

STATEMENT OF RICHARD C. MORSE  
CHIEF, ODOMETER FRAUD STAFF  
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION  
BEFORE THE  
SUBCOMMITTEE ON TELECOMMUNICATIONS, TRADE,  
AND CONSUMER PROTECTION  
U.S. HOUSE OF REPRESENTATIVES

June 26, 1997

Mr. Chairman and Members of the Subcommittee. I am pleased to appear before you today to discuss H.R. 1839, the "National Salvage Motor Vehicle Consumer Protection Act of 1997" and a similar proposal entitled "Titling and Control of Severely Damaged Passenger Motor Vehicles," included in Title IX of H.R. 1720, the Administration's "Surface Transportation Safety Act of 1997." With me at the witness table is Stan Feldman, the National Highway Traffic Safety Administration's (NHTSA) Senior Legislative Attorney.

**BACKGROUND.** Both H.R. 1839 and Section 9006 of the Administration's bill propose to implement the February 1994 recommendations of the Motor Vehicle Titling, Registration, and Salvage Advisory Committee (the "Advisory Committee"), convened by the Secretary of Transportation as directed by the Anti Car Theft Act of 1992 (the "1992 Act"). The Advisory Committee included representatives of auto manufacturers, dealers, recyclers, salvage dealers, scrap processors, insurers, State and local law enforcement officials, State motor vehicle administrators, and the U.S. Departments of Justice, Treasury, and Transportation. I had the honor to have served as Chairman of the Advisory Committee.

Section 140(a) of the 1992 Act directed the Advisory Committee to study problems in motor vehicle titling, registration, and salvage control that affect the problem of motor vehicle theft. The lack of uniformity in State laws on vehicle titling, registration, and salvage of used passenger motor vehicles increases the likelihood that the theft of these vehicles will go undetected. Moreover, this lack of uniformity in State laws permits unscrupulous sellers to sell these vehicles

without disclosing that they have been severely damaged. Vehicles sold in this manner often have titles that have been "laundered" to remove such information. Removing salvage history from a vehicle's title aids sellers who intend to mislead potential buyers about the condition and the value of these vehicles.

Salvage vehicles also become involved in illegal commerce in stolen vehicles and parts. Auto thieves buy salvage vehicles at a very low cost just to obtain the Vehicle Identification Number (VIN) plate and a title. They then steal a similar vehicle, switch the VIN, and obtain a valid title for the stolen car.

In addition, passenger motor vehicles that have been severely damaged, either through crashes or acts of nature such as floods, are often repaired without inspection and make their way back onto the Nation's roads and highways -- posing a danger to the lives of their operators, passengers, pedestrians, and other motorists. The lack of a safety inspection for rebuilt salvage passenger vehicles may pose a risk of death or serious injury to unwary buyers. Likewise, the absence of a theft inspection may lead to these vehicles being rebuilt with stolen parts.

Creating uniformity among State titling systems will ensure that brands indicating severe vehicle damage will remain on the title permanently and that the vehicles receive a safety and theft inspection before being sold to the public.

The National Auto Auction Association (NAAA) estimates that the reselling of salvaged vehicles as non-damaged used cars could be costing the used car industry and the car buying public as much as \$4 billion each year. State officials in Michigan and Pennsylvania estimate that 70 percent of wrecked cars that are sold as salvage (12,000 per month in the two states) are rebuilt and returned to the highway.

The 1992 Act directed the Advisory Committee to determine whether this lack of uniformity in State laws encourages vehicle theft and fraud and to determine if adoption of uniform title branding would deter criminal activities. The Advisory Committee's report concluded that the lack of uniformity in State laws on vehicle titling, registration, and salvage of used motor vehicles increases the likelihood that motor vehicle theft will go undetected. To address this problem, the report recommended the adoption of title branding and other Federal and State actions.

**OVERVIEW OF H.R. 1839 AND SECTION 9006 OF H.R. 1720.** Both H.R. 1839 and Section 9006 of H.R. 1720, the Administration's proposal, take very similar approaches to the recommendations of the Advisory Committee and, accordingly, propose many identical provisions. Both bills, for example, would require the States, when licensing a passenger motor vehicle whose ownership has been transferred, to disclose on the vehicle's title whether it had been severely damaged. This requirement would be accomplished in two phases. The first phase would require the States to disclose in writing, on a newly issued title, any information indicating that such a passenger motor vehicle was previously issued a title containing a word or symbol signifying it was "salvage," "unrebuildable," "parts only," "scrap," "junk," "nonrepairable," "reconstructed," "rebuilt," or damaged by flood. This first phase would begin after enactment, under the Administration's bill, and one year after enactment, under H.R. 1839.

The second phase would be implemented through a rulemaking. H.R. 1839 directs the Secretary to issue a rule requiring the States, in licensing **any** passenger motor vehicle whose ownership has been transferred "more than 2 years after publication of such final rule," to apply uniform standards, procedures, and methods for the issuance and control of their titles and for the information to be contained on their titles. The Administration's bill directs the Secretary to issue this rule "as soon as practicable" after the bill's enactment.

Neither bill authorizes funds to help the States pay the direct costs of complying with these requirements. While the Administration's bill anticipates that these costs to the States would be offset by user fees charged for the issuance of titles, registrations, inspections of rebuilt vehicles, related State services, and enforcement actions, H.R. 1839 directs the Secretary to report to the Congress, within 18 months after the bill's enactment, on whether the costs to the States of compliance with the rule issued by the Secretary can be met by these user fees. While both H.R. 1839 and the Administration's proposal would preempt State laws to the extent they are inconsistent with their provisions and the Secretary's final rule implementing its provisions, the Administration's bill takes a less preemptive approach by expressly stating that it does not: "(1) set forth the form of a State certificate of title; (2) affect a State law on titling, recordkeeping, inspection, or titling control procedures in connection with any passenger motor

vehicle with intent to defraud; or (3) exempt a person from complying with that (State) law.” Among other requirements, Section 33306 of H.R. 1839 preempts the States from prescribing the form of a passenger motor vehicle title.

Finally, though both bills set forth civil and criminal penalties for violations of their provisions, the Administration’s bill provides for a Federal private right of action to allow a private person to recover damages in a U.S. district court or in another court of competent jurisdiction. Specifically, it would make a person, who with intent to defraud violates the bill’s provisions or a regulation or an order issued under them, liable for 3 times the actual damages or \$1,500, whichever is greater. A similar private right of action in the Federal odometer law (49 U.S.C. 32710) has proven to be an effective mechanism for that law’s enforcement.

**COMMENTS ON H.R. 1839.** In general, H.R. 1839 is a comprehensive effort to implement the recommendations of the Titling, Registration, and Salvage Advisory Committee, established by the 1992 Anti Car Theft Act.

Though the Department supports the objectives and most provisions of H.R. 1839, we have concerns about several of its definitions. While we note that the definition of a “Salvage Vehicle” in Section 33301(2) of H.R. 1839 would make the cost of repair for such a vehicle exceed 80 percent of the vehicle’s pre-damaged retail value, instead of the 75 percent recommended by the Advisory Committee and the Administration’s proposal, we do not oppose an 80 percent threshold.

We have greater concern with the second part of the “Salvage Vehicle” definition, which excludes a passenger motor vehicle that is more than seven years old or has a retail value of less than \$10,000. We believe it may be appropriate to address, through rulemaking, a vehicle age limit for the term “Salvage Vehicle,” since even the most minor of crashes will render an older vehicle salvage under the definition’s cost of repair to value ratio. However, since approximately 105 million of the 190 million passenger motor vehicles in use today are older than seven years, the bill’s seven-year time limit would allow more than half of the total passenger motor vehicle fleet back on the road with no indication on their titles of how badly they may have been damaged.

We also believe it would be a mistake to include a \$10,000 retail value, or any other specific retail value, as part of the definition. Retail values depend on a number of variables, which vary from State to State and from pricing guide to pricing guide. A dollar-based retail value definition would allow unscrupulous sellers to move the titles of these vehicles to the State that offered the lowest value to avoid having to obtain a salvage title. Imposing such a definition may also have the effect of encouraging the vehicle's owner, based upon the owner's judgment of its condition, to choose to not have the vehicle declared "salvage" to avoid the controls required for such vehicles.

Another concern is Section 33301(4)'s definition of "Rebuilt Salvage Vehicle," implemented by Section 33302(b)(7), which requires anti-theft inspections of such vehicles but makes safety inspections a State option. A safety inspection of these vehicles is at least as important as the anti-theft inspection and it should be required as well.

The lack of a mandatory safety inspection also shows that the definition of "Nonrepairable Vehicle," in Section 33301(6), is flawed. As drafted, this term includes passenger motor vehicles that are "incapable of safe operation for use on roads or highways... ." However, without a safety inspection, it will be impossible to determine whether a severely damaged rebuilt vehicle is capable of safe operation for use on roads or highways or, alternatively, constitutes a "Nonrepairable Vehicle."

Finally, on the matter of safety inspections, we believe it would be impossible to effectively implement Section 33302(b)(7)(C)'s provision permitting States to allow the owners of rebuilt salvage vehicles to conduct their own safety inspections. Such inspections require trained personnel, either employed by or under the auspices of a State, to ensure accountability and effective implementation of the inspection criteria.

**CONCLUSION.** Mr. Chairman, thank you for the opportunity to discuss these important issues. Not only is legislation needed to ensure that severely damaged passenger motor vehicles are not used to facilitate auto theft, but with more and more people buying used cars, there is a growing need to provide uniform

information about these vehicles to permit consumers to make informed buying decisions.

This concludes my prepared remarks. I will be glad to try to answer any questions you might have.

#