



November 30, 2012

### NSVRP position regarding Ohio SB 273

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, and for helping to control criminal activities related to the exportation of stolen and fraudulently obtained vehicles. NSVRP works closely with the Department of Justice, the FBI, Customs and Border Protection and other parties to help further these objectives. In addition, NSVRP is recognized by DOJ as an independent third party standards body for NMVTIS, 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.

NSVRP has been made aware of the status of Ohio S273, and early on in the process we submitted testimony at the request of the chair of the Ohio Senate Committee on Transportation. This testimony is available on our website. Also available on our website is a detailed best practices for titling and branding of salvage and rebuilt vehicles which is part of our standards of best practices recommendations to the states in order to reduce fraud in the commerce of salvaged and total loss vehicles through responsible titling and reporting.

The need for closing loopholes and protecting the public from harm through undisclosed resale of damaged and total loss vehicles is more critical than ever. Just last month, roughly 30 days ago, Hurricane Sandy hit the Eastern United States already resulting in roughly 230,000 documented insurance vehicle flood claims. In addition to these insurance claims, there are also many thousands of self insured fleet flood vehicles that are being resold without flood titles being acquired for these vehicles. Many of them are being sold through salvage auctions under clean titles, and many so far are also bypassing the required reporting into the Federal databases.

Our review of the current Ohio title statutes and our monitoring of the activity through the Ohio based salvage auction had uncovered loopholes in the current law that created opportunities for fraud and abuse. Some of the more serious problems with current law include:

**There does not exist in Ohio law a mandatory threshold for branding a vehicle as a non-repairable or junk vehicle.** As a result, a vehicle no matter how badly damaged can get a repairable salvage title in Ohio. These massively damaged vehicles can then bought for the paperwork and the paperwork then used to cover the identity of a stolen vehicle by applying counterfeit VIN tags to the stolen vehicle and reusing that first vehicle's paperwork. Badly damaged vehicles that are uneconomical to repair which also get this (repairable) salvage branding are at times purchased by unscrupulous repairers who inadequately repair the vehicles and resell them to unsuspecting buyers. Often these sales take place using the Internet, and are sold in a way that the consumer has no practical recourse. ***The requirement for non-repairable branding must include a mandatory threshold to ACV definition for when a non-repairable brand must be acquired for a vehicle. Based on other states we recommend a threshold of damage at 80% of ACV as a good threshold level.***

**There does not appear in Ohio law a definition that flood damaged vehicles for which total loss payouts have been made should be required to have flood non-repairable title branding.** Once these vehicles have been immersed, even if they are later cleaned, the vehicles are not likely to be reliably operable. Furthermore, flood vehicles, unless they have electrical corrosion reduction treatments apply to all connectors and plug in interfaces, and are inspected

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using dealership diagnostic tools to help isolate electrical components at risk for failure cannot be estimated for damage using traditional body shop estimating tools. (A more complete description is available on the NSVRP.org homepage).

While these and other problems exist with the salvage auction sales, **the US Department of Justice has noted in the NMVTIS Federal Rule cites salvage pools as “one of the most significant sources used by criminal groups as a source of paperwork and as a way to fund their operations.”**<sup>1</sup>

**Ohio should include language making violating NMVTIS a violation of Ohio law.** This will allow Ohio to directly enforce NMVTIS, and to be able to collect fines for Ohio from the violation of NMVTIS by entities under Ohio authority. When these violations take place, those fines go to the general US treasury. By enacting this provision, Ohio will be able to enforce NMVTIS and collect those fines for the state agencies helping to enforce NMVTIS.

#### Issues relating to opening up the salvage pools to the public

While up to this point in time only businesses who have acquired an Ohio Bid Cards are able to purchase cars at these salvage auctions, **SB273 if enacted in its current form would open up the public to all sorts of risks.** Making the auctions especially risky to the public is that these vehicles cannot be tested beforehand either by a test drive, an inspection from a qualified mechanic, detailed body inspection on a rack for inspection, or having dealer diagnostics run. In fact, most of the units are available of sale over the Internet, relying on pictures and seller provided short descriptions which come with warnings that they should not be relied upon. The auctions conspicuously post that all sales are on an ‘as-is’ ‘where-is basis, and any description must not be relied upon and are non-binding. This is the environment in which salvage dealers, exporters and other businesses in the automotive trade operate at these auctions. ***It is not a place where the general public should be allowed to purchase devoid of the normal protections consumers should expect to find from businesses licensed by the state of Ohio.***

While NSVRP believes that exposing consumers to the salvage auctions places them at unnecessary risk of being defrauded, it will also increase the attractiveness of the pools to those wishing to engage in predatory practices. If Ohio did feel that it is in its interest to open the pools to the public, then there a number of critical safeguards that need to be incorporated into any such legislation. These include that a minimum set of consumer safeguards be available. The first safeguard is that purchases from consumers, or by brokers acting for consumers must be prohibited from being made under an ‘as-is, where-is’ basis.

A second provision is that sales to consumers either directly or through a designated broker **must include a buyer cooling off period allowing a consumer to withdraw their offer to purchase without any penalty for a period of days from the close of the sale.** The computer Internet auction process is very exciting, and buyers will make ill founded decisions which in the period after the auction they should be allowed to have buyer’s remorse.

Since the buyer who has had no opportunity to remove the vehicle from the auction to a true inspection site for testing prior to making their bid, sales to a consumer either directly or through a designated broker be **subject to a**

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[1] Department of Justice. Final Rule, National Motor Vehicle Title Information System (NMVTIS). Federal Register, January 30, 2009, page 5759.



**minimum 14 day inspection period which starts once the vehicle has been delivered to a repair shop of the buyer's choosing.** If the consumer finds that the vehicle is not as the consumer expected, they must be able to return the vehicle to the auction for a full refund of their purchase price and all fees and charges paid to the auction including buyer's fees, plus a recovery of all sales taxes withheld on the purchase as well as any fees and charges paid to any broker used in the transaction. Any money spent on repairs which were paid to an outside party by the buyer would not be covered by this right.

#### Summary Recommendations

- 1- Require Mandatory non-repairable branding if the damage to a total loss vehicle reaches 80% of the used ACV price of the vehicle.
- 2- Total loss flood vehicles that have been immersed should be branded as flood vehicles and be required to get non-repairable branding.
- 3- Ohio should include language making a violation of NMVTIS reporting also a violation of Ohio law and enforceable by Ohio.

Do not open the pools to the public - but if you must then.....

If the pools are opened to the public:

- .Vehicles should not be sold at salvage auctions to the public on an 'as-is, where-is' basis (either directly or indirectly through a broker).
- .Retail buyers must have an absolute right to withdraw their purchase without any penalty for a period of days after the auction they have been notified that they have been purchased the vehicle. This must apply whether the purchase is direct or through a broker. We recommend a minimum of 3 business days after they have received confirmed notification that they have been awarded the vehicle.
- .Retail buyers, once having received the vehicle at a place of repair of their choosing, must have a period to have the vehicle inspected to determine that they can repair it and it meets the requirements for fitness and use. This must apply whether the purchase is direct or through a broker. If the consumer finds that the vehicle is not as the consumer expected, they must be able to return the vehicle to the auction for a full refund of their purchase price and all fees and charges paid to the auction including buyer's fees, plus a recovery of all sales taxes withheld on the purchase as well as any fees and charges paid to any broker used in the transaction. Any money spent on repairs which were paid to an outside party by the buyer would not be covered by this right.
- .These rights must apply in addition to any other existing rights consumers may already have under applicable state and federal law.

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