



## **NSVRP PROPOSED LEGISLATIVE/REGULATORY REQUIREMENTS FOR BRANDING, TITLING, REGISTRATION AND REPORTING OF SALVAGE AND NON-REPAIRABLE VEHICLES**

The National Salvage Vehicle Reporting Program (NSVRP) is a leading not-for-profit law enforcement support organization dedicated to reducing auto theft, title fraud and abuse. NSVRP works closely with the U.S. Department of Justice, the FBI, Customs and Border Protection and other federal and state agencies to help further our mutual objectives. In addition, NSVRP is recognized by the Department of Justice as an independent third party standards body for the National Motor Vehicle Title Information System (NMVTIS), which was created as a result of the Anti-Car Theft Acts of 1992 and 1996. NSVRP's board is comprised of representatives of local and national law enforcement organizations.

In fulfilling our mission of reducing auto theft, title fraud and abuse, NSVRP routinely monitors the sale of used and salvage vehicles, tracking vehicles that are inappropriately and sometimes illegally offered for sale with unbranded or 'clean' titles, vehicles whose titles are 'skipped' when owners take possession through purchase and fail to retitle the vehicles in their name, when sellers avoid required reporting, or when titles are cleared of their prior branded status by 'title washing' through forgery or abuse of state loopholes that often involve interstate transfers. In many cases, NSVRP is able to track these potentially unsafe and fraudulently or improperly branded total loss vehicles from sources such as insurers, rental car fleets and other parties through the salvage auctions and middlemen as they ultimately pass into the hands of unsuspecting consumers, or when their paperwork is used to 'clone' stolen vehicles.

While titling rules vary by state, NSVRP has found that fraud is likely to occur when total loss vehicles do not get classified as salvage by insurers and other sellers or are not appropriately branded, and are not properly and swiftly reported into the appropriate state and federal databases by those entities such as auto auctions that are handling the vehicles prior to their being offered for resale. Some unscrupulous buyers are taking advantage of an undocumented damage status to then offer these cars for resale to an unsuspecting public. In some cases this involves title skipping, where the seller – which is in many cases a major insurance company – engages in a practice of title skipping to hide its part in the chain of ownership of the total loss vehicle. In other cases, buyers are purchasing massively damaged vehicles specifically for their titles and purchase record paperwork which is then used to 'cover' the identity of stolen vehicles which are cloned, or assigned the identity of the previously acquired title paperwork. Another trend that appears to be increasing is large scale purchasing of under-branded and unbranded salvage cars for export as part of trade based money-laundering schemes.

The under-branding, title skipping and non-reporting of total loss events often results in enhanced bidding on improperly branded cars, thus supporting subsequent resale fraud upon the public, creating a pre-condition that enables auto theft for cloning, or providing an environment that facilitates trade based money laundering by criminal groups as well as for funding terror organizations. Enhanced bidding leads to increased returns for the insurance companies or any other sellers and the salvage pools that sell these cars for themselves or on the behalf of others. This enhanced profitability at the expense of public safety and the public interest is of great concern and must be addressed as a law enforcement and public policy issue.

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NSVRP has developed a number of recommendations for branding, titling, registration and NMVTIS reporting that states should consider to improve the integrity and standardization of title branding and to better protect the public. Some of these recommendations may provide a new revenue opportunity for the state. None of the recommendations require additional funding.

**1. There should be title branding classifications for both salvage (repairable) and non-repairable titles and they must be well defined.**

NSVRP recommends at least three title branding classifications: clean; salvage, or repairable; and non-repairable, also known in some states as parts only, junk or Certificate of Destruction vehicles. Each classification must be well defined.

Vehicles that are damaged over 80% of their value are typically not safe to be repaired. If a vehicle is damaged in such a way that it makes sense to be repaired for an insured, and the repair is actually made for that insured, then such a vehicle does not have its ownership transferred and it need not get a salvage or non-repairable brand. When a wrecked or flooded vehicle is deemed a total loss by an insurance company, that insurance company has determined that the vehicle is not worth the cost that it would take to repair that vehicle and it must receive a branded title. If the damage is less than 80% of the actual cash value (ACV) of the vehicle, it may receive a repairable salvage title. If the damage exceeds more than 80% ACV, the vehicle must be taken off of the road.

Following please find NSVRP's recommended definitions for the major branding classifications. We strongly recommend against setting a monetary threshold for the definitions of these classifications and instead urge that the threshold be based upon the severity of the damage to the vehicle. The average age of vehicles on the road today is approximately 11 years. By setting even a relatively low monetary threshold in the definition, many older vehicles could be damaged to well over 100 percent of their retail value and still be sold with clean, unbranded titles.

Furthermore, NSVRP strongly advises against setting an extremely high (greater than 100%) threshold for a "parts only" or nonrepairable brand. Parts only branding prevents badly damaged vehicles from returning to our roads and highways, protecting consumers by insuring that heavily damaged total loss vehicles are designated as non-repairable. Such a high threshold for a nonrepairable brand means that cars that are terribly damaged and should be destined for the scrap heap are sold with titles that allow for rebuilding of the vehicle or reuse of the paperwork as rebuildable VINs, opening the door to numerous types of fraud and abuse.

Finally, states should ensure that insurers are not given the latitude to declare unwarranted self-exemptions when making branding determinations. Insurance companies have an economic incentive not to brand total loss vehicles as salvage vehicles and not to brand nonrepairable vehicles as nonrepairable. The best way to guard against this improper branding is to create well-defined branding classifications based upon the actual condition of the vehicle expressed in damage as a percentage of actual cash value.

**Clean title.** Extent of damage makes economic sense to repair to original condition, no branding.

**Salvage/repairable.** Any automobile with up to 80% damage to ACV may be considered repairable. A vehicle declared a total loss by an insurance company must be considered a salvage or non-repairable vehicle, depending upon the ratio of damage to ACV.

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**Non-repairable/parts only/Certificate of Destruction.** When an automobile is damaged to over 80% of ACV, it should be considered non-repairable. If a vehicle is deemed a total loss but no damage estimate is designated, that vehicle should be considered nonrepairable.

**Exemptions.** Exemptions to these branding classifications should be minimal. Some states may choose to exempt non-damaged recovered thefts from the salvage branding definition without impacting the integrity of the branding process. However, that integrity is lost when a state chooses to exempt vehicles over a certain age from branding, regardless of condition. The average age of a vehicle on the road today is more than 11 years. The older a car is, the less likely it is economically justified to repair that car. Creating thousands of exempt clean title total loss vehicles simply creates an environment that supports additional consumer harm when these total loss vehicles are later resold under clean titles, or are purchased for the paperwork which is then used to cover theft and/or VIN clones.

According to recent testimony in the Florida Senate Transportation Committee by Copart, one of the two largest salvage pool auction operations in the United States, cars that are sold with nonrepairable titles sell for an average of \$1200, while vehicles sold at auction as repairable typically sell for \$1500 to \$2000 more per vehicle. The thrust of this testimony seems to imply that salvage owners such as insurance companies and the auction companies that sell those vehicles on their behalf believe they have a strong economic incentive to be able to sell more cars with repairable titles. It has been NSVRP's observation from the field that the enhanced bidding can result from situations where the clean title paperwork adds to that value independent of the actual condition of the vehicle.

Instituting an 80% nonrepairable threshold not only protects consumers by keeping badly damaged and potentially shoddily-repaired wrecks off the road, but it also helps to protect them from the fraud that ensues in so many cases from the improper branding and valuation of salvage vehicles.

**2. States should include a flood title brand designation as well as a brand carry-forward provision in its rules.**

The importance of having a flood brand available becomes clear when you consider that none of the estimated 300,000 New York State vehicles damaged in Hurricane Sandy could be branded as flood vehicles – New York State can issue a salvage certificate but it does not have a flood brand available. Without a brand carry forward provision, non-repairable titles can easily be washed through states without non-repairable designations and sold in a third state to consumers who have no way of knowing the extent of prior damage.

**3. NMVTIS reporting violations should also be a violation of state law and states should require reporting on an accelerated timeframe.**

NMVTIS is operated by the U.S. Department of Justice (DOJ) and the American Association of Motor Vehicle Administrators (AAMVA). Following a recent NMVTIS Advisory Board meeting, [the U.S. Department of Justice \(DOJ\) provided an opinion confirming state authority to enact legislation that may be the same as or more stringent than the NMVTIS reporting requirements](#), as long as the state legislation does not conflict with or frustrate the federal legislation's purpose. This opinion provides justification for taking steps to make NMVTIS violations a violation of state law as well.

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The DOJ opinion also provides an opportunity for states to consider requiring NMVTIS reporting on an accelerated timeline. Federal law requires NMVTIS reporting entities (including insurance companies, fleet operators such as rental car companies, salvage auto auctions, tow operators and others) to report within 30 days of acquiring or handling a salvage vehicle. NSVRP proposes that a 24- or 48-hour reporting requirement would be in the best interest of the public, thus making branding information available in near real-time. This accelerated timeline would not impose a significant burden on reporting entities as the large-scale buyers have efficient systems in place and there are mechanisms for small volume reporting entities to report online directly to AAMVA at no cost.

NMVTIS violations are punishable by up to \$1,000 per vehicle incident. Therefore, state enforcement of NMVTIS can allow states to improve law enforcement and better protect consumers, while also providing a new revenue opportunity for the state's law enforcement agencies.

Well before Hurricane Sandy hit the mid-Atlantic last fall, NSVRP was working with state and federal agencies to monitor and record vehicles being offered for sale at online salvage auctions throughout the country. That monitoring had already uncovered that, even with the federal reporting and recording requirements of NMVTIS and the Odometer Act in place, major businesses involved in the sale of used and salvage vehicles and the parties that resell those vehicles domestically and internationally have continued to find opportunities to game the system.

When an estimated 500,000 cars were lost or damaged due to Hurricane Sandy, the problem was greatly magnified. NSVRP tracked vehicles that were inappropriately and sometimes illegally offered for sale with unbranded, clean titles due to title skipping, title washing and other violations. In a considerable number of cases, required reporting was not done by parties who were integral to the salvage disposal and resale process and who were required to do such reporting, including some insurers, fleet operators, salvage pools, towing companies, domestic resellers and exporters.

In April of 2013, the San Juan, New Mexico Sheriff's office announced action against a business that had been illegally engaged in the purchase of vehicles for the purpose of converting them to scrap. The Sheriff's office worked with the Department of Justice and NSVRP to identify 533 vehicles purchased in violation of NMVTIS, amounting to civil fines and penalties of nearly \$60,000. One of the business' owners pled guilty to five counts of state statute and sentencing will take place later this year. Based on our monitoring, NSVRP estimates that there could be tens of millions of dollars in NMVTIS and Odometer Act violation fines throughout the U.S. When states make NMVTIS violations also a violation of state law, they are in a position to collect these fines.

NSVRP has made available on its web site [NMVTIS State Enforcement Model Legislation](#) that provides a framework to provide authority to a state to enforce NMVTIS provisions and collect fines on reporting violations that so often lead to consumer harm and can also help to foster an environment in which it is easy for criminals to exploit the market for illicit ventures ranging from consumer fraud and domestic organized crime to international organized crime and trade-based money laundering.

#### **4. Close the gap on sales tax avoidance.**

There is significant sales tax avoidance in the sale of salvage vehicles. [California AB 2618](#), a bill that requires salvage vehicle sales to be presumed as sales at retail (and not for resale) and allows the seller to

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rebut the presumption by accepting a resale certificate from a licensed automobile dealer, dismantler, automotive repairer or scrap metal processor, went into immediate effect upon passage in 2012.

By closing this tax gap where purchasers who are not properly licensed to sell, repair or dismantle vehicles are purchasing vehicles without paying tax reimbursement to the sellers or use tax to DMV, the Cal. Board of Equalization anticipates staunching the loss of an estimated \$67 million every six months. NSVRP has developed draft legislation to help states close the gap on sales tax avoidance and it is available [here](#).

**5. Require a warning sticker on any vehicle offered for sale that has been reported as a total-loss by an insurance company or has been reported as acquired by a NMVTIS junk/salvage reporting entity, or if the certificate of title contains a brand.**

[California Assembly Bill 1215](#) requires all California auto dealers to check NMVTIS before offering a used car for sale and post a prominent warning sticker on the vehicle itself if the vehicle is in NMVTIS or has a branded title. The legislation was enacted in 2011 with widespread bi-partisan support and took effect July 1, 2012.

NSVRP recommends that other states use this as a model for similar legislation. Absent a prominent warning, consumers may be unaware that NMVTIS reporting history exists for the vehicles that they are in the act of acquiring. If they are made aware of the vehicle's status from the outset, consumers can make a more informed decision regarding price, safety and reliability of the vehicle they plan to purchase.

Additionally, NSVRP's research has demonstrated that when it comes to total loss information NMVTIS routinely carries explicit notification and reporting of total-loss information more quickly and more completely than any other source as a result of the legal requirement for such reporting by junk/salvage/insurance (J/S/I) reporting entities who are obligated to report directly to NMVTIS. This J/S/I reporting even includes the acquisition of vehicles handled for disposal for others, such as when a salvage pool sells a total loss vehicle for an insurer and which would not otherwise have been reported as a title transfer for state reporting requirements.

**6. Restrict sales of out of state clean title cars by salvage auctions.**

NSVRP's monitoring of salvage auto auctions following Hurricane Sandy, as well as in other cases, has identified substantial numbers of examples in which state title branding requirements have been avoided by moving unbranded total loss vehicles over state lines and offering them for sale in other states using the out-of-state pre-loss paperwork.

This approach violates the title branding requirements in the original state and involves title skipping which, on 0-9 model year old vehicles, is also a violation of the federal Odometer Act, according to the National Highway Traffic Safety Administration's Office of General Counsel. States should also ensure that title skipping – which is a federal violation – is classified as a violation of state law.

In these cases, neither the title state nor the state in which the vehicle is being resold is able to detect the violation. Therefore, some states have put regulations in place to prohibit the resale of these clean title out-of-state total loss vehicles in order to protect consumers from this illegal practice, which in many cases involves insurance companies engaging in this practice with the vehicle being resold at major salvage auction chains who would be in possession of the documentation (for example, noting water damage and a

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title state of New York which after Hurricane Sandy would indicate that the vehicle should carry a NY salvage brand) and would be aware of the legal requirements.

Selling an out-of-state branded title vehicle in a second state does not have the same level of risk of using cross-jurisdictional transfers to avoid title branding.

**7. Provide protections for consumers if they are allowed to purchase from salvage auctions either directly or through a brokering program.**

Some states are now considering expanding salvage auto auction sales from traditional wholesale markets to allow unlicensed consumer buyers, and some have already done so. Further, many auction companies now directly advertise broker services to members of the public who may not be eligible to bid due to licensing restrictions. However, there have not been corresponding changes to the typical auction pool ‘as-is, where-is’ sales policy, a policy that has been acceptable in an environment in which buying is done by businesses that can afford to absorb potential losses but that poses significant dangers for consumer purchasers.

Salvage auctions do not allow for close inspection of vehicles. The vehicles cannot be taken off-site, they cannot be put on a lift, and tests cannot be run. Furthermore, sales often take place in less than a minute based on Internet photos and extremely limited information provided by the seller. Severely damaged clean title cars lead to real problems for consumers – when the cars are purchased for paperwork used to clone stolen vehicles, when unscrupulous repairers flip catastrophically damaged vehicles by making cosmetic repairs and reselling them to unsuspecting consumers, or when severe damage is not visible and is not reported, as with many flood vehicles.

If auction pools are to be opened to unlicensed consumers, NSVRP recommends that these unlicensed buyers be granted a minimum seven day inspection period which begins once the vehicle has been delivered to a repair shop or other location of the buyer’s choosing. This time will allow for inspection, tests for undisclosed damage, searches for undisclosed history, or to determine if the vehicle is not fit for any reason for the purchaser’s use. Within that time, consumer purchasers should have an absolute right of cancellation, at the sole discretion of the purchaser, for a full refund of their purchase price and all fees and charges paid to the auction, including buyer’s fees, any fees and charges paid to any broker used in the transaction, and towing costs for delivery and return of the vehicle.

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## Conclusion

NSVRP has made a number of other recommendations for states to consider as a standard in order to improve the integrity and standardization of title branding and to better protect the public. Those recommendations can be accessed at [http://www.nsvrp.com/uploads/Best\\_Practices\\_Guidelines\\_for\\_Total.pdf](http://www.nsvrp.com/uploads/Best_Practices_Guidelines_for_Total.pdf). Additionally, members of NSVRP would be happy to discuss this matter with you further at your convenience. NSVRP may be reached at:

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Sincerely,

A handwritten signature in black ink, appearing to be 'H. Nusbaum', written in a cursive style.

Howard Nusbaum  
Administrator, National Salvage Vehicle Reporting Program

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