or that sustains frame or flood damage.

Release of claim data. To provide consumers with the best information about past accidents, Federal legislation should require insurers and their data-service vendors to make their existing accident and total-loss databases available to motor vehicle departments—for a fee, if need be—so that authorities from all 50 states and consumers can check whether a vehicle has been totaled or sustained major damage.

Safety inspections. Every vehicle that has suffered frame damage or that has been totaled and rebuilt should be required to be inspected for the quality of its repairs.

Uniform titling. Congress should establish uniform titling standards in all states regarding rebuilt vehicles.

Diary of a Rebuilt Wreck

Black 1998 Mercedes E320 four-door wagon, VIN: WDBJH65F9WA560114. Manufactured in Germany. Retail value in 1998: \$50,000.
January 15, 1998:

Registered in Forrest City, Ark. Odometer: 18 miles.

May–August 1999

A crash causes \$30,000 in damage.

Car is rebuilt across the state line, in Memphis, Tenn. Damage doesn't appear to meet threshold for Arkansas title disclosure. Odometer: 11,459.

Mercedes-Benz flags the car's 4-year, 50,000-mile warranty: Repairs deemed accident-related won't be covered.

November–December 1999:

Owner trades in car to Mercedes-Benz of Memphis for a new one. Odometer: 12,569.

Sold for \$30,000 to Mid-South Motors of Memphis.

Sold for \$29,000 to Peck Daniels Auto Sales of Memphis.

Sold for \$34,000 to Southern Imports, Leesburg, Fla.

December 20, 1999:

Sold for \$36,000 to Ocean Imports of Houston, Texas. Odometer: 13,823.

December 31, 1999:

Sold for \$45,000 to a man in Houston, Texas. Odometer: 14,300.

February 4, 2000:

Sold back to Ocean Imports, Houston, Texas, for \$45,000 after Houston owner says he discovered the prior damage. Odometer: 14,422.

February 18, 2000:

Sold for \$29,500 back to Southern Imports, Leesburg, Fla. Odometer: 14,223.

February 28, 2000:

Sold for \$29,500 to McNeill Automotive, St. Petersburg, Fla. Odometer: 14,423.

March 22, 2000:

Sold at a West Palm Beach, Fla., auto auction to Walter's Auto Sales & Service of Riverside, Calif. Odometer: 15,801.

May 2, 2000:

Sold for \$34,800 at Riverside Auto Auction to Auto Mart of San Ramon, Calif. Odometer: 15,911.

June 5, 2000:

Sold to Julie Ray of San Francisco for \$43,455. Odometer: 16,112.

April 2001:

Bought back by Auto Mart for \$43,455 plus legal fees after Ray learns of prior damage, sues Auto Mart, and settles.

October 2001:

Sold by Auto Mart to new owner for "just under" what Ray paid, Auto Mart says. Odometer: 27,981.

Our Study

No one seems to know how many rebuilt wrecks are on the road today, and whether their current owners know the history of these vehicles. Insurers have the best information to help answer these questions, but they aren't releasing it.

We analyzed government data on an important subset of all wrecks: Some 393,000 passenger vehicles involved in fatal accidents from 1993 through 1999. Of those, we focused on the 58,000 late-model cars and trucks deemed to have disabling damage by police at the accident scene for which we could find vehicle-history information.

Our analysis provides new statistical evidence that a severe crash is not the end of the road for many wrecks. Indeed, more than 40 percent of the passenger vehicles involved in such crashes were rebuilt and retitled for use on public roads, according to our study.

Other key findings:

- All vehicles identified by police as having disabling damage are not necessarily a total loss, as defined by states and hundreds of individual insurance companies. So we zeroed in on the 41,800 vehicles deemed by an insurer as totaled, as indicated by their receiving a "salvage," "junk," "dismantled," or "non-legal

highway” title as their first title following the fatal crash date. About 20 percent of those cars, or 8,300, were subsequently retitled for use on public roads.

- About one-third of the 8,300—roughly 2,500 vehicles—had titles “washed” of their salvage history. That means the latest title said nothing about the vehicle being totaled and then rebuilt. Overall, 6 percent of the totaled cars we studied had their title washed.
- Newer vehicles were more likely to be rebuilt. Experts say this is because their age and low mileage make them more attractive to used-car buyers. Approximately 25 percent of totaled vehicles that were the current model year or one model-year old at the time of the accident were retitled for the highway vs. just 15 percent of totals that were 5 model-years old. (See table below.)

Which vehicles get rebuilt?

Age of Vehicle	Percent Totaled And Rebuilt
0–1 yr.	25
2	24
3	19
4	17
5	15
All cars 0–5	20

Source: *Consumer Reports*, Carfax, NHTSA

A spokesman for the National Highway Traffic Safety Administration (NHTSA), a division of the Department of Transportation, said the agency has no official comment on our study. But NHTSA’s Richard Morse, former chairman of the agency’s Motor Vehicle Titling Registration and Salvage Advisory Committee, said of our findings, “That’s a lot of cars.” Morse said hard numbers on rebuilt vehicles are scarce and that lack of information has impeded reform efforts. “It’s hard to build up a whole lot of support in Congress if you don’t have a whole lot of numbers,” he said.

Said Rosemary Shahan, president of Consumers for Auto Reliability and Safety, a California-based safety-advocacy organization: “These numbers are a big red flag for used-car buyers. They validate the concern that tremendously damaged cars do go back on the highway.”

Our study tapped the Federal Fatality Analysis Reporting System (FARS), a computer database maintained by NHTSA that contains detailed information about every fatal U.S. motor vehicle accident.

Most FARS data are public and accessible via the Internet or CD-ROM, but NHTSA does not disclose the entire vehicle identification number (VIN) because it regards that as personally identifying information, which it is not allowed to release. The FARS data also have no information about the vehicle’s title history.

Carfax, one of two leading providers of vehicle title-history information, maintains a 1.6-billion-record database including VINs and vehicle histories. But it does not have the detailed accident information that’s in the FARS database, though it has accident data reported by some states.

Our analysis for the first time joined information from these two databases, through a special agreement between NHTSA, Carfax, and Consumers Union, designed to preserve the confidentiality of the FARS VINs. Consumers Union never saw the VINs.

The findings apply only to the group of fatal crashes we studied, not to all wrecks. And our numbers are conservative. For example, we excluded from the study titles with incomplete information about their salvage, washed-title, or road-legal status.

----- Caution, Before you buy any used car . . .

Bring a friend with you, preferably one who knows cars. Thoroughly inspect the exterior, interior, trunk, engine compartment, tire wear, and undercarriage.

Be direct. Ask the seller whether the car has been in an accident or a flood, and gauge his or her reaction.

Inspect the title for “salvage,” “rebuilt,” or similar notations. If the seller is an individual, check the title to make sure you’re dealing with the vehicle owner.

Take the car for a test drive. Make right and left turns at various speeds; turning should be smooth. On a straight roadway, check that the car doesn’t pull to one side. Ask your friend to follow behind in the car you arrived in to look for rear wheels that seem to skew to one side—a sign that the frame may be out of alignment.

Have the car inspected. If you're really interested in the car, have a qualified mechanic or vehicle appraiser examine it inside and out. Agree in advance with the seller that you'll pay for the examination if the car passes muster and the seller will pay if significant problems are discovered. Have the mechanic look under the air-bag covers to check that the air bags are present and functioning.

Check the warranty. Ask the service or warranty department of the local dealer if the warranty is still in effect.

Investigate the VIN. Use the Internet to find out whether the car's vehicle identification number (VIN) is listed among the thousands of cars severely damaged in floods in North Carolina in recent years (www.jus.state.nc.us/cpframe.htm). And, yes, even cars used in crash tests can wind up rebuilt. The National Highway Transportation Safety Administration takes steps to prevent this by titling its crash-test cars "not rebuildable" and publishing their VINs on the Internet (www.nhtsa.gov/cars/problems/salvage). The Insurance Institute for Highway Safety also titles its crash-test cars unrebuildable but does not publicly disclose the VINs. It provided them to *Consumer Reports*, however, and we found that only 1 of 150 apparently had been retitled for the road.

Buy a title-history report. Ask the seller to pay if there are problems. Two Internet providers sell this information. Carfax (www.carfax.com) charges \$15 per report on a single VIN and \$20 for 60 days of unlimited access; Experian Automotive (www.e-autohistory.com/1_autohistory/index.html) charges \$15 per history report for a single VIN and \$20 for five. Both systems use state motor-vehicle departments to compile their reports, but each has other sources that differ slightly. Other history-report services repackage Experian's basic data.

Size up the seller. If it's a car dealer, consult the Better Business Bureau; if it's an individual, browse the classifieds for other auto ads with the same phone number—a sign of an unlicensed broker who sells used cars by posing as the owner.

Telltale Signs of a Rebuilt Wreck

1. Paint that chips off or doesn't match indicates damage repair and poor blending.
2. Paint overspray on chrome, trim, or rubber seals around body openings reveals that the adjacent panel was repaired.
3. Misaligned fenders suggest a poor repair job or use of non-original equipment manufacturer (non-OEM) parts.
4. CAPA (Certified Automotive Parts Association) sticker on any part may indicate collision repair.
5. Uneven tread wear reveals wheel misalignment, possibly because of frame damage.
6. Mold or air freshener cover-up suggests water damage from a leak or flood.
7. Silt in trunk may mean flood damage.
8. Fresh undercoating on wheel wells, chassis, or engine strongly suggests recent structural repairs covered up.
9. Door that doesn't close correctly could point to a door-frame deformation and poor repair.
10. Hood or trunk that doesn't close squarely may indicate twisting from side impact.
11. Dashboard lights, power windows, and other electronics with intermittent problems could be a sign of flood damage.
12. Dashboard air-bag indicator that doesn't light up could mean the air bag was replaced improperly—or wasn't replaced at all.
13. Big dents, kinks in structural components, or crimped or crunched fuel lines and pipes underneath are the easiest problems to find because rebuilders assume you won't be looking there.
14. Uneven surfaces on frame components could be filler, seam sealer, or welding beads.
15. Damaged/gouged nuts and metal on top surface of strut tower (which connects the front wheels to the frame) in engine compartment may mean the frame was realigned.
16. New metal on only one part of the hood apron shows section repair rather than replacement of the entire apron piece.
17. Welding bead anywhere on heavy frame members underneath the engine suggests frame-rail sectioning or sloppy repair of a cutout made in the rail to perform repair work.
18. Inconsistent welds around hood apron, door, door frame, or trunk exemplify a nonfactory weld.

19. Frayed safety belts or belt fibers that have melted together because of friction indicate a previous frontal impact above 15 mph.
20. Missing car emblem or name on trunk may mean a non-OEM part was used.

What We Don't Know

The Highway Loss Data Institute (HLDI) and its affiliate, the Insurance Institute for Highway Safety (IIHS), describe their mission as “finding out what works and what doesn't work to prevent motor-vehicle crashes in the first place.” Their aim is to reduce human and property losses from automobile accidents. The combined \$14.6 million annual budget of these private nonprofit groups is provided mainly by 75 insurance companies.

Through crash testing and research of damage claims make-by-make, model-by-model, the institutes analyze the human, vehicular, and environmental factors associated with accidents. *Consumer Reports* uses IIHS data in our safety assessments of specific models.

A unique database maintained by the institutes—millions of records on loss claims related to roughly two-thirds of all insured late-model cars and trucks in the U.S.—allows them to glean rich information about those models that are more frequently involved in accidents.

That same database could help answer critical questions about rebuilt wrecks, such as: How many totaled vehicles have been rebuilt and put back on the road? Are there patterns or trends that merit further investigation or better regulation?

There's no evidence that the safety of rebuilt vehicles is a major problem, says Brian O'Neill, president of HLDI and IIHS. “Is it possible that repairs are related to vehicle performance during a crash? That's impossible to know,” he says. “If I were going to have concerns about this issue, I'd be concerned whether consumers are adequately informed about the history of the vehicle.”

For this report, we asked HLDI for the vehicle-identification numbers (VINs) and other basic details for all collision-totaled cars and trucks in its database. Merged with the extensive title-history database of Carfax, a Fairfax, Va., company, the HLDI data could provide the most comprehensive picture to date of rebuilt wrecks.

The HLDI board, whose members are executives from the nation's largest auto insurers, turned down our request. “The conditions in which we get our data from insurers is that we cannot release any individual records, and a VIN is an individual record,” says O'Neill.

Even if the data were made available, “Knowing that there are that many rebuilt vehicles doesn't tell you very much,” O'Neill says. He notes that some wrecks are bought by car thieves, who remove the VIN plate and put it on a stolen car of the same make, model, and year. He said he had no information on how often that might happen.

CCC Information Services (CCCIS), an insurance-industry service provider, maintains its own database containing information on 30 million vehicles that have been identified as totaled, salvaged, borderline totaled, stolen, or damaged since 1980. The company declined our request for information from the database; contracts with insurance-company customers prevents it, says Susan Jablonski, a spokeswoman.

We also asked Experian Automotive, a leading seller of vehicle-history reports, which draws on the CCCIS database to include the barest major-damage information about individual vehicles. Ken Kauppila, Experian's executive vice president, says his database has information on 10 million salvage vehicles and that the company retrieves data in large batches for car dealerships. But the company's contract with its partners doesn't allow release to *Consumer Reports*, he says.

Ms. SHAHAN. Thank you very much, Senator.

It has a classic example that I told *Consumer Reports* about of a woman who is a real estate agent in San Francisco who bought a car that was new at one time in Arkansas, and it was a Mercedes. The first owner registered it in Arkansas and then it sustained \$30,000 worth of damage. At that time Mercedes red-flagged the warranty and deemed that repairs that were accident-related would no longer be covered.

Then it was sent to Tennessee, Texas, and Florida and sold at one point to an individual who got it bought back in Texas, then it went to Florida again, then to California, Riverside, and then up to San Francisco, where Julie Ray bought it.

It was a so-called “certified” car, so the implication was that it had already been inspected, had passed a very rigorous inspection. She paid \$43,455 for this car. Then when she started having serious problems with it, she tried to get Mercedes to honor the existing warranty that supposedly was in effect, and Mercedes said no. They would not honor the warranty because of the prior damage.

So she paid extra to get a car that was certified. She paid extra to get a car with the manufacturer’s warranty. And not only was it a very dangerous car because the prior wreck was very shoddily repaired, but she could not get it repaired under the warranty.

With my testimony I have brought copies of other examples. We are seeing this all over the country, where certified cars are being sold, supposedly with additional protections, that consumers cannot use because of prior damage status. It is a serious problem. In California Governor Schwarzenegger just signed legislation, it is the first in the country, and it is part of the Car Buyer’s Bill of Rights, to address the sales of certified wrecks. It outlaws selling prior damaged cars if they had any frame damage as a certified car. We think that that is an important step.

But because of the mobility of these cars, there is nothing any individual State can do that is sufficient. We need better protection. As others who have testified before me have said, consumers should have access to the databases that are out there that already exist, whether it is through improving NMVTIS, whether it is through better access to NICB for the public.

We are not asking for personal identifiers or information about the owners. We are just asking for the consumers who are looking to buy the car to have access to the same information that others have, the insurance company or self-insured entity if it is a rental car company or a car dealership, or very often, the manufacturers. We do not believe that the consumer should be the last to know.

If you are looking at a car, we think that the information really belongs right on the car. Here is an example of the car buyer’s guide [indicating] that the Federal Trade Commission has required on every used car since 1985. It would go a long way toward cleaning up fraud if there were information on the buyer’s guide. The dealer is supposed to say whether or not there is a warranty in effect, but what often happens is—here is an example of a car buyer’s guide. A young man who works as a landscaper bought a BMW and on the guide it said it had a warranty, a full factory warranty for 4 years or \$50,000, but in fact, BMW would not honor that warranty due to prior damage.

So the representation that is being made to consumers in the Federally-required buyer’s guide is very often misleading. It is like a triple whammy because the car is not worth as much as they are paying for it, and they pay extra for warranty coverage they cannot use. If they get an extended service contract, extended service contract companies will not honor the warranties on these vehicles either.

This will not solve the problem entirely if the disclosure is on used cars because, unfortunately, and lot of times we forget this, a lot of times flood-damaged cars or wrecks are new. We hear from consumers, not very often but occasionally, who buy new cars that were damaged and there was no disclosure and the manufacturer

will not honor the warranty on them or part of the warranty is void.

So we need something that goes beyond the used car sticker. We look forward to discussing what that might be with other parties and look forward to your questions.

[The prepared statement of Ms. Shahan follows:]

PREPARED STATEMENT OF ROSEMARY SHAHAN, PRESIDENT,
CONSUMERS FOR AUTO RELIABILITY AND SAFETY

Mr. Chairman and Senators: Thank you for the invitation to testify today regarding ways to protect consumers from flooded and salvage vehicle fraud. My name is Rosemary Shahan, and I am the President of Consumers for Auto Reliability and Safety, or CARS, a nonprofit auto safety and consumer advocacy organization based in Sacramento, California.

CARS is dedicated to preventing motor-vehicle related fatalities, injuries, and economic losses. Since 1979, I have worked at the State and Federal levels on behalf of consumers on a range of auto-related issues. I appreciate the opportunity to highlight some of the worst problems posed by flooded and salvage vehicle fraud, and to make some recommendations for your consideration.

Problem

Damaged Vehicles Pose a Serious Threat to the American Public

Every year, millions of vehicles are in serious collisions, or in flood disasters. Most people assume that severely damaged vehicles are crushed, or sold solely for parts. In fact, many are destroyed. Many are taken apart and usable parts are recycled by professional and responsible recyclers. But every year millions of severely damaged autos are sent by insurers to auctions and then sold to unscrupulous auto dealers and rebuilders. They are then sold under false pretenses to car buyers. The deceptions artificially inflate profits for the unscrupulous insurers, auctions, rebuilders, and dealers who profit from perpetrating fraud, at the expense of the motoring public and honest businesses alike.

This is particularly troubling since shoddily rebuilt wrecks and flood cars pose a serious safety problem—to the owners and to all who share the roads with them.¹

The problem of flooded and salvage vehicles goes far beyond title branding. At its core, the problem is systemic fraud—knowing and deliberate concealment of material facts. Fraud involving prior wreck or flood damage costs American consumers billions each year and also endangers lives.

Prior damage vehicles may not provide adequate protection in a subsequent crash. Air bags are sometimes not replaced. Some major franchised auto dealers have sold cars missing air bags or with shop rags where the air bags belong. This is a serious safety threat. Auto manufacturers have reconfigured seat belt designs so that seat belts work in tandem with the air bag as a safety system. Consequently, in a moderate-to-severe collision, a driver or passenger who is wearing a seat belt, but whose vehicle is missing an air bag, is prone to suffer and debilitating serious head, facial, or spinal cord injuries, or be killed.

Insurers Part of the Problem

Some insurers destroy vehicles that are non-repairable and properly brand the titles of “salvage” autos, but others engage in fraud. The fraudsters send nonrepairable vehicles and salvage or flood cars to auctions, often with clean titles. In return, insurers recoup more than the vehicles are actually worth, given their damaged condition.

The Nation’s largest auto insurer, State Farm, has a shameful record of violating state title-branding laws and failing to properly brand titles as “salvage.” In 1998, State Farm settled a case brought by the Attorney General of Indiana. According to Indiana Attorney General Jeffrey Modisett, “State Farm sold, exchanged, or

¹ State of California: *Report to the Legislature: A Study of Auto Body Repair Problems with Findings and Recommendations* (July 1, 1994). “According to a 1984 DCA/BAR [Department of Consumer Affairs Bureau of Automotive Repair] study of unibody repairs, the ability of improperly repaired unibody vehicles (95 percent of today’s passenger cars are of unibody design) to withstand a second crash is significantly compromised and would result in serious injury and death to the occupants. . . . Finding: More than 70,000 structurally damaged and 150,000 salvaged vehicles are returned to our streets and highways every year without a safety inspection, and they pose a potential hazard to all of California’s twenty million unsuspecting motorists.”

transferred salvage vehicles it had acquired without obtaining salvage titles . . . People who purchased these vehicles did so without knowledge of the damage, safety, reliability and true value of these vehicles.”²

That case reportedly came to light because “a car dealer in Greenfield, IN, made a startling discovery. After repairing what he thought was a relatively new Ford pickup, he routinely sent the manufacturer a bill for his warranty work. Ford refused to pay. It told the puzzled dealer that a records check found that the pickup had been in a wreck, an insurance company had declared it a total loss and had resold it. That voided the warranty . . . After a two-year investigation, State Farm admitted selling about 1,400 totaled cars, trucks and sport-utility vehicles in Indiana—all without the required state salvage titles.”³

Earlier this year, State Farm settled yet another case, this time with 49 state attorneys general and the District of Columbia. The company publicly admitted that it had resold at least 30,000 totaled vehicles without salvage titles. State Farm reportedly conceded that “the number could turn out to be as high as 40,000.”⁴ A spokesperson for State Farm is quoted as saying “We don’t know whether it was an error, a mistake or malfeasance.”⁵

Owners of those salvage vehicles were not immediately notified. Over a year after State Farm notified the attorneys general, the owners received letters informing them their vehicles were “salvage.” The titles are belatedly being branded “salvage.” Some owners have found that not only is their vehicle worth far less than they paid for it, but they face losing insurance coverage or having their coverage reduced due to the salvage history.

Hapless victims may also find the lender will call the entire loan due, on grounds the vehicle is not sufficient collateral for the loan. Under the new Federal bankruptcy law, they may be held liable for the entire amount of the loan, based on the inflated price they paid, while in the past the amount could have been reduced to reflect the fair market value of the damaged vehicle. If the consumer is unable to pay the full loan, they may end up having the vehicle repossessed. For many people, that means they would lose their only means of transportation, and potentially lose their jobs.

Flood Cars Pose Unique Problems

The entire Nation has witnessed national news coverage showing tens of thousands of new and used flooded cars resulting from the recent disasters in the Gulf region and Florida. They have garnered tremendous media attention, and rightfully so. Flood cars pose a unique set of hazards to consumers. Thanks to sophisticated, advanced safety technologies and the increasing computerization of automobile design, flood cars are even more hazardous than in the past. Virtually all of today’s cars have sensitive electronic components that control major systems, including the engine, brakes, and air bags. Those electronic components, immersed in water and contaminants such as silt and petroleum residues, will inevitably deteriorate and corrode, particularly if the vehicle was submerged in salt water, rendering the vehicles unreliable.

Compounding the problem: complicated electronic components tend to be the most expensive to replace. They are also not visible, but are usually enclosed, making their condition difficult to detect and easy to conceal. The temptation for unscrupulous rebuilders and dealers is to cut corners and simply do a cosmetic clean-up, replacing the carpeting and upholstery and leaving the compromised electronics untouched.

At one time, the typical vehicle could be submerged in water over the sill without compromising its safety. Those days are gone. Now, most passenger vehicles have electronic systems located under the seats. Flood damage to the point where vital electronic components are soaked in water makes today’s vehicles totally unreliable. They will be plagued by a whole host of major electronic problems.

For example, the air bags may or may not inflate in a crash. If they do inflate, they may inflate too soon or too late. The anti-lock brakes may not work. In an emergency braking situation, on a rain-slicked road, a driver who has learned to slam on his or her anti-lock brakes may lose control and spin out. The engine may stall out intermittently, without warning, during driving in heavy traffic—an obvious safety hazard.

²“Attorney General Modisett, State Farm settle salvage motor vehicle title case,” News Release, State of Indiana Office of the Attorney General, July 28, 1998.

³“State Farm violated agreement on selling totaled cars,” *St. Louis Post-Dispatch*, January 24, 2005.

⁴*Ibid.*

⁵*Ibid.*

Over time, flood cars are also prone to develop mold and mildew that can cause serious health problems, particularly for people who suffer from allergies or asthma.

According to one news report, some insurers, such as Progressive, have been destroying many of their flood cars, but others, including State Farm, reportedly have failed to do the same.⁶ This raises the question: what possible legitimate purpose can there be for placing flooded vehicles back into the stream of commerce? This question takes on a certain urgency when it involves an unprecedented number of flood cars that were submerged in heavily contaminated salt water for days or weeks.

Self-Insured Entities

A complicating factor: some self-insured entities, including rental car companies, large auto dealers and auto dealer chains, may not be required to brand titles “salvage,” or “flood,” and since there is no claim filed, it is harder to trace and document the damage history.

New Vehicles

Salvage and flood car fraud also involves new vehicles. For example, some auto dealerships had hundreds of new vehicles on their lots when the flood waters rose. If history is any guide, new car buyers from coast to coast will eventually end up saddled with problem-plagued “new” vehicles that were once submerged in flood waters. In some cases, the manufacturers will refuse to honor the warranties, citing the prior flood histories. Those histories will be known to the manufacturer, but not the buyer.

“Certified” Damaged Vehicles

Some rebuilt wrecks are even being sold by supposedly “reputable” dealers as “certified” used cars, and the dealers are charging a premium—with the representation made that the vehicles have passed a rigorous, 130+ or 150+ point inspection. Sometimes the vehicles are advertised “complete with factory/manufacturer warranty.”

But—manufacturers will not honor warranties on prior damage vehicles, certainly not for area repaired, and sometimes for entire vehicle. Nor will consumers who paid extra for an extended service contract be able to have necessary repairs covered, since prior wreck and flood damage are excluded under the contracts.

This is a triple whammy for consumers. Consumers pay extra for “certified” used cars, pay extra for factory or OEM [original equipment manufacturer] warranties, and pay extra for extended service contracts, in order to be protected. Then when problems arise, they discover not only did they pay thousands more than the Blue Book price when the vehicle is actually worth thousands less, but the warranty is void and the contract won’t cover repairs. It’s a very rude surprise to be forced to incur unexpected, unanticipated repair costs—if the vehicle is repairable. Some are beyond repair.

California recently enacted landmark legislation, the Car Buyers Bill of Rights, signed into law by Governor Schwarzenegger, to curb various forms of auto fraud, including sales of previously damaged vehicles as “certified” used cars. The impetus for the “certified” provision came from numerous cases where consumers paid thousands extra to buy cars that had been “certified,” only to find they were grossly unsafe to drive, due to prior damage that had been shoddily repaired and was concealed at the time of sale.

California’s law, which will take effect next July, expressly forbids the sale of used vehicles with ANY frame damage as “certified.”⁷

Salvage and Flood Car Perpetrators Target Victims

Who is targeted for sales of rebuilt wrecks and flood cars? While even highly sophisticated, well-educated consumers sometimes fall prey to auto salvage fraud, some dealers have shown a propensity to target particularly vulnerable individuals. Due to their inexperience buying cars, teenagers and students buying their first vehicles are often targeted. Other targets: recent immigrants, and members of our armed forces, especially enlisted personnel.⁸

⁶“What insurers are doing,” *Automotive News*, October 31, 2005.

⁷AB 68 (Montañez), Statutes of 2005.

⁸*In Harm’s Way—at Home: Consumer Scams and the Direct Targeting of America’s Military and Veterans*, Report by National Consumer Law Center, May 2003. “Automobile-related scams: Cars are a big source of financial trouble for service people. The Navy-Marine Corps Relief Society, for instance, gives the largest single portion of its cash aid to military families—nearly a quarter of all its aid—for car-repair assistance . . . military legal assistance officials

The armed forces themselves have documented the harm that ensues from used car fraud, noting that such frauds can compromise the troops' ability to perform their duties, even "to the point of endangering themselves, their unit, and the mission itself."⁹ According to experts, unscrupulous dealers prey on military families.¹⁰ Recently, representatives of the armed forces testified at a hearing in California that auto-related scams, including rebuilt wrecks being sold as "certified" used cars, are the worst consumer-related problems troops stationed in California face.¹¹

To make matters worse, some auto dealerships are disregarding the Servicemembers Civil Relief Act, intended by Congress to protect all active-duty families from foreclosures, evictions, and other financial consequences of military service.¹²

Recommendations

Designate Vehicles Non-Repairable and Retire VINs

Severely damaged vehicles and flood cars that have been submerged in salt water should be declared non-repairable and destroyed. The Vehicle Identification Numbers, or VINs, should be permanently retired to curb fraud and to reduce the incidence of VIN-switching, which contributes to vehicle theft, carjackings, and other related crimes.

National Databases Present Opportunities, Challenges

For vehicles that are suitable for repair and resale as safe, reliable transportation, full disclosure to sellers and consumers alike is needed.

With the advent of CLUE¹³ and other vast electronic databases, insurers, manufacturers, lenders, dealers, and other entities have access to relevant data that is sometimes withheld from consumers, or is not provided in a timely fashion. The challenge policy makers face is how to make that information accessible to prospective buyers in an efficient, cost-effective, meaningful way.

While improved title branding will assist as an important enforcement tool, title branding is of limited usefulness in curbing salvage fraud. One reason: consumers usually do not see the titles until after a sale is consummated. It may be years later, when the lien is paid, that they finally see the title for the first time.

Also, thanks to computer technology, it is now quite easy for unscrupulous sellers to counterfeit titles, so even if states were to adopt uniform standards, and carry forward other states' title brands, auto salvage fraud involving vehicles with false clean titles would continue to occur.

However, a national electronic database with relevant information holds promise for curbing fraud. Prior to sale, prospective buyers should have access to the same information about the vehicle's history as the insurers, manufacturers, or other entities that already enjoy access. (Of course, the prior owner(s) personal information should be kept private.) Vehicle owners, who are entrusting their personal safety, and their family's safety, to the reliable operation of the vehicle, should not be the last to find out their vehicle's damage history.

in the San Diego region told NCLC that high-priced used car sales are "the single largest consumer [contract] problem that we see here in Legal Assistance."

⁹*Financial Fitness: The Importance of Financial Fitness to the United States Marine Corps' Mission. A Final Report.* Prepared for and funded by The United States Marine Corps, prepared by The Financial Fitness Evaluation Team, University of California, Riverside. August 2000: "We found widespread agreement that when Marines have pressing financial problems, their performance in the field can be significantly compromised, even to the point of endangering themselves, their unit, and the mission itself . . . Buying cars causes more problems than any other single financial factor."

¹⁰"Scamsters preying on military families," *Los Angeles Times*, April 2, 2003. "Operating just outside the gates of major bases, some car repair shops and dealerships prey on military families, particularly when a husband has been shipped out of the country, said Karen Varcoe, a consumer economics specialist at UC Riverside who has written academic studies on the financial problems of military personnel."

¹¹"After car breaks down, Iraq vet wages new battle—with dealer." *Sacramento Bee*, April 14, 2005: "Last month, the Assembly Committee on Banking and Finance heard testimony about financial scams aimed at members of the military. John Irons, director of the Navy-Marine Corps Relief Society in San Diego, told lawmakers his informal survey of Navy lawyers found 'the number one issue they are confronted with is used car dealers who are taking advantage of military personnel.' Among the alleged problems: sale of 'certified' junkers. . . ." [Note: Active duty representatives of the U.S. Armed Forces also testified that they had conducted their own informal surveys and reached the same conclusions.]

¹²"Creditors Press Troops Despite Relief Act," *New York Times*, March 28, 2005.

¹³CLUE is a registered trademark of ChoicePoint Asset Company.

The most effective way to provide vehicle history information in a timely fashion to all prospective purchasers and bridge the Digital Divide is to require relevant information from a national database be displayed on vehicles themselves.

A precedent to consider: after extensive research into effective means of disclosing vehicle safety information to the public, the National Academy of Sciences issued a report recommending that the relevant information be provided on a separate sticker on the vehicle itself.¹⁴ The National Highway Traffic Administration sought comments on that approach, and adopted the Academy's recommendation, requiring on-vehicle safety ratings disclosures on all new vehicles.

Federal Trade Commission Used Car Buyers Guide

For used vehicles, an on-vehicle Buyer's Guide already exists. Since 1985, the Federal Trade Commission has required that all licensed auto dealers must post a Buyers Guide on each used vehicle sold to retail consumers. The Guide includes information about warranty coverage and warnings aimed at informing consumers about common pitfalls involved in purchasing used cars. Dealers must provide consumers with the Buyers Guide as part of the sale or lease transaction.

Requiring the disclosure of vehicle history information would also help address the inherent deception that occurs when a vehicle is advertised and sold with a supposed warranty that is actually void due to prior damage. Currently, the Buyers Guide on relatively new damaged vehicles usually states that the vehicle is being sold with the remainder of the manufacturer's factory warranty. However, if the warranty is void due to prior damage, that should be fully disclosed prior to sale, along with the prior damage history. Otherwise, buyers are being misled into believing they are obtaining vital protections that prove to be illusory.

Enforcement and Remedies for Victims

In order to discourage scamsters from engaging in auto salvage fraud, it is important for any Federal legislation to provide for remedies and penalties that are at least as strong as under the Federal Odometer Act. That Act provides for victims to obtain multiple damages and attorneys fees, and also provides criminal penalties. Salvage and flood car fraud is even more serious than odometer fraud, since it clearly impacts the motoring public's safety, and should invoke commensurate sanctions.

Any Federal statute should create a floor and not a ceiling for states, allowing states to provide stronger protection. This non-preemptive effect is particularly important since some states may find they are being targeted, and need to take stronger steps to avoid becoming dumping grounds for salvage and flood car frauds.

Ease of enforcement: providing damage information on the Used Car Buyers Guide would provide law enforcement agencies with a relatively simple, cost-effective, uniform method for monitoring disclosures and ensuring compliance. Rather than attempting to delve into whether or when the prior damage disclosure was made during complicated sales or lease transactions, law enforcement officials could simply monitor and spot-check the Buyers Guides on open display.

Conclusion

Thank you again, Senators, for the opportunity to testify. I appreciate the Senate's interest in examining this serious form of fraud, and I welcome the opportunity to work with you and the Subcommittee Counsel to develop positive, effective ways to protect the public from flooded car and salvage fraud.

ATTACHMENTS:

1. Federal Trade Commission Used Car Buyers Guide from a so-called "certified" BMW. The buyer, who works as a landscaper, paid over \$30,000 for the BMW. When he test-drove it, the traffic was congested and he was unable to drive more than about 35 mph. As soon as he drove it home, and got to speeds over 60 mph, it shook violently. A subsequent expert inspection found that the vehicle had sustained major damage in a crash. The repairs were woefully inadequate and shoddy. As a result, the frame was bent and the suspension was shot. It would take thousands more dollars to fix it so that it was safe to drive. BMW refused to honor the

¹⁴ As part of the Department of Transportation and Related Agencies Appropriations Act, 1995 (Pub. L. 103-331; September 30, 1994), Congress provided NHTSA funds "for a study to be conducted by the National Academy of Sciences (NAS) of motor vehicle safety consumer information needs and the most cost effective methods of communicating this information." The NAS study was completed and released to the public on March 26, 1996. It is titled "Shopping for Safety—Providing Consumer Automotive Safety Information." TRB Special Report 248. Based on its findings, the study makes recommendations to NHTSA on ways to improve automobile safety information for consumers.

"Full factory warranty, 4 years or 50,000 miles" touted on the Buyers Guide due to the prior damage. The buyer had also purchased an extended service contract. The holder of the service contract excluded coverage for repairs due to the prior damage.

The dealer refused to refund the purchase price. The BMW sat unused in the owner's driveway for over a year, while he drove an old truck and continued making \$500 per month in car payments, pending resolution of a lawsuit.

2. CARFAX Vehicle History Report for the same BMW, reporting "no severe accidents reported to DMV, Guaranteed!" This report was presented by the dealership to the buyer prior to sale.

3. Blank Federal Trade Commission Used Car Buyers Guide

BUYERS GUIDE

IMPORTANT: Spoken promises are difficult to enforce. Ask dealer to put all promises in writing. Keep this form.

BMW **3 Series** **2001** **WBAAV53421JR78574**
VEHICLE MAKE MODEL YEAR VIN

1940
DEALER STOCK NUMBER (optional)

WARRANTIES FOR THIS VEHICLE:

AS IS - NO WARRANTY

YOU WILL PAY ALL COSTS FOR ANY REPAIRS. The dealer assumes no responsibility for any repairs regardless of any oral statements about this vehicle.

WARRANTY

FULL **LIMITED WARRANTY.** The dealer will pay _____ % of the labor and _____ % of the parts for the covered systems that fail during the warranty period. Ask the dealer for a copy of the warranty documents for a full explanation of warranty coverage, exclusions, and the dealer's repair obligations. Under state law, "implied warranties" may give you even more rights.

SYSTEMS COVERED:	DURATION:
<u>FULL FACTORY WARRANTY*****</u>	<u>4 YEARS OR 50K*****</u>
_____	_____
_____	_____
_____	_____
_____	_____

SERVICE CONTRACT.
 A service contract is available at an extra charge on this vehicle. Ask for details as to coverage, deductible, price, and exclusions. If you buy a service contract within 90 days of the time of sale, state law "implied warranties" may give you additional rights.

PRE PURCHASE INSPECTION: ASK THE DEALER IF YOU MAY HAVE THIS VEHICLE INSPECTED BY YOUR MECHANIC EITHER ON OR OFF THE LOT.

SEE THE BACK OF THIS FORM for important information, including a list of some major defects that may occur in used motor vehicles.

FORM# AS-723 (800) 944-4255 ALTERNATIVE SOURCE, INC. AUTOMOTIVE BUSINESS FORMS
The 1991 model inventory applies or implied, in its content or these for purposes of this form. Consult your own legal counsel.



CARFAX® Vehicle History Report™

carfax.com

Stevens Creek Certified Auto
San Jose, CA



CARFAX is the leading independent provider of vehicle history information. This CARFAX Vehicle History Report is based on information reported to CARFAX from over 5,300 sources. CARFAX does not inspect vehicles; there may be additional information or problems with this vehicle that were not reported to CARFAX. Use this Report, with a vehicle inspection and test drive, to make a better decision about your next used car.

CARFAX Report Summary

[Print Report](#)



GOOD NEWS - CARFAX Certified History - Guaranteed!

This 2001 BMW 330i (WBAAV53421JR78574) qualifies for the **CARFAX Certified History**, a guarantee worth up to \$5,000 that protects you from buying a vehicle that has had any of the following problems reported to a Department of Motor Vehicles (DMV): severe damage, major odometer problems, or Lemon history.

CARFAX Talking Car™

The story of this 2001 BMW 330i (WBAAV53421JR78574) according to our interpretation of the information reported to CARFAX:

- ▶ This sedan has had 2 owners and was owned in California. It was originally registered by the owner for personal use.
- ▶ It has had no minor or moderate accidents reported to CARFAX.
- ▶ It has had no DMV-reported total loss events, like a major accident, fire or flood.
- ▶ It has a consistent mileage history with no indication of an odometer rollback. It was driven an average of 14,352 miles per year, which is slightly lower than the industry average of 15,000. The last odometer reading, reported on 04/30/2003, was 36,138 miles.
- ▶ It was not reported to a DMV as a Manufacturer Buyback (LEMON).
- ▶ CARFAX estimates it has 10 months or 13,862 miles remaining on the basic warranty. The basic warranty provides bumper-to-bumper coverage.
- ▶ Go to the [Detailed Vehicle History](#) for the complete history and a [glossary](#) of terms.

Report Summary

1. ACCIDENT CHECK

Total Loss Check



No Severe Accidents Reported to DMV - **GUARANTEED!**

Other Accident Indicators



No Accident Indicators Reported

2. MILEAGE ACCURACY CHECK

Truth-In-Mileage Check



No Odometer Problems Reported to DMV - **GUARANTEED!**

Odometer Rollback Check



No Potential Odometer Rollback Found

Mileage Consistency Check



No Inconsistent Odometer Reading Found

3. LEMON CHECK



No Manufacturer Buyback Reported to DMV - **GUARANTEED!**

http://www.carfaxonline.com/cfr/dealer_order.cfm

1/22/2004

BUYERS GUIDE

IMPORTANT: Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.

VEHICLE MAKE _____ MODEL _____ YEAR _____ VIN NUMBER _____

DEALER STOCK NUMBER (Optional) _____

WARRANTIES FOR THIS VEHICLE:

AS IS - NO WARRANTY

YOU WILL PAY ALL COSTS FOR ANY REPAIRS. The dealer assumes no responsibility for any repairs regardless of any oral statements about the vehicle.

WARRANTY

- FULL LIMITED WARRANTY. The dealer will pay _____% of the labor and _____% of the parts for the covered systems that fail during the warranty period. Ask the dealer for a copy of the warranty document for a full explanation of warranty coverage, exclusions, and the dealer's repair obligations. Under state law, "implied warranties" may give you even more rights.

SYSTEMS COVERED:

DURATION:

SERVICE CONTRACT. A service contract is available at an extra charge on this vehicle. Ask for details as to coverage, deductible, price, and exclusions. If you buy a service contract within 90 days of the time of sale, state law "implied warranties" may give you additional rights.

PRE PURCHASE INSPECTION: ASK THE DEALER IF YOU MAY HAVE THIS VEHICLE INSPECTED BY YOUR MECHANIC EITHER ON OR OFF THE LOT.

SEE THE BACK OF THIS FORM for important additional information, including a list of some major defects that may occur in used motor vehicles.

Senator PRYOR [presiding]. Thank you very much.
Mr. Fuglestad.

**STATEMENT OF ALAN FUGLESTAD, VICE PRESIDENT,
OPERATIONS AND TECHNOLOGY, EXPERIAN AUTOMOTIVE**

Mr. FUGLESTAD. Thank you, Senator Pryor, for the opportunity to testify today. My name is Alan Fuglestad and I am Vice President of Operations and Technology for Experian Automotive. I plan to touch on a few topics today related to how private industry and Experian can help and is helping protect consumers on flooded and salvage vehicle fraud.

First let me give a brief description of Experian Automotive. We are a unit of Experian that delivers information solutions to the automotive marketplace, car manufacturers, dealers, lenders, and consumers. Our core data asset that drives these solutions is our national vehicle database. This database houses information on more than 500 million vehicles, of which about 285 million of those vehicles are in operation on the road today. Our sources include the State departments of motor vehicles, auto auctions, police accident reports, and salvage yards.

One of Experian's key automotive solutions that is applicable to today's topics is its AutoCheck vehicle history report. A vehicle history report helps consumers and businesses make vehicle purchase decisions by understanding historical events for pre-owned vehicles. This report can reveal frequency and location of title and registration, past title brands, past accidents, and even odometer history.

Let me touch briefly on how Experian helps prevent vehicle title fraud, especially in the wake of the recent hurricanes. We feel there are important steps consumers can take to protect themselves from unknowingly buying a car damaged by one of these hurricane storms. In addition to a physical inspection, one of the most important steps a potential buyer can take is to better understand the history of a car prior to purchasing it by obtaining a vehicle history report. This report can tell potential buyers if the vehicle has severe flood damage or has been branded salvage, as well as where and how many times the vehicle has been titled.

Now, in the wake of the recent hurricanes, Experian set out on an awareness campaign for car dealers and consumers. Experian launched a cooperative effort with the National Automotive Dealers Association designed to educate its members and build awareness of the large number of storm-damaged cars that would potentially be hitting the market after these storms.

Information was supplied about how to identify and recognize a storm-damaged vehicle and a process was established so that dealers and others could report their own vehicles damaged by the storms. Our goal was to make this information available more quickly than traditional reporting processes through the State DMVs.

Experian is now making this information available to dealers and consumers at no charge via its AutoCheck Storm Scan feature, which includes three key pieces of information. Number 1 is the self-reported information from the car manufacturers and dealers. Number 2 is past vehicle title brands, whether or not they are the result of storm damage. Number 3 is the title and registration history that does reveal whether the vehicle has been titled or registered in areas affected by a storm during the past 12 months.

Let me move briefly to address how private industry and Experian can work with AAMVA and its members. We have been in discussion with AAMVA for some time now about how we may further support their efforts with the National Motor Vehicle Title Information System initiative to combat title and vehicle fraud. We do fully support the efforts of AAMVA in moving toward providing real-time information on vehicles during the vehicle titling process.

For the past several years, private industry, including Experian, has developed data assets and solutions for the marketplace that

can be leveraged effectively to support the National Motor Vehicle Title Information System initiative. As far as some examples of where industry can help: first, in providing a comprehensive data repository. I spoke of our national vehicle database earlier. Experian does receive vehicle data from all of the U.S. jurisdictions. A comprehensive data source we feel is imperative in combatting title and vehicle fraud.

Second, in managing the data. Experian has expended significant resources and expertise in interpreting, standardizing and hosting this data to provide the common formats that our solutions use for the marketplace.

Third, in distributing or providing access to this data. Experian has developed secure, flexible methods for distributing our vehicle history reports and services based on the needs of our partners and clients and consumers.

Next, I will briefly discuss how industry can work with other governmental agencies in these efforts. Today Experian does offer our AutoCheck services free of charge to law enforcement agencies to support their investigative efforts. Experian is also in discussion with the NICB to offer their hurricane-affected vehicle database free of charge to consumers.

But whether working with AAMVA, the State DMVs, or other organizations, once again having a comprehensive vehicle history information database or repository available at the point-of-purchase or titling a vehicle or during an investigation is critical to consumers, businesses, DMVs, law enforcement, and others in combatting title and vehicle fraud.

Finally, I was asked to speak briefly on issues regarding DMV data costs. We do purchase this data from the 51 jurisdictions. No doubt that the high and unpredictable nature of our data costs from the State DMV organizations is one of our primary risks of doing business. There are significant differences in pricing between the various State DMV organizations as well as significant fluctuations from year to year. I can get into more details on that during the Q and A, but that does conclude my initial statement.

Thank you.

[The prepared statement of Mr. Fuglestad follows:]

PREPARED STATEMENT OF ALAN FUGLESTAD, VICE PRESIDENT,
OPERATIONS AND TECHNOLOGY, EXPERIAN AUTOMOTIVE

Description of Experian Automotive

Experian Automotive delivers information solutions to manufacturers, dealers, lenders, insurance companies, and consumers. Experian helps automotive clients increase customer loyalty, target and win new business, and make better lending and vehicle purchase decisions. Its National Vehicle Database, housing information on more than 500 million vehicles, meets the industry's growing demand for an integrated information source. Experian technology supports several top automotive websites including eBay Motors, *CarsDirect.com*, *NADAguides.com* and Yahoo! Autos.

One of Experian's key automotive solutions is its AutoCheck® Vehicle History Report. A Vehicle History Report is designed to help consumers and businesses make better vehicle purchase decisions by quickly and easily understanding potentially significant historical events for pre-owned vehicles manufactured in 1981 or later. Using the Vehicle Identification Number (VIN) and depending on the information reported to Experian, an AutoCheck vehicle history report can reveal frequency and location of title and registrations, past title brands, past accidents, and odometer history. Through its joint venture with The First American Corporation (leading

provider of mortgage title insurance), Experian also offers consumers a vehicle title insurance policy (TitleGuard) that covers hidden title defects (*e.g.*, water damage, salvage) with coverage up to the full purchase price of the vehicle.

AutoCheck Vehicle History Reports supply information about pre-owned vehicles from a multitude of data sources, including state departments of motor vehicles (DMVs), auto auctions, police accident reports, and salvage yards. AutoCheck is the volume leader in supplying vehicle history information to the automotive industry. Dealers, consumers and manufactures can easily access the AutoCheck information via the AutoCheck website or other methods. AutoCheck offers toll-free telephone and e-mail support to all clients should they have questions regarding any event in the vehicle's past.

How Experian Automotive Helps Prevent Vehicle Fraud

Consumers who live thousands of miles from areas recently hit by hurricanes may think they have little to be concerned about, but those in the market for a used car are wise to take steps to protect themselves from purchasing a flood-damaged vehicle. Even if potential buyers are not in an area directly affected by a hurricane or flooding, cars often are repaired and shipped across the country in a matter of weeks, putting consumers at risk of buying damaged vehicles.

While it's too early to know exact numbers, some experts estimate nearly 500,000 cars have been damaged by Hurricanes Katrina and Rita. There are steps consumers can take to help protect themselves from unknowingly buying a car damaged by a hurricane.

One of the most important steps a car-buyer can take is to better understand the history of a car prior to purchasing it by obtaining a vehicle history report. A vehicle history report can tell potential buyers if the vehicle has severe flood damage, been branded "lemon" or "salvage," if the vehicle has been in an accident, where and how many times the vehicle has been titled and the vehicle's odometer history.

Consumers can check a car's reported background by obtaining a history report from the seller or dealer or online through AutoCheck Vehicle History Reports. Consumers can enter a car's Vehicle Identification Number (VIN) at www.autocheck.com and receive a detailed vehicle history report.

Experian recommends a thorough vehicle inspection be performed as well. We advocate consumer inspection tips from the National Automobile Dealers Association (NADA), to help detect significant water damage when buying a used car:

- Check the vehicle's title history;
- Examine the interior and the engine compartment for evidence of water and grit from suspected submersion;
- Check for recently shampooed carpet;
- Check under the floorboard carpet for water residue or stain marks from evaporated water not related to air-conditioning pan leaks;
- Look for rusting on the inside of the car and under interior carpeting and visually inspect all interior upholstery and door panels for any evidence of fading;
- Check under the dashboard for dried mud and residue, and note any evidence of mold or a musty odor in the upholstery, carpet or trunk;
- Check for rust on screws in the console or other areas where the water would normally not reach unless submerged;
- Check for mud or grit in alternator crevices, behind wiring harnesses and around the small recesses of starter motors, power steering pumps and relays;
- Complete a detailed inspection of the electrical wiring system, looking for rusted components, water residue or suspicious corrosion; and
- Inspect the undercarriage of other components for evidence of rust and flaking metal that would not normally be associated with late model vehicles.

By taking a few simple precautions when buying a used car, consumers can safeguard themselves from the frustration of wasting their hard-earned money on a flooded or damaged vehicle.

In the wake of the most recent hurricanes, Experian set out on an awareness campaign for dealers and consumers. Experian launched a cooperative effort with NADA designed to educate its members and build awareness of the large number of storm damaged cars that would be hitting the market after these catastrophes. Information was supplied about how to identify and recognize a storm-damaged vehicle and a process was established so that dealers and others could report their own vehicles damaged by the storms. Our goal was to make this information available more quickly than the traditional reporting process through state DMVs. Experian is now making this information available to NADA members and con-

sumers at no charge via its AutoCheck storm scan functionality, which includes three pieces of information:

1. Self-reported information on storm damaged vehicles from dealers and manufacturers.
2. Past vehicle title brands whether or not they are the result of a storm.
3. Title and registration history that reveals whether the vehicle has been titled or registered in areas affected by storm during the previous twelve months. If considering a purchase of one of these vehicles, Experian recommends a professional vehicle inspection.

Experian also provided state attorneys general offices with vehicle inspection tips and AutoCheck storm scan availability so they may educate their constituents regarding the risk of purchasing a storm damaged vehicle.

How Experian Works With AAMVA and Its Members

Experian has enjoyed a good relationship with the American Association of Motor Vehicle Administrators (AAMVA) for many years. We are also an Industry Member with the “sister” organization, Canadian Council of Motor Transport Administrators.

Experian supports AAMVA as an Associate Member and through our participation in the Industry Advisory Board. We have been in discussion with AAMVA for some time about how we may further support their efforts to combat title and vehicle fraud.

For the past several years, industry has developed assets and solutions for the marketplace that can be leveraged to support the National Motor Vehicle Title Information System (NMVTIS) initiative. For example,

- Experian currently receives vehicle data from all U.S. jurisdictions. A comprehensive data source is imperative in combating title and vehicle fraud.
- Experian has expended significant resources in analyzing, interpreting, validating, standardizing, and hosting this data to provide a comprehensive national database of vehicle data to be used in solutions and services. This process allows the data to be used in a “common” format while retaining the specific content of the different sources.
- Experian has developed secure, flexible methods for distributing our vehicle history reports and services based on the needs of our partners and clients.

Public/Private Efforts to Improve Titling and Disclosure of Brands

Experian welcomes the opportunity to work with government to provide critical information to consumers and business.

Experian Automotive has dedicated staff who are researching and analyzing potential data sources everyday. We are always looking for important data that can impact our AutoCheck report to the benefit of business and consumers.

Experian offers our AutoCheck services free of charge to law enforcement agencies to support their investigative efforts. We support organizations such as the National Odometer and Title Fraud Enforcement Association (NOTFEA), the International Association of Lemon Law Administrators (IALLA) and the Association of Traffic Safety Information Professionals (ATSIP).

Experian is also in discussion with the National Insurance Crime Bureau (NICB) to offer their Hurricane Affected Vehicle Database free of charge to consumers. This is an important opportunity to forge a partnership between public and private participants for the greater good.

Whether working with AAMVA, the state DMVs or other organizations, having comprehensive vehicle history information available at the point of purchase or titling a vehicle, or during an investigation, is critical to consumers, businesses, DMVs, law enforcement and others in combating title and vehicle fraud.

Issues Associated With Data Costs

The high and unpredictable nature of our data costs from the state DMVs is one of our primary risks of doing business. Experian pays millions of dollars annually to the states for the right to collect and preserve this data. There are significant differences in pricing between the various state DMV organizations, and we’ve seen significant increases in pricing from year to year. In addition, in order for the data to continue to be useful, it is necessary to store and maintain the information for an indefinite period of time. Experian currently stores information on more than 500 million vehicles in our database.

Experian provides information solutions based on a national database of vehicle information. As a bulk data purchaser, we must aggregate data from all of the DMVs prior to offering our services and solutions (and beginning to recover costs).

To add to the business risk of our data cost, various state and Federal laws and regulations greatly restrict what we can do with the records we purchase, which limits our ability to recover the cost of this data.

Finally, in addition to the cost of acquiring this data, we also expend significant resources interpreting, validating, aggregating, and standardizing the various state-specific file formats for use in our solutions.

Senator PRYOR. Thank you.
Mr. Hall.

**STATEMENT OF DONALD L. HALL, PRESIDENT AND CHIEF
EXECUTIVE OFFICER, VIRGINIA AUTOMOBILE DEALERS
ASSOCIATION; ON BEHALF OF THE NATIONAL
AUTOMOBILE DEALERS ASSOCIATION**

Mr. HALL. Thank you, Senator. To begin with today, I am here speaking on behalf of the Virginia Automobile Dealers Association, the National Automobile Dealers Association, and our 20,000-plus members nationwide. Senator, I will go one step further and say we are also here on behalf of the 36 million purchasers of vehicles every year. They are very important to us and we think we are the consumer advocates here.

Hundreds of thousands of vehicles are totaled each year. It was estimated in 2001 by a well-respected consumer organization that about 20 percent of those were rebuilt. They estimate in about 30 percent of those the titles were washed. People had no knowledge of what took place with those rebuilt vehicles.

As we all know, this year has been a very tough year on this great Nation of ours in terms of hurricanes, tornadoes, and so forth. We had Hurricane Katrina with 500,000 vehicles. We had a number of hurricanes up and down the East Coast. We had flooding in the Northeast, the Western States, tornadoes in Iowa, in fact even last night, unfortunately, tornadoes that hit in Indiana and other parts of the Midwest that destroyed vehicles.

We are very, very concerned about those salvage vehicles, probably to a tune of probably a million cars before it is all said and done this year. I guess the basic question, Senator, and to all of your colleagues, would be this: Do consumers have the right to know the history of a car? It is our stance and our belief that consumers have that right to know and the only way, unfortunately, we have found to address this issue is to come to Congress and ask Congress to intervene in our behalf.

Safety issues are very important. Many of the speakers today spoke about that, but just to make the point, any time you buy a vehicle that has been wrecked or under water, you want to know about that before you make the decision. You want to know whether it has impacted the electrical system, whether it has impacted the air bags and any other kind of equipment on that car. You have a right to know it and you ought to know it, so when you make a decision to buy you do so with that knowledge.

We are very concerned about the economic impact this has on consumers. There was a great example used earlier by one of the panelists today dealing with a Chevrolet Tahoe. The fact of the matter is, these cars that have been branded are worth less money. We want consumers to know that and make a decision, again, with that knowledge.

So we are very much in favor, very much in favor of brands being carried forward from State to State to State. There are basically three things that are important to us as an industry, as the automotive industry. One is transparency, two is timing, and three is technology. It is important that we have complete histories of these cars. We do not want to sell vehicles to the consumers of the United States of America without that knowledge. We want you to have it. In fact, in most cases we do not even want to sell those vehicles. We want to stay away from them. Unfortunately, so often we find out after the fact.

Timing is important to us as well. It is critical that when these State agencies and other Federal agencies have this information that it be passed on to these third-party vendors that are out there as soon as possible, so we can get it and we know it. So often you hear about the story of an individual who bought a car only to find out months later that it had been in fact branded. We as the dealer public or the dealers in this country, we do not know about it oftentimes either until after the fact, and that is not right.

The technology is there. That is what is unique about today's discussion. We are already there. We have third-party vendors already providing this. We have other State and Federal agencies who have the capacity to provide this information. What we need is more complete information to be able to help us make a better decision about whether or not we want to sell that vehicle and/or as a consumer, whether or not you want to buy that vehicle with that knowledge. Again, we think the answer is to require brands to go forward.

If I can, and I will not enter this in the record, Senator, but this is a book about two inches long—two inches thick, rather—that has 51 different ways to register cars throughout this country, 51 different ways, and they are as different as night and day. I have tagged several states, without naming any States—and yours is not one of them, Senator—that have the policy of either accepting a brand from another State and not carrying it forward or even stating that they do not accept a brand from another state and therefore do not carry it forward.

As indicated earlier, oftentimes those titles are physically taken to those states, the fees are paid, they re-issue a new title, the brand is gone, and three or four titles later that car then is moved into, as an example, the Commonwealth of Virginia and sold to an unsuspecting dealer and consumer, and now both are going to be disadvantaged because they did not have this knowledge.

As simple as passing on from title to title to title these brands, it is critical to us.

It is a complicated system. It has been reduced to this big old book. We hope that ultimately with technology we can get it to something a little less than this, and make it simpler to know how to title vehicles and what they mean.

The insurance industry has taken what I would consider to be a baby step, if you will, in terms of saying, "let us tell folks about Katrina cars, let us let them know about these vehicles." Well, my comment is this: If you buy a car that came out of Indiana after last night's horrible tornadoes, do you have a right to know that? Our answer as an industry is absolutely yes.

It does not matter—Katrina was terrible and it is the reason this hearing is taking place, but let us go after all the vehicles in this country. Let us give consumers the right to know. The key is once again, do consumers have the right to know? It is our position that they do. We absolutely support this. We hope that brands will be carried forward from State to State to State and make sure that consumers know.

Senator Pryor, we appreciate the opportunity to speak on behalf of the dealers. We appreciate the good work that you have done not only in your State but here in the Senate as well, and thank you.

[The prepared statement of Mr. Hall follows:]

PREPARED STATEMENT OF DONALD L. HALL, PRESIDENT/CHIEF EXECUTIVE OFFICER,
VIRGINIA AUTOMOBILE DEALERS ASSOCIATION; ON BEHALF OF THE NATIONAL
AUTOMOBILE DEALERS ASSOCIATION

My name is Don Hall. I am the President of the Virginia Automobile Dealers Association.

I am appearing on behalf of the National Automobile Dealers Association (NADA) and its 20,000 franchised auto and truck dealerships involved in the retail sale, service and repair of new and used motor vehicles, both domestic and import. The majority of NADA's members are small family-owned and community-based businesses that employ more than one million people nationwide.

I am also a member of NADA's Title Integrity Task Force, a group of representatives from state dealer associations that seeks to combat title fraud and to identify solutions that will create more transparency in the title history process to protect vehicle purchasers.

I applaud the Subcommittee and the leadership of Senators Allen and Pryor on this important national issue. While motor vehicle titling is traditionally the province of the states, by nature motor vehicles are mobile and are frequently titled across state lines. Several years ago, we passed legislation in Virginia to require permanent branding on titles for seriously damaged vehicles. Unfortunately, because vehicles cross state lines, vehicles purchased and sold in Virginia do not come only from Virginia. Because of the inherent mobility of vehicles, title fraud is a national problem that requires a national solution.

Amid the personal devastation of the gulf coast hurricanes this year we are faced with an unprecedented number of flood vehicles that may result in a dramatic increase in title fraud. It is estimated that more than 500,000 vehicles were damaged by flooding in the Southeast region and many will be cleaned up and sold to unknowing vehicle purchasers.

But the problem goes beyond flood vehicles from the Gulf region hurricanes. Flooding in New England and North Carolina and other areas of the Nation has led to countless other flood vehicles. And this barely scratches the surface of salvage vehicles, which result when insurance companies deem a car to be "totaled" as a result of collision, theft or fire damage. These vehicles can be rebuilt and given a clean title that does not disclose damage.

The National Automobile Dealers Association is pleased to be included in your hearing to discuss the problem of flood and salvage cars. Each year new car and truck dealers buy millions of used vehicles at wholesale auctions or in trade. Dealers and consumers, as purchasers of vehicles, must rely on the accuracy of the titles of used cars. NADA's Chairman, Jack Kain, spoke to the Automotive Press Association on October 6 on the issue, outlining many of the strategies that I will present today for laying the foundation to stop title fraud.

The Risk to Car Buyers

The Problem

The complicated 51-jurisdiction state motor vehicle titling regime invites fraud. The large-scale damage of three major hurricanes highlights the flaws in our current motor vehicle titling laws. Hundreds of thousands of flooded vehicles in the Gulf Coast region may be wholesaled and retailed without fundamental disclosure of the severity of the flood damage. Because 51 jurisdictions title vehicles 51 different ways, many opportunities for fraud exist. Under the current system, any unscrupulous rebuilder can repair or refurbish a wrecked or flood damaged car (typically a late model car "totaled" by an insurance company) and obtain a "clean" or "washed" title in a state with weak title disclosure rules. The new title will contain

no reference to the damage, leaving the buyer (consumer or dealer) to rely on a physical inspection of the vehicle to expose flood damage. NADA's website at www.nada.org contains tips on how to spot a flood vehicle.

Vehicle purchasers believe they can rely on the title history and vehicle history reports, which are currently incomplete. Vehicle history services can only report information to which they have access. Recent court cases and settlements illustrate that insurance companies receive higher sale prices for these totaled vehicles at salvage auctions if the titles are not branded.

The current unreliability of information creates a blanket suspicion of all vehicles from a particular region due to an inability to obtain information for individual vehicles. The current system creates an environment where all vehicles from Louisiana, Mississippi, Alabama and other states in the Gulf region are inherently suspect as flood damage vehicles, penalizing all sellers in those states, even those whose vehicles have not suffered damage. We have specific information that this is already occurring in Louisiana.

The Solution

More transparency, more timeliness, and more technology is necessary to provide buyers a more complete and reliable title history *before* the sale, and penalties must be created for intentional circumvention of damage disclosure. We are not talking about how states title vehicles; we are talking about sharing information they currently collect. All buyers of a used vehicle (consumers, businesses, and even automobile dealers taking a vehicle in trade) have the same economic interest—determining fair market value *prior to purchase*. A more complete, near real-time title history would provide a more accurate picture of a vehicle's prior condition/use.

- *Transparency: More complete title history data is needed.* Most states departments of motor vehicles (DMVs) are collecting the necessary title data about damaged vehicles, but there are exceptions. The motor vehicle title laws of each should provide a threshold level of disclosure to capture significant damage to a vehicle. Also, the states should move to more uniform classification of the title data.
- *Timing: More current title history data is needed.* Title histories provide key data that dramatically affect fair market value and may raise safety-related concerns. Yet, as many as 30 to 60 days may pass between the time that a vehicle is damaged and the time that data reflecting that damage are publicly available. This delay facilitates criminal activity.
- *Technology: More accessible title history data is needed.* The information industry in the private sector should have access to insurance company information for total loss vehicles (VIN, odometer reading, and date of declaration of total loss) and salvage auction sales data (VIN, odometer reading, date of salvage auction sale). Additionally, DMVs should make title data commercially available in bulk on a daily basis to the information industry. This information, marketed to consumers by private sector companies, would enable consumers to have more information *before* buying a vehicle.

Enforcement of existing penalties is needed to prevent attempts at circumventing disclosure. In any system there exists an opportunity and incentive to circumvent the system. As described below, Congress has already enacted applicable penalties; they should be enforced.

Background On Motor Vehicle Titling Laws

The laws of fifty states and the District of Columbia govern the titling and registration of motor vehicles, which creates a systemic lack of uniformity. A motor vehicle title documents ownership of a specific vehicle, while a motor vehicle registration provides permission to operate a specific vehicle. Although the trend in state titling laws has been toward more uniformity during the past several years, the 51 jurisdictions still conduct business 51 different ways. Each jurisdiction has created a distinct paper title, different computer programs to issue and track titles and registration, and a separate, extensive body of statutes and regulations to govern the titling and registration of motor vehicles within their respective borders. Additionally, these discrepancies can be complicated by the informal policies and procedures used by title clerks, which may vary even within jurisdictions.

One purpose of a motor vehicle title is to provide public notice about certain characteristics of a specific vehicle. A motor vehicle title has a unique title number assigned by the issuing jurisdiction and a unique Vehicle Identification Number (VIN) assigned by the manufacturer to the specific vehicle. The 17-character VIN conveys information about the vehicle, such as year, make, model, body type, and engine type. The unique identifiers facilitate the tracking of vehicles for a variety of pur-

poses. For example, state or local taxing authorities may rely on VIN information to assess personal property taxes. The paper title includes the name and address of the owner, existence of a lien holder, and other information about the specific vehicle's prior condition or use.

Federal and state privacy laws strictly limit the use of personal information obtained in the titling process. The Federal Driver Privacy Protection Act and similar state statutes limit the distribution of names and addresses included in title databases. The distribution of VIN-based title branding data does not include vehicle ownership identifiers.

In common usage, a "title brand" is a notation of the face of a certificate of title that provides notice to all subsequent purchasers of the damage, condition, or prior use of a vehicle. A "brand" is a word, symbol or abbreviation printed on the title itself. The 51 titling jurisdictions use a wide variety of brands, such as reconstructed, salvage, rebuilt salvage, rebuilt, restored, reconditioned, junk, non-repairable, taxi, police, flood damage, fire damage, unsafe, and repaired. The complete list is extensive and confusing.

While state titling laws and procedures are becoming more uniform, no single database contains all of the data necessary to obtain a completely accurate title history. In recent years, the American Association of Motor Vehicle Administrators (AAMVA), the trade association of state motor vehicle administrators, has encouraged the adoption of uniform definitions and procedures for dealing with title brands. Despite these efforts, four fundamental problems remain:

- *Some states still do not brand all vehicles that sustain major damage.* Most states typically brand vehicles that sustain significant damage from accidents, floods, etc., especially if an insurance company declares a total loss. The most significantly damaged vehicles are covered by the following brands in most states: salvage, rebuilt salvage, flood, and non-repairable. However, some of the current databases are still incomplete. As a practical matter, some states need to be more aggressive in branding vehicles, especially to ensure that total loss vehicles are branded.
- *The current databases provide conflicting information.* While many states have consistent concepts for title branding, the specific definitions and symbols are inconsistent and confusing. For instance, the percentage of damage required for a salvage brand varies from state to state. The private sector will interpret and summarize the information so that consumers can understand the significance of this information.
- *Not all states "carry forward" the brands of other jurisdictions, and some states carry forward the brands of other jurisdictions to a limited extent.* Even worse, some jurisdictions re-issue titles without carrying forward the brands of their own jurisdiction.
- *No single database captures current state titling information. (It is impossible to search all of the databases simultaneously.)* Currently, title data reside in 51 databases that are not accessible by one search engine. Private vendors provide access, but their databases have a 30 to 60 day lag time. The absence of near real-time title histories literally invites fraud.

Technology—The Essential Element of Any Solution

Congress has recognized that technology should play a critical role. The Anti-Car Theft Act of 1992 authorized the creation of the National Motor Vehicle Title Information System (NMVTIS). As envisioned, NMVTIS would become the single source for title history data from all 51 jurisdictions. AAMVA has attempted to link all 51 databases in real-time using a combination of Federal funds, state funds, and internal resources. The system envisioned would provide real-time, title clerk-to-title clerk linkage and then provide third party access to title histories. NMVTIS has not been completed because state resources are required to reconfigure state DMV systems to communicate with NMVTIS. AAMVA's attempts to design and implement a system to provide third-party access to NMVTIS have failed.

The challenge facing NMVTIS is funding—initial costs to configure the system and continued operating costs. Unless the system can generate income through the sale of data to third parties (VIN-based information that does not include vehicle ownership identifiers), the future of the system is in doubt. The existing economic model of NMVTIS—relying exclusively on public funding—is not sustainable.

Private sector information vendors are essential to the distribution of data to consumers. Private sector vendors already buy DMV data in bulk and provide title history reports to consumers, but the vehicle histories are not accessed in as timely a manner as they should be. However, incumbents in the market are well-positioned to leverage technology to the advantage of consumers. Any NMVTIS-based solution

must rely on the private sector to package and market title histories to the general public. These vendors already buy title data in bulk, usually every month. If the states simply provided daily electronic updates instead of monthly, the private sector could use technology to close the window for fraud. The end result would be an efficiently administered, up-to-date system that would provide consumers with more timely information.

Potential Legislative Solutions

All states should “carry forward” prior brands when issuing new titles. This requirement is one of the first steps necessary to provide a “closed loop” system. Once any state brands a vehicle, every subsequent jurisdiction titling and registering that vehicle must carry forward all previous brands of all previous jurisdictions. For example, if Virginia brands a title as a flood vehicle and the car is re-titled in Kentucky, the Kentucky title should carry the notation “VA–FL” (an abbreviation for Virginia-Flood Damage). Just as important, this carry forward requirement would require every state to carry forward previous brands on duplicate titles issued within the same jurisdiction. In short, interstate and intrastate brand carry forward is critical.

In addition to placing the brands on titles, states should brand registrations as well. Owners often do not see a title if the vehicle is subject to a lien, but every owner receives a registration document.

Congress should encourage all states to, at a minimum, brand vehicles within these four basic categories to capture the most relevant data for vehicle purchasers: salvage, rebuilt salvage, flood, and non-repairable. The most significantly damaged vehicles are covered by the following brands in most states: salvage, rebuilt salvage, flood, and non-repairable. To avoid needless confrontation over the exact wording of definitions, the states should retain flexibility in defining these terms.

All states should make existing title data readily available on a cost structure that reflects electronic records rather than paper records. Currently, private sector information vendors such as CarFax and Experian buy title history data in bulk and aggregate the data from various states to provide title histories to consumers. The states sell this data in bulk to these vendors and the lag time may be as long as 60 days. The laws of some states have not been updated to reflect economic commerce. Congress could encourage the states to make title data more available so that data vendors can obtain daily downloads of active title and registration and brand files.

All states should be encouraged to move to electronic titling of motor vehicles. If every state DMV issued electronic titles, the benefits to the consumer would be significant. Title histories would be more readily available, and the perfection and release of liens, an essential element of motor vehicle commerce, would be more efficient. An electronic titling regime does not mean the elimination of paper titles, because paper titles will be necessary for years to come to facilitate consumer-to-consumer transactions.

The National Motor Vehicle Title Information System, authorized in the Anti-Car Theft Act of 1992, should be reconfigured to focus on providing consumers transparency *prior* to a transaction. The vast majority of the resources of NMVTIS have been used in an attempt to link DMVs so that title clerks can talk to title clerks electronically before issuing new titles. *Unfortunately, most title fraud occurs before a title clerk ever sees an application for a new title.* Most DMVs exist to document motor vehicle ownership *after* a transaction has occurred. Moreover, DMVs do not have the statutory authority, the expertise, or the financial resources to package and market VIN history data in the general public.

In contrast, there is an active, innovative, and highly competitive information industry that could provide more complete, timely and accurate vehicle title histories. The DMVs and the private sector must work together more aggressively to enhance consumer access to title history data.

Congress should require the Department of Justice to implement the Anti-Car Theft Act for the benefit of consumers. DOJ has existing statutory authority to create more motor vehicle title transparency in a matter of months. 42 U.S.C. §§ 30501–30505.

Congress should compel DOJ to initiate the rulemaking that was originally intended and enforce the penalties under existing law for failing to submit data to NMVTIS. The rule should: (1) recognize that NMVTIS has been created; (2) require insurance companies to submit to NMVTIS VIN-based information on total loss vehicles; (3) require salvage auctions and junk yards to submit to NMVTIS VIN-based information for vehicles sold at salvage auctions and junk yards; (4) require NMVTIS to engage a private sector joint venture partner to market the NMVTIS data to consumers no later than June 30, 2006; and (5) encourage state DMVs to

submit VIN-based motor vehicle title and registration data to NMVTIS in electronic batch form every 24 or 48 hours. NOTE: All data marketed to the public must comply with Federal and state privacy protection statutes.

Any Federal remedies must reflect federalism. Motor vehicle titling laws fall within the jurisdiction of the states. Federal preemption of this state-based regulatory regime could be challenged under the Tenth Amendment to the U.S. Constitution. To limit such a challenge, Congress could use incentives (provide grant money) or penalties (withhold certain Federal funds) to encourage states to change their respective motor vehicle titling laws promptly.

Conclusion

Vehicle purchasers should have the right to know about significant vehicle damage that may affect the safety, drivability, durability, and value of a car or truck. Only if armed with fully disclosed information regarding a prospective vehicle can a purchaser make an informed buying decision. Only when armed with this information will a purchaser know what repairs to inspect prior to purchase.

Any solution to the title fraud problem must be viewed through the pre-transaction lens. The technological solution to the problem of flood vehicles—and all other title fraud—lies in creating near real-time, pre-transaction access to the vehicle history data that DMVs, insurance companies and salvage yards currently collect.

The solution employs existing private sector companies. A vibrant third-party information industry already exists using the limited information currently available. Adding to that information would add value to the industry and value to the information currently available to vehicle purchasers.

Our focus is on creating accessibility to this information, not providing it directly. We seek to take a currently antiquated element of what states do and encourage states to bring that function into the information age for the benefit of vehicle purchasers, not to dictate to states how they do it.

On a final note: the Coordinating Committee for Automotive Repair recently introduced a report on the health hazards of many flood vehicles since “contaminated vehicles and their parts are likely to be distributed over a much larger area than was directly impacted by the hurricane.” Flood cars only highlight a broken title system. If we work together to solve flood vehicle problems, these same solutions will reduce all types of title fraud, such as odometer fraud and VIN cloning.

It is now time to modernize the titling system and bring the titling system into the 21st Century. Congress can take simple steps to help notify vehicle purchasers that their vehicles have been seriously damaged. Complete and timely title information benefits us all. Congress should take this opportunity to take action that helps prevent scam artists from “washing” titles and keeps damaged vehicles from ending up back on the road.

NADA and automobile dealers in Virginia and throughout the country are prepared to assist with efforts to eliminate title fraud. Thank you for the opportunity to present our views, and I look forward to your questions.

Senator PRYOR. Thank you very much.

I know that Senator Allen will return in just a moment. We had a total of three votes. So I voted on the first vote. I was the last vote on the first vote and the first vote on the second vote, and I am sure he is doing that right now, and when he gets back I will probably have to leave to take care of my third vote.

But let me, if I may, start with you, Mr. Hall, because you are really a critical player in all of this. Back when I was the Attorney General of my state I had a very good relationship with the auto dealers in Arkansas. You may want to check with some of them. But they would be the first to tell you they would always get nervous when the Attorney General was starting to look around at consumer issues relating to cars, because a lot of times if you are not careful the auto dealers are the ones who get stuck with the costs and the risk, etcetera.

So this is a situation where a lot of times people think you have to make a choice, you have to be either pro-consumer or pro-business, but this is one of those areas where you can be both at the same time and everybody is much better off.

I saw your orange book there, "51 different ways to brand cars or title cars." I know in Arkansas before I was the Attorney General at one point at least the State did not have any branded title law. So we were one of those States that you could go to to wash the title. We recognized that and we changed our law.

So I think that that is very positive and very pro-consumer. But I am very glad to hear you say that consumers—and you stress it over and over—consumers have a right to know. I agree with that. I think the marketplace is really what we are trying to clean up here and make sure the marketplace is fair and there is transparency and people know what they are buying because, like you said, if someone knows—if someone is about to buy a salvage car or a flooded car, I guarantee you in their mind it is not worth as much as a car in better condition. It is just not. So let the marketplace operate as it should.

I assume that it is very common with your membership that they unknowingly take possession of these cars with the washed titles, is that right? You mentioned 30 percent of the time. You think it is that high in your state?

Mr. HALL. First of all, Senator, let me say this to you. To begin with, what is unique as at least I appear today is this: We are not asking you to come down on the side of consumers over car dealers or car dealers over consumers either way. The bottom line is we want you to come down on the side of consumers and we are consumers. We buy those 38 million cars and then resell those cars.

In my 27 years of working for auto dealers, I can absolutely attest to this Committee today that dealers do not want to sell vehicles that have brands on them without that knowledge and make that knowledge fully available to consumers. They have had dealings with the Attorney General's Office. They have expressed over and over again: All we want to do is know, but unfortunately we do not hold the information. The information comes from the insurance industry and those individuals that own those vehicles. As a result, we have a tough time selling a vehicle, only to find out later.

Unfortunately, some of the vehicles, Senator, that are rebuilt are done so good that, even with years of experience, it would be very difficult to detect until after you have taken it, you have driven it for a period of time, and/or it gets hot in Arkansas with a flood car, and so forth.

So I am here today to tell you that we absolutely are on the side of the consumers with this issue. We want to know. We want the responsibility to tell consumers about that knowledge and let the consumers make informed decisions. But as a follow-up, in Virginia we average about 10,000 cars a year that would fit into this category on average. In Virginia we have passed a very, very tough law that deals with title branding and salvage vehicles. The difficulty is it only protects the good citizens of the Commonwealth of Virginia. It does not do much good for other folks and/or cars that come from somewhere else into Virginia.

Our goal and our aim and the position of the National Automobile Dealers Association is to say, if it is good enough for Virginia, it is good enough for consumers and it ought to happen nationwide.

Senator PRYOR. Let me ask this too, before I turn it over to the chairman here. You mentioned that some of these cars can be restored and they can look great and it is very hard to tell. But can you fix these cars well enough to where they are not going to have any mechanical or electrical problems?

Mr. HALL. Senator, to begin with, I think it would be difficult to say that you could absolutely fix it and not have mechanical problems or not. I would say this to you. Historically speaking, these vehicles have problems. I think the key is this. The price that you pay for that vehicle should be considerably less than what it would be if it were not a branded car.

The issue is for you to understand what you are buying. There are folks that may want to buy those vehicles for various reasons. We do not want to take away their right to purchase those vehicles. What we want to make sure is they know what they are buying, what it means. If it says "Iowa brand" on it, then they have to figure out what that means and understand what potentially is going to happen.

My experience in all the many years of representing car dealers is this: I would not allow my adult age children to drive around in these cars. I would not want you, Senator, or anyone else that I know to drive these cars, because generally speaking, they are not good investments for lots of reasons, and typically they do not drive real well and they do have problems that are manifested down the road.

Senator PRYOR. I am going to turn it over to the Chairman. Thank you.

Senator ALLEN [presiding]. Thank you, Senator Pryor.

What would anybody—Don, what would anybody want these cars for, the people that buy them? Demolition derbies?

Mr. HALL. Senator, I appreciate the question. Let me say a couple of things to you. First of all, people want to sell them, as testimony that was given earlier would indicate, which is there is a lot of money in these cars. You buy them very inexpensively at the auto auction.

Senator ALLEN. Why would any consumer want to buy a car that has been flooded when you have all the problems that would be associated with it to the engine, to the electrical system, to mold growing inside the panels? Why would anybody want to buy one of these?

Mr. HALL. Senator, I would say this to you. The reasonable person probably would not, but oftentimes because of brands not carrying forward they would not know that it had been a flood car or a damaged car. I think the people that tend to buy them, if they buy them with full knowledge, then they buy them because the price is greatly reduced. Maybe they have some special expertise in working on vehicles where they want to take on that liability and responsibility.

But as a general rule, unfortunately, most cases that I am privy to over the years are situations where consumers have bought them, dealers did not know, consumers did not know, only to find out later they in fact had a brand from some other state and it was manifested months later.

Senator ALLEN. Let me ask all of you this, which states are the states where you have talked about in the beginning on washing titles? Are there certain States that are the States where you can wash titles, if any of you? Don't?

Mr. HALL. Mr. Chairman, I will chime in for a minute. You were not here.

Senator ALLEN. Yes, I missed it; I am sorry.

Mr. HALL. That is not a problem, sir. This book [indicating] is the book that has how to title cars in 51 different jurisdictions. I have made a conscious decision not to mention various states so as not to embarrass the states.

Senator ALLEN. I have now asked you.

Mr. HALL. You have, so I am now obligated to answer that question. I would submit to you that if you had a good friend in Alaska, as an example, you do not send the car to Alaska; you send the paperwork to Alaska. Then Alaska at that point will issue a title and wash it.

There are a number of states, and they are all marked here in this book, that in various forms either will not recognize a title, therefore will not carry it forward, if they can recognize it and it seems to be synonymous with something they use they will carry it forward, or they say point blank, we do not carry forward brands from other states. That is the problem in a nutshell, is the fact that they are not carried forward.

Senator ALLEN. Well, how many states—are there other states other than Alaska, which is a good state? The value of that is the Chairman of this Committee—

Mr. HALL. Is from Alaska.

Senator ALLEN.—is from Alaska.

Mr. HALL. I noticed he is not here, Mr. Chairman.

Senator ALLEN. Are there other States?

Mr. HALL. There are and I could literally go through if you would like.

Senator ALLEN. Well, how many are there? Half a dozen, ten?

Mr. HALL. More than a half a dozen that have different variations of either do not carry it forward under any circumstances, do not use it if they cannot recognize it, or will conform it to some other term in their state if they think they can sort of figure out what it means. In Virginia, Mr. Chairman, I might submit that what Virginia does, our home, it will take a brand from Florida, as an example, and put on that title and the registration card, which is critical—most of us never see a title, but the registration card—they will put on there "Fl. brand".

At that point, it is up to the dealer and it is up to the consumer buying the vehicle to find out, what does that mean, "Fl. brand" and what does that brand involve? It may not be a brand Virginia recognizes, but through the wisdom of Virginia and our State DMV they have seen fit to carry forward brands on the registration card and on the title so everyone knows what they are dealing with.

Senator ALLEN. All right. Let us assume they have that. The vast majority of people buying a used vehicle in Virginia, and I would say any other state, would have no idea of what a Florida brand means. I doubt if people in Georgia or Alabama or other states would understand it. Would the National Insurance Crime Bureau

or would Experian information databases, would that help? How would either of those help a consumer if they tried to log onto their websites and tried to get that information?

Mr. FUGLESTAD. Mr. Chairman, certainly Experian's national vehicle database does have all the historical records associated with that. We do go to great lengths to standardize and normalize our data to have some consistency. For example, we will bring the multitude of brands into 51 key types that we currently have and support in our database.

But certainly the brand history and all of those transactions will appear on a vehicle history report if obtained by a consumer at the time of purchase. That should throw up the red flags at that point that there was something in the history of this vehicle. Whether or not the brands do carry in the formality of registering or titling with the DMV organizations between States, it will occur on the vehicle history report.

Ms. SHAHAN. Mr. Chairman.

Senator ALLEN. Yes, Ms. Shahan.

Ms. SHAHAN. That was a very good question, I think, about which States do not recognize different titles. What we have found is that really all it takes is one State not recognizing titles and then the titles can be sent there from anywhere in the country. In California, we had a problem where the highway patrol found a lot of salvage cars that had been brought in from Arizona and they physically stayed in California, but the titles were sent to Oregon, and Oregon did not recognize Arizona's salvage brand and they put on there something like "prior something," not anything that would raise a lot of red flags. When it came back to California, then it got a clean title because California did not recognize whatever Oregon was using as its terminology as meaning salvage.

I think that is one reason we are looking to electronic databases to solve this. One flaw with title branding, even if we had 100 percent carrying forward of titles, is that more sophisticated thieves are now counterfeiting titles, and you cannot even rely on the titles. Sometimes they just use whiteout. There were some flood cars from Hugo that were sent to Florida where they used a paper punch to punch out the place physically on the title where "Flood" had been stamped in North Carolina, and then they duplicated that and had a clean title coming from Florida.

So paper titles—

Senator ALLEN. So you catch that by what, by having the vehicle ID number?

Ms. SHAHAN. By having an electronic database, hopefully.

Senator ALLEN. But having it all on the vehicle ID number on the electronic database?

Ms. SHAHAN. That is right, and then it is a permanent record that is not in the control of someone who can just—

Senator ALLEN. Tamper with it.

Ms. SHAHAN.—tamper with it, right. Hopefully, it would be a secure database, and then it is part of that vehicle's history for the rest of its life. You know, there are potential problems with the VIN numbers being inaccurate. It is not going to be 100 percent, but it is so far superior to—it is sort of the 21st century solution for the problem.

Senator ALLEN. Mr. Brauch, let me ask you this, because I think the attorney general's office clearly can have an impact on this. Let us presume—and Ms. Chappell, you may want to answer this, too. Let us presume that the National Motor Vehicle Title Information System were up and running and all across this country, in every State, and anybody who wanted to, whether they were a dealer or whether they were a consumer, could have access to the database, or anybody else involved in the industry.

It seems to me that this is where we are getting to. Would this be the most advantageous approach? I am just listening to how you get around this fraud and so forth using data that cannot be tampered or altered, with relevant information quickly and easily accessible.

Mr. BRAUCH. Mr. Chairman, yes, the answer is yes. That is one of the most effective parts of what we can do here. One of the most effective solutions is to actually make NMVTIS work the way it was designed to work. What you described is how it is envisioned to work, and getting the information real-time, not just at the point of titling, but for consumers, well in advance of making a decision whether to purchase, this is so vitally important that they know about this history.

We can talk about branding titles, but, as we have noticed when we talk about "Fl brand," we do not know what that means. The title, as I mentioned, is not often present at the time of sale and so consumers do not see it in any event.

So having that kind of availability, whether it is through NMVTIS, through AutoCheck, Carfax, or all of those, would go a long way. But we still have to have enforcement to be able to go after the folks who lie, who do the sorts of things Rosemary described.

Senator ALLEN. Who would you say would be in the best position to go after those who are fraudulently passing on these vehicles?

Mr. BRAUCH. Federal and State law enforcement, sir. I think that we have a very good model in the odometer statute, where you have Federal criminal, you have State civil, and some States have enacted their own State laws. But what those provide are basically 51 cops on the beat, the AGs plus U.S. DOJ. I know this committee has jurisdiction over the FTC, if there is some way to authorize the FTC as well to bring action, kind of modeled on the do-not-call process that we have in place. That works very well and it really provides us the ability to prioritize, where the Feds can go after the biggest operators and the states can go after regional or other national operators and really hit them where it hurts, because we really want to knock the crooks out of this area.

So by getting the information into NMVTIS, getting it out to consumers, and having strong enforcement capability, we can really, really put a dent in this.

Senator ALLEN. The reality is apparently that this information as far as NMVTIS is concerned, it is not all in there.

Mr. BRAUCH. Right.

Senator ALLEN. First of all, they have not accumulated all the information on all the vehicles because different states do it differently.

Mr. BRAUCH. Yes, sir.

Senator ALLEN. So would we have to have a Federal mandate that all States require this? Go ahead.

Mr. BRAUCH. I just want to answer that question. I think a Federal mandate that States recognize each other's titles is important. A Federal mandate that States carry forward those brands on each other's titles is very important. I do not know if we have to mandate a bottom line definition of salvage or not. I mentioned that in my comments, that it might be helpful to have a minimum and allow the States to be more expansive. But if that proves unworkable, and that has been one of the problems that we have had in the past in trying to enact this, at least by requiring the States to recognize each other's title brands, carry them forward, have reporting across the country, and enough resources out there for NMVTIS to be up and operational as it is envisioned, those are the things that are going to make a huge difference.

Senator ALLEN. Ms. Chappell.

Ms. CHAPPELL. AAMVA would like to see, first of all, the uniform salvage branding legislation, which would ensure that we are all calling the same type of damage the same thing and carrying that forward. But NMVTIS really is the solution to the problem. If all 51 jurisdictions were participating in NMVTIS today, nobody would be able to wash a brand from a title because there would not be a DMV in the country who would title that vehicle without first checking this database and comparing what was on that paper title that the clerk is looking at with what the database is telling them.

To get to that point, we are going to need additional funding.

Senator ALLEN. Has anyone—has anybody estimated what the funding would be for and the amount?

Ms. CHAPPELL. We do have some estimates. I do not know if—\$25 million is what we need to bring the additional States online. But full participation in NMVTIS is bigger than that, as I mentioned in my testimony. We have got a requirement for the insurance industry and the junk and salvage yards to provide information to NMVTIS as well, and without the regulations, that has not happened.

Senator ALLEN. What is your bottom line figure for the States?

Ms. CHAPPELL. \$25 million.

Senator ALLEN. \$25 million. All right. Now, if it costs \$25 million, with Experian and Carfax and those in the private sector, are they not of use and benefit in this sort of discerning or title search?

Ms. CHAPPELL. I think that they are essential, that there needs to be a partnership between the DMVs, AAMVA, and the information resellers. Historically, there has been a partnership with those three entities and I think that we are all major players in this.

Mr. FUGLESTAD. I agree with that, Mr. Chairman. If you look at the power that can be brought, I will not say by flipping a switch, but very quickly, by marrying these initiatives, talking about private industry with their breadth and depth of data, collecting that today, standardizing, managing those data repositories today, marrying that with the real-time notion of NMVTIS, I think would be a very powerful solution, and in fact, it would probably make NMVTIS a more viable solution in the short term since it will be comprehensive.

Obviously, the States that are not participating directly in NMVTIS, we would not have real-time data. They would still be feeding through our typical batch transaction cycle and the validation and normalization. But it would be basically overnight to have all of the breadth of the 51 jurisdictions' data available, with much of it available real-time through the NMVTIS system and then what is not available real-time could be brought forward by private industry.

Senator ALLEN. So you envision—I would hate to put a private enterprise out of business in the midst of all of this when you can actually find a public/private partnership, so to speak, to take the best minds and creativity of the private sector and the government to satisfy a desire on the part of consumers to receive accurate title information. And I add car dealers as consumers because, ultimately, they would want to know what they are buying. In many cases there are no titles and that is one of services you get at a dealership. Ah, I do not know where the title is, it is lost. You find a few inspection stickers around and so forth, and they have to go through DMV. It is kind of a DMV office at a car dealership. So you have all of that.

So a dealer on a trade-in will be a consumer as well. To the extent that a public/private partnership could work out, that would be the approach, because I do not care to put creative entrepreneurs out of business.

You may have different recollections, but this is not an issue of first impression. When Senator Pryor brought this up, I said, let us have a hearing, figure out what all the stakeholders and knowledgeable people think about this concern that he saw as attorney general of Arkansas. There were some shows. I cannot remember which one of the broadcast networks had it, but it was actually a car from Virginia that was washed through Mississippi to Arkansas from Hurricane Floyd, I think it was.

But in the past this has failed, this effort in the Senate has failed. What is different now or why did that fail? I know, Mr. Hall, you have been involved and probably some of the other panelists have. And what can we do now to make sure that what we are doing is appropriate for Federal jurisdiction at the least cost, but effectuating the desire that consumers, purchasers, whether they are individuals, whether they are companies, whether they are dealers, know what they are buying and making an informed choice?

So what is the difference now? Or what were the pitfalls that stopped this previously so that we can actually effectuate something positive and constructive?

Mr. HALL. Mr. Chairman, I am sure that others could comment as well. I think part of the problem in the past was a desire to create a standardization of what brands are, so that the Federal Government would say there are certain brands that would be accepted. As an advocate of States' rights, we knew back then that was a problem, the idea of telling each State how they would have to handle this and not handle it. And frankly, the cost of doing this whole program was a major concern.

I think part of the message here today is that the private sector has it available. What has happened, though, is the insurance in-

dustry up until recently has not seen fit to release a lot of this information, and as a result of Katrina now, because of the number of cars that are out there, they have seen fit, and I respect that fact and I appreciate it, to release that information, those VIN numbers and the fact that they are flood cars.

The concern we have is that Katrina is only one part of probably another half a million cars that are going to exist this year as well. So in the past it was a combination of the complexity of trying to have one uniform way of doing it, and the protection of States' rights and States having the ability to do things the way they want to do things; two, kind of an unfunded mandate, if you will; and three, just the overall expense of providing this.

What has brought this to the forefront today as far as we are concerned, I am certain, is the fact that Katrina with that many cars at one time—it would take us years to get 500,000 cars out of the Commonwealth of Virginia in this situation. But when you have one particular national tragedy like Katrina and the number of cars, so now it is such where there are a lot of folks, including the insurance industry, have said, let us do something about it, let us make that information available.

Our comment is to go one step further, make all cars available. Probably the easiest way to have this happen, the first baby step, if you will, Mr. Chairman, is the idea of carrying brands forward from State to State. It may not be a perfect system. It is not going to tell you what an "Fl brand" is at that time. You are going to have to do some due diligence as a consumer. You are going to have to work with your dealer—that obviously is going to be noted to you—and talk about it.

But it is a system that at least gets the brands going from State to State and prevents the washing of titles in other States.

Senator ALLEN. Any other?

Mr. BRAUCH. Mr. Chairman, I was very involved in the process back in the 1990s and I would agree with Mr. Hall primarily in what he has described. From the perspective of the State attorneys general, it was the lack of flexibility that the Federal proposals were providing. They were telling the States, this is how you must define "salvage," it must be 75 percent, and if a State wanted to define it more broadly the proposal would not allow that.

The other thing that it did was it limited the number of years that were covered by the proposal. In other words, the car had to be something like six model years old or newer, and it was not picking up at all older vehicles. We were very concerned about that as well. Again, we wanted States to be able to be broader in their perspective, broader in what they covered, than that.

Ms. CHAPPELL. Mr. Chairman, if I may, from the AAMVA perspective.

Senator ALLEN. Ms. Chappell.

Ms. CHAPPELL. I would have to say that the reason NMVTIS only represents 52 percent of the vehicle population at this point-in-time is primarily a funding issue. So anything that could be done to find new funding sources to bring the rest of those jurisdictions on should get us to where we need to be, as well as ensuring that the regulations are done for the insurers and the junk and salvage yards to report their data.

Senator ALLEN. Back to this funding, this \$25 million—why do some States fund this and do not look to the Federal Government to assist them in doing it, like Virginia, and I reckon Iowa and California, also? Why do some States recognize it is important to fund NMVTIS, and others do not?

It can be looked upon as rewarding the less diligent by saying that the taxpayers, the Federal taxpayers, are going to help out those that have been slow to do it or inattentive, whereas others, whether it is California, Virginia, Iowa, Florida, spend their own funds on maintaining NMVTIS. How do you handle that?

Ms. CHAPPELL. As of today we have 15 jurisdictions that are participating in NMVTIS.

Senator ALLEN. 15.

Ms. CHAPPELL. Nevada came online today. And as far as I know, Federal funding was used by each of those jurisdictions, including Virginia.

Senator ALLEN. Well, was Federal funding available—Nevada undoubtedly got some Federal funding. Let us assume there are other States, the other 35 States that have not gone to this sort of reporting and branding. Is that funding available to those States presently?

Ms. CHAPPELL. Federal funding?

Senator ALLEN. Right. How does Nevada get Federal funding? Does Nevada have some special legislation or pot of money that it allocates the Federal funds in one way, and another State allocates Federal funds a different way?

Ms. CHAPPELL. The way the Federal funding has worked historically with NMVTIS is that a pot of money is given for implementing NMVTIS and then States that are interested in pursuing it this particular year who have IT resources available to do the work this particular year will go to AAMVA and request that they be given a piece of that Federal money to help support their development efforts.

Senator ALLEN. Is there a State match to this?

Ms. CHAPPELL. In some States what it has cost has been more than what the Federal funds that have been used by that State, so the State has contributed. I cannot tell you that it was a 50–50 match or anything.

Senator ALLEN. But there is some State share usually to it?

Ms. CHAPPELL. Yes.

Senator ALLEN. Well, when Virginia did it, how much was Federal funding, and how much was State funding?

Ms. CHAPPELL. Virginia's cost for NMVTIS as a pilot state are higher, were higher than what it costs a State to do today, because we were involved in defining the requirements for both sides of the system. We spent approximately \$2 million to bring up NMVTIS and we got \$750,000 from the Federal funds.

Mr. BRAUCH. Mr. Chairman, can I add something to that? I think that the information regarding NMVTIS we got from the Iowa Department of Transportation just this week was that that had 13 States participating online, so it must be up to 15 now. But there were an additional 10 states that are participating by batching information in, plus another 9 that are in development for either batch or online. So there are over 25 and maybe more than 30

states that either are participating right now or may very soon participate in NMVTIS.

Senator ALLEN. So it is not as bad as it sounds.

Mr. BRAUCH. It is not as bad as it sounds. But there is a strong need out there for more assistance. There was Federal funding at the very outset. In Iowa, I found out, we were able to bring ours online because we had Federal funding and because the timing was right. We were also in the process of upgrading our State system with State funds. We were able to combine it, as you say, a State match, and therefore get it done. But some other States may not be in that position yet and maybe need that Federal funding to help get them over the hump.

Senator ALLEN. Would a company like Experian be able to buy data from NMVTIS?

Ms. CHAPPELL. At this point in time they do not purchase data from NMVTIS, but we do envision giving them access to NMVTIS data. In fact, when we were talking earlier about the consumer having basically real-time access to NMVTIS data, one model would be that the consumer works with the third-party reseller, such as Experian, and they would not come directly to a department of motor vehicles, nor would they go to AAMVA.

Mr. BRYANT. Senator.

Senator ALLEN. Yes, Mr. Bryant.

Mr. BRYANT. Could I make a comment? The answer to our issues here is NMVTIS and this issue needs to be funded and standardized and it needs to be done now. The reason that there is concern now is because you have 350,000/500,000 vehicles that are out there. Before the hurricanes hit, NICB had around 40 to 50 cloning—I am sorry—title-washing vehicles, title-washing investigations going on from Alaska, Alabama, et al. These investigations are very complex because the vehicles go from state to state. The way you stop that is by having standardization of terms and communication and electronic databases.

The funding for NMVTIS is the real issue. When we created the Katrina database, there are 200,000 VINs in that database that NICB put together with law enforcement authorities, insurance companies, and from salvage pools. We are trying to prevent title-washing and fraud. It is going to hit us like a plague, and that is our concern.

Once again, I reiterate, NMVTIS is really the answer and it needs to be seriously considered.

Senator ALLEN. Thank you.

Senator PRYOR. Ms. Shahan, did you want to say something?

Ms. SHAHAN. I just wanted to add that I think NMVTIS is part of the solution, but it is not the entire solution. I think it is important to put some information on the car itself. When the National Highway Traffic Safety Administration was tasked by Congress with coming up with the best way to get information to consumers about vehicle safety, they contracted with the National Academy of Sciences to look into that issue. The Academy of Sciences came back and recommended putting safety information right on the car. They said that is when it is most useful.

Senator ALLEN. On the automobile itself?

Ms. SHAHAN. That is right.

We already have a requirement that has been in effect since 1985. The Federal Trade Commission requires every licensed dealer selling used cars to put a buyer's guide on the car explaining whether it is being sold with a warranty or without a warranty. That would be the logical place to put some information saying: "This is a problem vehicle and you need to look further into the database to get more information from it," so you can tell on the car.

As Mr. Brauch has pointed out, usually consumers do not have access to the title, so they are unaware at the time of purchase about the brand on the title. But as the National Academy of Sciences found, if you put it on the car, it's very useful. That is the time when you need to know, when you are looking at the car physically.

It does not resolve the question of what you do with online purchasing. There is probably a way to deal with that. But it is the most cost-efficient way, using existing requirements and just building on those. It is at least as important for the consumer to know that this is a car that swam with the fishes as it is to know whether or not it has a warranty.

As a matter of fact, usually if it has a damage history, even if the buyer's guide says there is a warranty on it, the manufacturer has voided the warranty, maybe for the entire car, or certainly for the part that is damaged, because manufacturers for some reason do not want to warrant parts when they have no idea whose parts are in that car. They could be totally different parts, not original equipment manufacturer parts. They have no control over who did the repairs. So, of course they are not going to honor the warranty on those cars.

Senator ALLEN. Right. And in some cases, though, the dealer may not know. If you only have 15 states, or let us assume half the States have some sort of way that you could determine the prior condition or whether it is a salvage vehicle or whether it had been flooded, the dealer may not even know that.

Ms. SHAHAN. That is right, and that is why I would agree that dealing with NMVTIS and having uniform access that is very timely makes perfect sense. Then it would be very easy for a dealer to download information, by vehicle VIN from NMVTIS, whatever, when filling out the buyer's guide to say whether there is a warranty or not, and then include in here, lo and behold, this is in the Federal database as a damaged car and if you are looking at this, you are a teenager buying your first car, you are a parent looking for a car, it is right there on the car, so you can factor that into your decision before you get to the point where you have agreed on a price, before you get into the little room where things happen.

Senator ALLEN. That is just plain old horse-trading. That is the most fun part of it, almost.

Senator Pryor, any questions?

Senator PRYOR. Thank you, Mr. Chairman. I do have a couple of questions probably for each witness, if that is OK.

Senator ALLEN. Of course.

Senator PRYOR. Let me—I am sorry; is it "CHA-pell" or "chapelL"?

Ms. CHAPPELL. "CHA-pell."

Senator PRYOR. “CHA-pell.” I am sorry, I mispronounced that earlier.

Ms. Chappell, let me ask you. We have talked a lot about NMVTIS here.

Ms. CHAPPELL. Yes, sir.

Senator PRYOR. I am not as familiar with it as I am sure I will be. Tell me, what is the purpose of NMVTIS? What does it accomplish?

Ms. CHAPPELL. The basic concept of NMVTIS is that for each vehicle there is only one record and only one title.

Senator PRYOR. So this, NMVTIS, is designed to thwart title-washing, right, and different terminology in different States; is that right?

Ms. CHAPPELL. It is designed to make available all information—

Senator PRYOR. In one place.

Ms. CHAPPELL.—in one place, on every vehicle that is on the road.

Senator PRYOR. When you say “all information,” do you mean like insurance information, like it was in an auto accident back in 2001? Is that the type of information, or is it who has owned it? I mean, tell me what type of information?

Ms. CHAPPELL. There is no personal information in NMVTIS, so name of owner, address of owner, none of that is there. Information that is about the vehicle itself—the year, the make, the model, the VIN, whether it has been branded, what those brands are, what the odometer reading was at the time of each titling transaction.

Senator PRYOR. So it is basic consumer protection and just basic information transparency on this vehicle?

Ms. CHAPPELL. Yes, sir.

Senator PRYOR. Now let me ask this. Is NMVTIS a Federal Act? Is it a State-to-State compact? What is it?

Ms. CHAPPELL. NMVTIS is the name of the actual automated system.

Senator PRYOR. Right.

Ms. CHAPPELL. It was created to comply with language that is in the Anti-Car Theft Act.

Senator PRYOR. Right.

Ms. CHAPPELL. Which required that there be a national database.

Senator PRYOR. But is it just an agreement among the states? Is that what it is? Or is it something the State legislature has to pass?

Ms. CHAPPELL. In Virginia we did not. It was an agreement between us and AAMVA. I do not know—it is federally-mandated.

Senator PRYOR. OK, I got you. I know how that works sometimes.

Ms. CHAPPELL. Probably better than I.

Senator PRYOR. Unfortunately.

The other thing is, I was just going to ask you, Ms. Chappell, is about real-time. You talked about real-time a few minutes ago.

Ms. CHAPPELL. Yes, sir.

Senator PRYOR. What is your definition of “real-time”?

Ms. CHAPPELL. Real-time means that if somebody comes into an office today to title a vehicle, the vehicle identification number that

is on the application they provide the front teller clerk is put into the Virginia automated system and that information is sent out through AAMVANET, which is the network for AAMVA, and AAMVANET knows where that vehicle is currently titled, so it points the query to the current state of title and the information that that other State has—let us say it is Kentucky—comes back and shows to the clerk standing at the front counter.

So I have got the Kentucky title in front of me and I am able to compare what is on the record with what is on this piece of paper in front of me. And if there is a discrepancy, I can stop the title transaction right then. If it comes back that the vehicle is stolen, I am certainly not going to title that vehicle.

Senator PRYOR. Right, OK.

Mr. Brauch, let me ask you, if I may, based on your experience in the Attorney General's Office there in Iowa and also just your experience with NAAG, et cetera, looking at this as a national problem as well, is washing titles a problem with a few bad actors or is it spread across the entire U.S. with people that are just selling their own vehicle engaged in this practice, or are there more like companies out there that almost specialize in this, that know all the tricks of the trade and do that?

Give me a sense of the scope of what we are talking about?

Mr. BRAUCH. It is a very broad scope. Unfortunately, there are large companies that operate nationally that may, in some respects, violate the laws and there are individuals operating out of their back yards who do it on an occasional basis. So it is large, it is small, and it is all over the place.

It is something that is not hard to do if you know how to work cars and you have larceny in your heart and you want to rip people off. So it can be done by individuals, it can be done by small used car dealers, it can be done by larger companies.

Senator PRYOR. Let us say if a consumer in your State is going to buy a used car. Right now as I understand it he can get—there are a few services—I think Carfax is one and I do not know how many there are total, but Carfax is the one that I know the name right off the bat. But what do they have to do, pay a fee to access Carfax? They type in the VIN number?

Mr. BRAUCH. That is correct. Other than this new service that they and NCIB and AutoCheck are providing here on the flood vehicles, which is a wonderful service—

Senator PRYOR. Right.

Mr. BRAUCH. But generally, yes, they pay a fee to get information about that vehicle. I do not know whether the services maybe offer the first one free to somebody who signs up or something of that nature. But the bottom line is there is a fee for it.

There are alternatives. For example, consumers in Iowa for a number of years have been able to contact the Department of Transportation and they will provide them that kind of information to the best of their records. So that is available out there.

Senator PRYOR. Will a company like Carfax be able to catch a washed title? Will they be able to say, well, it was titled in Kentucky and then it went to Mississippi, then it went somewhere else and somewhere else?

Mr. BRAUCH. Often they are. They do not always catch it, but often they do, very often. Those kinds of services and NMVTIS itself are extremely helpful in going back and saying, oops, before it was washed in whatever State it was titled as salvage in New York or whatever it might be.

Senator PRYOR. Right.

Mr. Bryant, let me jump to you if I can quickly. You—and again, I am glad you are doing it, but you have this web-based listing system now in the aftermath of Katrina, right?

Mr. BRYANT. Yes, sir.

Senator PRYOR. Is that available to the general public?

Mr. BRYANT. It is available to the general public and it is free. There is no charge.

Senator PRYOR. OK. And are you contemplating trying to expand that or trying to build on that? Do you have a sense of the success rate based on what you have done?

Mr. BRYANT. We have had a lot of internal discussions of whether we should expand that over a period of time, because natural disasters unfortunately are not going to go away. Frankly, there are other issues here as far as title-washing and so forth. We are having discussions, and have not made any final decisions.

Senator PRYOR. What percentage of the automobile insurance companies participate in what you are doing? Is it everybody? Is it just one or two companies?

Mr. BRYANT. The rules of the game in the Gulf Coast area affected by the hurricanes is that we take vehicle identification numbers from anybody and everybody. They do not have to be members of NICB. We have had—all the major insurance companies are involved. They are supporting it and furnishing information. We have certainly some of the salvage pools; most of them are furnishing us information, even down to Orkin Exterminating giving us a car.

We are taking information and entering it in a database. That is what we are doing in coordination with the Louisiana State Police, the Mississippi State Police, and some other authorities.

Senator PRYOR. Ms. Shahan, let me ask you. You were telling a story. I was in and out on voting, but you were telling a story about a Mercedes-Benz and the person bought it as a certified car. You mentioned this Mercedes story, but are other auto manufacturers doing the same thing? Are they selling cars as certified or whatever their program may be called, but certified, and then not honoring the warranty because they have a salvage title?

Ms. SHAHAN. Yes, that is correct.

Senator PRYOR. Is it your impression that all the auto industry is doing that?

Ms. SHAHAN. Yes.

Senator PRYOR. Are you familiar with the California Car Buyer's Bill of Rights?

Ms. SHAHAN. Yes.

Senator PRYOR. Will that help the people in California with that problem?

Ms. SHAHAN. I hope so. Unfortunately, it does not outlaw selling flooded cars as certified, but it specifically outlaws selling any vehicle that has sustained any frame damage. We are hoping that that is applied literally and broadly, to include vehicles that have

unibody construction. You know, there was some question. Some dealers said, well, it may not apply to unibody, and 95 percent of passenger cars are unibody. It was certainly our intention that it would include those cars.

Senator PRYOR. I like your idea about somehow thinking through a way of actually posting it on the windshield or the window when you buy it, because the buyer's guide is already required. Again, I do not know all the mechanics and the logistics of how that would work and how the responsibility of that would flow, but I think that is a common sense idea that I would like to pursue with you.

Let me ask one thing. I missed part of your testimony. I am not sure you mentioned it. But my understanding is some companies with large fleets, like a rental car company, somehow or another, given the way they are structured and how they do their business, they may not be picked up in the system, so to speak, maybe because they do their own repairs. I am not quite sure, but is there—are they in a special category, these rental car companies?

Ms. SHAHAN. They are, because they are self-insured. What has happened in some States in the past is that self-insured entities do not report to NICB necessarily. This is one of the flaws we have found with the Carfax database. We recommend to consumers that they check Experian or Carfax as one of the components of finding out the history, but we also tell consumers it is not a substitute for getting your own inspection done, because there are flaws with those databases. I am not faulting those companies, but it is only as good as the information that goes in.

So for instance, in the State Farm case, State Farm has admitted to the State AGs that it withheld salvage titles, it did not brand. About 30,000 to 40,000 vehicles that were salvage did not get salvage brands. For that reason, they would not show up as salvage in those databases.

Senator PRYOR. That makes sense.

Mr. Fuglestad, let me ask you a couple of quick questions. That is, back—let me preface by saying that when I was the attorney general in Arkansas we passed a do-not-call law. One thing that was very important to us is that the do-not-call law actually worked and actually made sense and it was workable. So we spent a lot of time with the phone companies and others to try to make sure that we could iron out all the details and all the kinks in the system before we passed the legislation.

So I am glad that you are here in part of this discussion, because you have some real world experience that I think would be very helpful to the Committee and very helpful to the Chairman and I as we do our follow-up on this.

But let me ask about Experian. You pay for that service, right?

Mr. FUGLESTAD. Yes.

Senator PRYOR. I mean, for me. If I come in—

Mr. FUGLESTAD. Yes, consumers pay for that service.

Senator PRYOR. And what is that? How does that work? Is that a one-time fee or what?

Mr. FUGLESTAD. Yes, there is a one-time fee for consumers that go to *AutoCheck.com* to get a vehicle history report. There is really two flavors. One is a single report, or if I am in the market for a

used car, I can get an unlimited number of reports for a 60-day period. There are two different ways to do it.

Senator PRYOR. I see.

Mr. FUGLESTAD. We also work with many of the dealers in providing history reports to them, with manufacturers on their certified pre-owned vehicle programs. So there is a variety of ways we get the vehicle history information out.

Senator PRYOR. You have about 500 million cars?

Mr. FUGLESTAD. 500 million, about 530 million vehicles that are represented in our database. We do not retire the records after they may have been retired on the road. Through our internal calculations, we have 280 million vehicles in operation or on the road today.

Senator PRYOR. Your report does include the brand? If title has been branded in one state or another—

Mr. FUGLESTAD. That is correct.

Senator PRYOR.—you pass that on. Do you explain to the consumer what the brand means in that state?

Mr. FUGLESTAD. Yes, there is a lot of explanation on what the different brands are. We do try to standardize to a certain degree. As I stated earlier, we have 51 brand types that we try to bring in into those types, because there is a lot of diversity across the States.

One of the things that we do, I guess I should mention that is a little bit different from the NMVTIS model, is we take on the standardization. We do not necessarily have the ability to require States to get their formats specific for us, so what we have to do is take it as it comes to us, typically electronically, daily, weekly, monthly, depending on the State, and we take that, standardize it, normalize it, instead of asking the States, obviously, to change their formats to abide by what we do.

So we do a lot of that data management and that is what, when I talk about leveraging private industry, it is on that management, it is on the breadth and depth. We have been collecting this data for years. I think we will see, obviously, in the States that are not participating in NMVTIS, but even in some of the States that are participating, we might see deeper and richer information. I think some deeper analysis can be done to bring that to the table.

I think that would be very effective, to analyze that. Even on the distribution side, we talked a little bit about how we get this out to the marketplace and to consumers and dealers and such. We have a variety of flexible, secure means for getting that information in the vehicle history reports out to consumers on a very, very high-scale basis.

Senator PRYOR. Do you have any sense of how many people use your service and change their mind on a car they are about to buy? Do you have any sense of that?

Mr. FUGLESTAD. We do not have any sense other than testimonials. We have received several testimonials that allude to that. In fact, we do not have any mechanism for really tracking that. We do turn out, in different flavors now, we do turn out about a million either branded title vehicle history reports or vehicle history checks, depending on the customer or the partner we are deal-

ing with, a month. So it is a very high volume and it is rolling through.

We provide all the branded title reporting to the auction houses as the vehicles go through the auctions. They are using AutoCheck's services to check the vehicle for any historical brands or potential problems. So it is a very high-scale volume there.

Senator PRYOR. Let me ask you about Ms. Shahan's idea about having the information posted on the window, like the buyer's guide. What if there was a law that required retailers, I guess, to post some sort of information on the windshield or the window like they do with the buyer's guide? Would—at initial first blush, do you think that your company would be in favor of something like that?

Mr. FUGLESTAD. I think so, as long as we include the AutoCheck vehicle history report with that.

[Laughter.]

Senator PRYOR. I understand that. Well, actually that is kind of what I am getting to. It sounds like a consumer would have more than one option, or seller, let us say a seller, like a car dealer, on the used car lot would have more than one option to choose from, maybe if we left it to their discretion, for them to post some sort of standardized type format, so that when a consumer goes from lot to lot to lot they would see pretty much the same type of information posted.

But if your company was one of those that was providing that information, it might change a little bit the nature of your business because you would be dealing more with sellers than buyers. But it is something to think about.

Mr. FUGLESTAD. Sure. And Senator, just briefly, that is something that is done today, not necessarily posted on the vehicle, but many dealers again through our service or our competitor's service Carfax, they do provide that history report to the buyer. So the seller in that case is actually paying for that service.

Senator PRYOR. Let me ask this, the last question for the car dealers in Virginia. Let us just say hypothetically right now in your State, if a car dealer does the background check on the vehicle, finds out it is salvage, but does not disclose that to the consumer, what does that do to your liability or your member's liability? How does that—does that make you responsible in any way? Are you—is that some sort of deceptive trade practice?

Mr. HALL. First of all, Senator, as a former attorney general you have much greater expertise in this area than I would. I would submit this to you. The bulk of all new car dealers nationwide retail the most used cars nationwide, Number 1.

Number 2, if a dealer were to determine that, I can assure you that in Virginia, and I am certain with Dennis Yungmeyer in Arkansas and his folks, they are going to make sure that that car is never sold at a retail dealership. Unfortunately, what happens is we have got the car, we are stuck with it. So it is wholesaled then and ends up on a used car lot someplace, who knows where, and it may or may not have the title washed later on.

But the answer is certainly there is significant liability. Car dealers are very much aware of that and are very much uninterested in selling cars of that nature with that knowledge. Part of the prob-

lem we have got is, Experian is a wonderful company, as is Carfax, but the data is very incomplete today. So therefore we are selling those cars as we speak, without knowledge. We have run the reports, we have represented them as such, and even, unfortunately, having done that, we lose in court, frankly, honestly stated.

But we find out after the fact because the information takes months to get in and/or it never gets in the system, but it is determined later, months later, the car in fact was put together, two cars put together, or it was under water or whatever else.

But I can assure you that the typical new car dealer who sells the majority of all used cars retail is not interested in selling a car with that information. They do not want to sell it. They want to get rid of it.

Senator PRYOR. That is where we get back to, you are on the side of the consumer.

Mr. HALL. Yes, sir.

Senator PRYOR. And you want to see this have a good resolution.

Mr. Chairman, that is all I have.

Senator ALLEN. Thank you, Senator Pryor.

I do not have any further questions. I want to thank all our panelists today for your interest and your expert insight. I am particularly proud of Ms. Chappell and Mr. Hall from Virginia, but all of you, from California and Iowa and Illinois, and Mr. Bryant is headquartered there in Virginia as well. Thank you.

This issue of flooded and salvage vehicles, we want to go about this in a thoughtful, logical, and effective way. Your insight and your perspectives have really given us—I have taken notes and our staffs have been taking notes. I thank you also for bearing with the way the Senate operates. We did want to keep this moving and you have provided us with a very valuable perspective. As we cobble together some legislation, we are going to keep in contact with each and every one of you and others in your association to make sure that we can move forward, because there was a pretty good unanimity and convergence of approaches here. So we want to make sure that as legislation goes forward it is appropriate, while also recognizing that the Federal Government cannot do this alone. It will be in partnership with the states and obviously the private sector as well, and others who care about the consumers, as we all do.

Thank you so much for your attendance, your interest, and your sterling leadership.

[Whereupon, at 4:20 p.m., the Subcommittee was adjourned.]