

Testimony

submitted by

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before the

House Subcommittee on Commerce, Trade, and
Consumer Protection

2123 Rayburn House office Building
10:30 AM – Wednesday
March 1, 2006

Mr. Chairman, Honorable members of the House Subcommittee on
Commerce, Trade, and Consumer Protection: *Good Morning!*

My name is Jim Watson and I am here today as President of the Automotive Recyclers Association (ARA). I am qualified to speak to the issue under consideration because, with my family, I own a dismantling and recycling business in Blue Island, IL. My family has owned and operated the business continually since 1936. We currently employ more than 50 technicians, sales reps, administration and support Staff.

The Automotive Recyclers Association was founded in 1943 and for 63 years has represented the best interests of the Nation's quality automotive parts recycling enterprises. The recycling of quality OEM automotive parts supports the highest pinnacle of recycling which is reuse, and through reuse, recycling saves our Nation raw materials, reduces the need to manufacture

additional and unnecessary brand-new parts, saves valuable landfill space and makes available to the consuming public, quality OEM used products that are much less costly than brand-new OEM parts.

Thank you very much for this opportunity to explain ARA's position in support of federal car title fraud legislation as a necessary requirement to protect the American consumer in several important ways, which I will address.

We appreciate this opportunity to speak to this important issue because vehicle title fraud is huge business in the United States. It ranges in the millions of dollars annually in the defraud of consumers and insurance companies. It also steals valuable time and effort from law enforcement agencies and officials both at home and in the international arena.

According to Interpol, the total value of motor vehicles involved in organized crime, including car title fraud, exceeds US\$19 billion per annum worldwide.

In fact, our industry, automotive recycling, takes this issue so seriously that ARA has drafted legislation to be introduced within the next week or so that would require the Vehicle Identification Numbers (VIN) of motor vehicles declared Total Loss and Non-Repairable by insurers would have to be reported to the National Insurance Crime Bureau (NICB) and permanently retired. The information on these vehicles would then be available on an online database available to the general public, law enforcement and business entities at no charge.

In addition, the ARA legislation would create a second and separate database that would also identify the VIN numbers of motor vehicles declared Total Loss by insurers but deemed safe to repair and ultimately are put back on the road. The legislation would also create yet a third database that would identify all vehicles destined for export out of the U.S. I have included a copy of the ARA draft legislation as an attachment to our written submitted statement, as Exhibit A, for your consideration.

Many consumers and dealers purchase unsafe and substandard motor vehicles each year and the unsuspecting consumer always is the loser because their purchase fails to perform properly as the result of sloppy, shabby and minimal repair necessary to just get the vehicle up and running

and back on the road. Failure on the part of the vehicle to perform safely is the cause of many accidents and, in fact, collisions that often result in the unnecessary and avoidable death of innocent people.

As licensed automotive recyclers responsible for the safe removal and recycling of every end-of-life and collision vehicle, we are keenly aware of the role salvage plays in title fraud, organized crime and vehicle theft.

Automotive recyclers not only see VIN numbers from declared Total Loss Vehicles being used or duplicated to be put on stolen vehicles of the same year, make and model, and often the same color, we have to compete for salvage vehicles against thieves who bid to purchase vehicles just to get the VIN number so they can put it on a matching stolen vehicle to be able to prove ownership of the stolen vehicle. Then, the thief will sell the stolen vehicle with its new VIN number and continue to repeat the process over and over again; paying whatever it takes to get the next vehicle he needs, for its VIN number.

Many of the stolen vehicles are represented to the buying public and to legitimate used car and new car dealers as rebuilt salvage vehicles. And worse, and often, the thieves will have rebuilt salvage titles washed so they are able to offer those vehicles for sale as just other nice vehicles available to the consuming public.

We also see VIN numbers used to title non-existent vehicles in insurance claims. What happens is that fraudulent stolen vehicle reports are created and filed with insurance companies as a loss.

Frequently, we also see VIN numbers from Total loss Vehicles being transferred to stolen vehicles that are exported from the United States to unsuspecting buyers in foreign countries.

ARA, as the voice of automotive recycling in the United States, believes that it is absolutely critical to take immediate action to remove the use of Total Loss vehicles and their VIN numbers out of the tool box of criminals intent on increasing title fraud in the U.S. and worldwide.

To that end, ARA has drafted a National VIN Retirement Bill (VRB) for which we hope to have notable Congressional sponsors and co-sponsors when we introduce it. The bill will not require the States to introduce any

new State regulations for compliance. But it will require the retirement of the VIN numbers of legitimate Total Loss, Non-Repairable vehicles in every State. Our legislation will prevent the use of retired VIN numbers in the United States and its Territories, prevent their use to register another vehicle, prevent their use to file fraudulent insurance claims, or to be usefully transferred to a stolen vehicle.

With, conservatively, more than five million vehicles declared a Total Loss Vehicle each year in the United States, with the number increasing each year as more and more air bags, which represent an expensive component in new cars, are added to improve passenger safety, having these data bases which identify the vehicle VIN numbers retired nationwide available to the public would be a gigantic step forward in the effort to reduce title fraud in the United States.

In addition to the draft legislation attached as Exhibit A, I am also attaching other documents I believe are relevant to understanding our position on stopping if possible or at least drastically minimizing title fraud in the U.S. The attachment included as Exhibit B is an article I wrote for the Power Source magazine which was published in December 2005. It focuses on the direct impact of the increasing percentage in salvage each year that is not available to legitimate automotive recyclers because of Total Loss Vehicle declarations. Exhibit C is another article I wrote on the subject that was published by the same magazine in January 2006. It explains the two types of Total Loss Vehicles and the problem faced by what is going on in the marketplace. Exhibit D also addresses the problem of salvage emphasizing the key provisions in the ARA draft legislation to help solve the problem.

Exhibit E is an article written by reporter Bryan Bender of the GLOBE Staff published October 2, 2005 entitled "US Car Theft Rings Probed for Ties to Iraq Bombings." According to that article, car theft in the U.S. alone exceeds \$8 billion per annum. Exhibit F is a copy of the Issue Briefing on the legislation and Exhibit G is a copy of an article by Peter Alexander, a correspondent with NBC Nightly News, dated June 9, 2005, which discusses cloning, the problems it creates and how to avoid buying a cloned vehicle.

In summary, ARA is very concerned about (1) how out of control the disposal of Total Loss Salvage has become in the United States, (2) the huge increase in the number of Total Loss Settlements versus Repairable Vehicle estimates that are being written today and the lack of accountability to track

the Total Loss Salvage vehicles or their accompanying ownership documents to protect the consumer and business interests, and (3) the growing fraud, theft and terrorism issues directly related to declared Total Loss Vehicles.

The fact that Homeland Security and U.S. Ports Authorities inspect about 5% of the inbound freight and a lesser percentage of what is exported only compounds the problems and our concerns. Recently, at a Canadian port, as an example, the North American Export Committee had a large number of containers searched, I think it was 100, and 10% of those searched had stolen vehicles in them!

In another instance, close to home, the Chairman of ARA's Salvage Solution Committee and a Past ARA President, Herb Lieberman, Vice President, LKQ Corporation, recently advised that he personally found fourteen 2005 Nissans that were sold in Los Angeles, CA on October 13, 2005 by Auto Auctions, Inc., a public company, with Arizona salvage certificates showing salt water damage. All 14 were listed on the National Insurance Crime Bureau website as Katrina cars from New Orleans.

These cars should never have been put back on the road because of the impact of corrosion from being submerged under 20 feet of salt water for several weeks which cannot be reversed, and because EPA tested the water in New Orleans and publicly announced that it contained high level traces of arsenic, lead, chromium and E coli. The toxic residue hidden in those vehicles make them a bona fide safety hazard to the consuming public.

Of the more than five million Total Loss Vehicles sold through salvage pools in the U. S. every year, the vast majority ... approximately 70% ... are not sold for the purpose of dismantling and recycling. Some are purchased by legitimate rebuilders

And others are purchased by rebuilders who embrace questionable safe and accepted repair techniques who may also use stolen parts to rebuild or repair vehicles for sale.

It is also interesting that 70% of the vehicles sold through salvage pools are insurer-declared Total Loss Vehicles. This would suggest that these vehicles probably should not have been declared Total Loss in the first place.

Another problem is that anyone can purchase a salvage vehicle thru a salvage pool by going on the internet. The purchaser does not have to have a license to make the purchase and such sales may well support a large underground economy that skirts the payment of any taxes.

Two of the goals ARA is pursuing are to create a level playing field for all legitimate bidders whose business is to legally process end of life and collision vehicles for any legal purpose, and to curtail the fraud, theft and crime involving motor vehicles. This is why we believe federal legislation is needed, necessary and now.

Other reasons ARA promulgates the need for federal legislation to prevent fraud, theft and criminal activity, and any illegal activity involving motor vehicles, includes the following points, which are also supported by the North American Export Committee:

- 1) auto theft has been linked to terrorist groups as a funding source, for transportation, and as an improvised explosive device;
- 2) organized crime has been and continues to be one of the greatest threats to the safety and well-being of American citizens on a daily basis and motor vehicle theft is a staple in organized crime activities and is a major commodity in global trade;
- 3) the success to date of law enforcement to quickly identify motor vehicles used in criminal activity, including terrorism, has resulted in a demand for “cloned” vehicles that cannot be traced back to their owners, hiding the paper trail. Had the van used in the first World Trade Center bombing in 1993 been a cloned vehicle, to hide its paper trail, law enforcement might not have been able to make the arrests so quickly. In London, last summer, when the trains were bombed, one of the suspects had a vehicle document on him that led police to quickly find a vehicle parked at another train station. It had seven explosive devices inside and the evidence collected helped lead to the suspects arrest. Had it been a clone, more bombings may have occurred;
- 4) title fraud enables other criminal activity to occur, from insurance fraud to narcotics trafficking and the smuggling of undocumented aliens;
- 5) “Operation Road Runner” in Miami-Dade County illustrated the reach title fraud can have. Cars stolen in South Florida were given “cloned” numbers from legitimate automobiles, salvage and exported vehicles.

These vehicles were then distributed to more than 14 States where they were utilized in drug smuggling on the eastern seaboard, undocumented alien smuggling in Arizona, and funding being sent to Iran from Nevada. In addition, two of the main principals in this group were operating out of a federal prison.

- 6) law enforcement has found salvage and food vehicles rebuilt without quality OEM used parts or workmanship. Some vehicles even have had air bags that turned out to contain rags or other debris inside;
- 7) car title fraud is a fast-growing issue that affects all U.S. citizens, either directly as a victim, or as a consumer paying higher insurance and repair bills; and
- 8) legislation to fight title fraud is needed along with the full implementation of the National Motor Vehicle Title Information System (NMVTIS).

ARA strongly encourages the House Subcommittee on Commerce, Trade and Consumer Protection to aggressively support the need and initiative for legislation to prevent car title fraud, theft, and organized crime and terrorism activities involving motor vehicles, and to level the playing field in salvage recycling across the United States to protect the American consumer from the perils of not moving to secure federal legislation and what inaction imposes on the public and to keep innocent and deserving citizens safe on the road. We also ask the Subcommittee to consider seriously the ARA draft legislation as a positive and affirmative step in the direction to accomplish what needs to happen.

Thank you again, very much and sincerely, for this opportunity to testify in support of the Subcommittee's initiative and the ARA VIN Retirement legislation.

If we may answer any questions or assist further in any way, please let me know.

Respectfully submitted,

James Watson, President
Automotive Recyclers Association

March 1, 2006

One Page Summary of ARA Key Points in Testimony

On

Car Title Fraud: Issues and Approaches for Keeping Consumers Safe on The Road

- Katrina cars create a huge opportunity for fraud criminals to take advantage of consumers: *These cars can be rebuilt, then their titles can be washed in certain states in the US then sold to consumers*
- Create a classification of Retired VIN Vehicles: *Within two weeks of declaring a vehicle a salvage only vehicle, insurers would alert those who maintained a publicly accessible free database, preferable DOT. The VIN of this vehicle would be retired and it would not be able to be registered again.*
- Create another database to track Total Loss Vehicles: *If insurer declares a vehicle a Total Loss but determines it can be rebuilt and SAFELY put back on the road, this information should also be made available to the public.*
- Give DOT the authority to Make Retired VIN and Total Loss VIN info available to the public: *Vehicle histories should be transparent to consumers.*
- Salt water flood vehicles should be crushed or otherwise destroyed: *Salt water corrosion is an irreversible process. Include these vehicles in the Retired VIN Classification. There is no reason for the VINs of these vehicles to be available for misuse.*
- VIN “swapping” is a problem that these measures would address: *Auto thieves would no longer be able to take the VIN number off a salvage vehicle and place it on a stolen one since the VIN would be retired.*
- Create remedies for victims of title fraud ... *impose penalties and sanctions against fraud criminals*

Attachments:

EXHIBIT A
PROPOSED LEGISLATION-DRAFT
TO ADDRESS PROBLEMS ASSOCIATED WITH FLOOD AND DAMAGED
VEHICLES NOT WORTH REPAIRING
AND SUITABLE ONLY FOR RECYCLING OR SCRAPPING

109TH CONGRESS
2ND SESSION

H. R. _____

To protect the public against unreasonable risks of property damage, injury or death in incidents with cosmetically repaired but inherently unsafe or salt water flood vehicles and against fraud in the sale of these vehicles, and to reduce vehicle theft involving the wrongful use of vehicle identification numbers.

SECTION 101. SHORT TITLE

This Act may be designated as the “Vehicle Flood, Damaged, Theft and Anti-Fraud Act of 2006.”

SECTION 102. DEFINITIONS

For purposes of this Act –

- (a) “Automotive recycler or dismantler” means a person or entity engaged in the act of acquiring, dismantling, or destroying 12 or more vehicles in a calendar year for purposes that may include resale or reuse of their parts for any purpose.
- (b) “Actual Cost of Repair” means the total dollar amount of a comprehensive repair estimate of the damage to a vehicle compiled by a professional repair estimator and deemed necessary to restore the vehicle to its pre-incident condition.
- (c) “Department” means the Department of Transportation and “Secretary” means the Secretary of Transportation.

(d) “Actual cash value” means a vehicle’s actual cash value immediately prior to the incident in which it was damaged (i) as set forth in a current edition of any independent, nationally recognized compilation (including automated databases) of retail vehicle values or (ii) as determined pursuant to an independent market survey of comparable vehicles with regard to condition and equipment.

(e) “Insurer” means a person engaged in (i) the business of underwriting any type of insurance relating to vehicles, including collisions insurance, liability insurance, and comprehensive-coverage insurance, (ii) a self-insured business leasing or renting out ten or more vehicles, or (iii) a self-insured owner or operator of a fleet of ten or more vehicles.

(f) “Insurer’s vehicle” or “its [referring to an insurer’s] vehicle” means a vehicle with respect to which an insurer has issued or assumed insurance coverage of any type as described in subsection (e)(i) of this section.

(g) “Internet web site” means a web site established and maintained solely for the purposes of this Act pursuant to section XXX of this Act.

(h) “Person” means an individual, corporation, partnership, trust, other private entity, or a unit or entity of the federal or a state or local government.

(i) “Register information” means any or all of the information specified in paragraphs (i) through (vii) of section 301(a) and “register” means an organized collection of register information for each of a number or grouping of vehicles.

(j) “Salt water flood vehicle” means any vehicle that has been submerged in salt water above the bottom of the passenger compartment.

(k) “Scrap Recycling Facility” means a fixed location where machinery and equipment are utilized for processing and manufacturing scrap metal into prepared grades and whose principal product is scrap iron, scrap steel, or nonferrous metallic scrap for sale for remelting and licensed for such purposes.

(l) “State” means a state of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands

(m) “Substantial damage to a vehicle” means damage that led the insurer to declaring or determining the vehicle a total loss.

(n) “Title” means a certificate of title or other document issued by a state showing

ownership of a vehicle, or the manufacturer's certificate of origin if no state has issued a document showing ownership.

(o) "Vehicle" means a vehicle which is (i) driven or drawn by mechanical power and manufactured primarily for use on any street, road, or highway (but not a vehicle operated only on a rail line) and which (ii) either has (A) a manufacturer's model year designation of or later than the year in which the vehicle was damaged or any of the seven preceding years and (B) a fair retail market value greater than \$5,000.

(p) "Vehicle identification number" means a unique identification number (or derivative of that number) assigned to a passenger motor vehicle by a manufacturer or by a state in compliance with applicable laws and regulations.

SECTION 103. SALT WATER FLOOD VEHICLES

Salt water flood vehicles shall be crushed or otherwise destroyed. None of the parts from a salt water flood vehicle shall be sold for the purpose of resale for use in other vehicles. Salt water flood vehicles are not subject to Section 301.

SECTION 201. VEHICLES SUBJECT TO CONDEMNATION

A vehicle and its VIN shall be subject to condemnation under this Act if (a) the vehicle is incapable of safe operation for use on any street, road, or highway and wrecked or damaged to the extent that it has little or no resale value except as a source of parts or scrap or as a source of a vehicle identification number, or if (b) the vehicle has been irreversibly designated by its owner as a source of parts or scrap only, or if (c) the actual cost of repair of the vehicle condition equals or exceeds the fair retail market value of the vehicle immediately prior to the incident.

SECTION 202. DETERMINATION AND CONDEMNATION

(a) As soon as practicable after learning of an incident resulting in damage to one of its vehicles, the insurer shall with reasonable care make a good-faith determination whether it was substantial damage and, if so, whether that vehicle is subject to condemnation under section 201 this Act. If the insurer determines that the vehicle is subject to condemnation under any of the clauses of section 201, the insurer need not make any determination under either of the others. If the insurer determines that the vehicle is not subject to condemnation under either clause (a) or clause (b) of section 201, the insurer shall make a determination under clause (c) of section 201.

(b) Whenever an insurer determines that a vehicle is subject to condemnation under this Act, the insurer shall immediately notify the Department by electronic media using the electronic form prescribed by regulation for this purpose and available on the internet web site.

SECTION 203. CONDEMNATION BY DEPARTMENT

On receipt of a notification under section 202(b), the Department shall immediately:

- (a) issue to the owner of the vehicle a Certificate of Vehicle Condemnation that:
 - (i) declares the vehicle, its title, and its vehicle identification number are condemned pursuant to this Act,
 - (ii) assigns to the vehicle a unique “Condemned-Vehicle Identification Number,” which shall also be the number of the Certificate of Vehicle Condemnation,
 - (iii) includes statements of the effect of condemnation and penalties for violation of this Act, and
 - (iv) includes a form enabling transfer of the vehicle but only in compliance with section 204(b) and (c);
- (b) transmit the Certificate of Vehicle Condemnation to the insurer electronically; and
- (c) give notice of the condemnation and of issuance of the Certificate of Vehicle Condemnation by posting it on the internet web site and directing it by electronic media to the National Motor Vehicle Titling Information System; all state motor vehicle administrators, attorneys general, and police department heads; the United States Customs Service; and any person subscribing to the notification service which the Department shall establish. This notice shall include the following information:
 - make and model of the vehicle, vehicle identification number, state that issued the title, and title number, and Condemned Vehicle Identification Number.
- (d) If the insurer is not the owner of the condemned vehicle at the time the insurer receives the Certificate of Vehicle Condemnation, the insurer shall promptly transmit the Certificate to the person who is the owner.

(e) States may set other standards by which vehicles titled by their state are to be condemned, and any vehicle meeting such standard is to be condemned in the same manner as vehicles meeting any requirement of section 201.

SECTION 204. EFFECT OF CONDEMNATION

Effectively immediately upon the Department's giving of notice under section 203(c) with respect to any condemned vehicle, its title, and its vehicle identification number:

- (a) It shall be unlawful for the last title owner or any other person to operate the condemned vehicle on any street, road, or highway or to engage or seek to engage in, or to facilitate in any way, any transaction involving titling or registration of the condemned vehicle under any jurisdiction for the purpose of its operation on any street, road, or highway.
- (b) It shall be unlawful for any person to transfer the condemned vehicle to any other person who is not an insurance company, automotive recycler or dismantler or scrap recycling facility, or a person in the business of crushing or otherwise destroying wrecked vehicles.
- (c) It shall be unlawful for any person to transfer the condemned vehicle except by use of the condemned vehicle transfer form on the Certificate of Vehicle Condemnation.
- (d) It shall be unlawful to use the condemned vehicle's title or vehicle identification number for any purpose having any relationship whatsoever to any other vehicle or to transportation on any street, road, or highway, except only that the vehicle identification number may be retained on parts taken from the condemned vehicle by an automotive recycler or dismantler, or scrap recycling facility for the purpose of resale for use in other vehicles.

SECTION 301. DETERMINATIONS REGARDING OTHER VEHICLES

- (a) As soon as practicable after learning that an incident resulted in damage to one of its vehicles, if the insurer has with reasonable care made a good-faith determination that it was substantial damage but that the vehicle is not subject to condemnation under section

201, the insurer shall enter on a register, using forms prescribed by the Department for electronic media, the following information with respect to the vehicle:

- (i) make, model, and vehicle identification number;
 - (ii) state of vehicle registration and registration number;
 - (iii) brief statement of the nature and extent of damage sustained in the incident;
 - (iv) any brand or brands previously assigned to the vehicle, the agency which assigned each brand, and the date of each assignment (to the extent this information is reasonably available). For this purpose, “brand” means a designation assigned pursuant to state law regarding damage to or condition or status of a vehicle, including “salvage,” “flood,” “nonrepairable,” “nonrebuildable,” “certificate of destruction,” “restored salvage,” “remanufactured,” “rebuilt,” “reconstructed,” “junk,” “dismantled,” and “frame change”;
 - (v) name and address of the insurer;
 - (vi) name, address, occupation, and employer of the individual or individuals who actually made the determination for or on behalf of the insurer; and
 - (vii) name and address of any transferee and name and address of any auto auction or other agent or representative that may have been involved in transferring or otherwise disposing of the vehicle.
 - (viii) certification by the insurer that the car will not be transferred to any person unless and until all the repairs necessary to restore the car to its pre-incident condition have been fully and properly performed, and
- (b) Each insurer shall at all times maintain, in electronic media, a complete and current register containing all register information for each and every vehicle it has determined is not subject to condemnation under section 201, and each insurer shall do so in a manner that ensures instant electronic retrieval according to any of the points of information mentioned in subsection (a) of this section.

(c) Within ten days after the end of each calendar month, each insurer shall transmit to the

Department, in electronic media, a complete inventory containing all register information for each and every vehicle it determined within that month is not subject to condemnation under section 201.

(d) The Department shall maintain all register information received under subsection (c) of this section in a manner that ensures instant electronic retrieval according to any of the points of information mentioned in subsection (a) of this section.

(e) Information with respect to one or more or all vehicles of any model year may be retired or deleted from the registers prescribed in subsections (b) and (d) of this section after twenty years have passed from that model year.

(f) Whenever a vehicle is offered to retail sale by a seller required to display a Buyer's Guide on the vehicle, that seller shall also display in the same manner a copy of any non-confidential register information about that vehicle.

SECTION 302. USE OF REGISTER INFORMATION; CONFIDENTIALITY

Notwithstanding any other provision of law, it shall be unlawful for any person within the Department to publish or disclose register information except as follows:

(a) The Department shall disclose all register information concerning a specific vehicle when requested in writing by (i) a person reasonably claiming to have suffered any damage or loss in an incident in which the vehicle was damaged or (ii) any party to a legal proceeding involving such a claim.

(b) The Department shall also post on the internet web site all register information except the identities of persons referred to in paragraphs (v), (vi), or (vii) of section 301(a) or any other confidential business information. This shall be done in a manner which ensures instant electronic retrieval by any person according to any of the applicable points of

information which this register contains. The Department shall disclose this same register information in writing when requested in writing by any person lacking easy access to the internet web site.

(c) The Department may use register information for statistical and analytical purposes, and for the purpose of preparing, in consultation with the Attorney General, an annual report for transmittal every March to the Committees of Congress having appropriate jurisdiction, and to the motor vehicle administrators, attorneys general, and heads of police departments of the states, provided that it shall not, under this subsection, disclose to any person the identities of persons referred to in paragraphs (v), (vi), or (vii) of section 301(a) or any other confidential business information.

(d) The Department shall disclose register information to any committee of the Congress having appropriate jurisdiction when and as specifically requested by a majority of that committee.

(e) The Department shall have no obligation to disclose to any person identified in register information the making of any request for information under this section.

(f) The Attorney General and the chief law enforcement officer of any state shall at all times have access to all register information. The Attorney General and the chief law enforcement officer of any state shall provide this information as necessary or appropriate with state and local law enforcement officers in connection with federal, state, or local law enforcement activity, but shall not otherwise disclose to any person the identities of persons referred to in paragraphs (v), (vi), or (vii) of Section 301 (a).

SECTION 401. INTERNET WEB SITE

(Development of necessary software for purposes of this Act; management and control of internet web site; interface between DOT and insurance companies; limited and "personal" access for insurers; fees for access – when, to whom, and how much?) .

SECTION 501. PENALTIES AND ENFORCEMENT

(a) Civil penalty

(i) A person that violates this chapter or a regulation prescribed or order issued under this chapter is liable to the United States Government for a civil penalty of not more than \$5,000 for each violation. A separate violation occurs for each motor vehicle involved in

the violation. The maximum penalty under this subsection for a related series of violations is \$500,000.

(ii) The Secretary of Transportation shall impose a civil penalty under this subsection. The Attorney General shall bring a civil action to collect the penalty. Before referring a penalty claim to the Attorney General, the Secretary may compromise the amount of the penalty. Before compromising the amount of the penalty, the Secretary shall give the person charged with a violation an opportunity to establish that the violation did not occur.

(iii) In determining the amount of a civil penalty under this subsection, the Secretary shall consider--

(A) the nature, circumstances, extent, and gravity of the violation;

(B) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue doing business; and

(C) other matters that justice requires.

(b) Criminal penalty.

A person that knowingly and willfully violates this chapter or a regulation prescribed or order issued under this chapter shall be fined under title 18, imprisoned for not more than 3 years, or both. If the person is a corporation, the penalties of this subsection also apply to a director, officer, or individual agent of a corporation who knowingly and willfully authorizes, orders, or performs an act in violation of this chapter or a regulation prescribed or order issued under this chapter without regard to penalties imposed on the corporation.

(c) Civil actions by Attorney General.

The Attorney General may bring a civil action to enjoin a violation of this chapter or a regulation prescribed or order issued under this chapter. The action may be brought in the United States district court for the judicial district in which the violation occurred or the defendant is found, resides, or does business. Process in the action may be served in any other judicial district in which the defendant resides or is found. A subpoena for a witness in the action may be served in any judicial district.

(d) Civil actions by States.

(i) When a person violates this chapter or a regulation prescribed or order issued under this chapter, the chief law enforcement officer of the State in which the violation occurs may bring a civil action

(A) to enjoin the violation; or

(B) to recover amounts for which the person is liable under section 502 of this title for each person on whose behalf the action is brought.

(ii) An action under this subsection may be brought in an appropriate United States district court or in a State court of competent jurisdiction. The action must be brought not later than 2 years after the claim accrues.

SECTION 502. CIVIL ACTIONS BY PRIVATE PERSONS

(a) Violation and amount of damages.

A person that violates this chapter or a regulation prescribed or order issued under this chapter is liable for 3 times the actual damages or \$5,000, whichever is greater.

(b) Civil actions.--A person may bring a civil action to enforce a claim under this section in an appropriate United States district court or in another court of competent jurisdiction. The action must be brought not later than 2 years after the claim accrues. The court shall award costs and a reasonable attorney's fee to the person when a judgment is entered for that person.

SECTION 503. RELATIONSHIP TO STATE LAW

Except to the extent that State law is inconsistent with this chapter, this chapter does not -
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(1) prevent States from enacting State laws which provide additional protections to vehicle purchasers; or

(2) exempt a person from complying with that law.

SECTION 601.

The Secretary shall have the authority to issue rules and regulations to implement this chapter.

Exhibit B

powersource 12-2005

The number of total loss vehicles has been increasing; in 1997 the total loss rate was under 8%, in 2004 the rate was over 13% and that only includes the vehicles for which an estimate was written. I have seen statistics which report total loss rates exceeds 17%.

The ARA Executive Committee had the opportunity to attend a meeting with the Vehicle Recycling Partnership in Detroit recently. They indicate that they are putting more than 17 million new vehicles in the market each year and can account for 15 million vehicles are de-registered. Have you been buying more cars lately?

The ARA Regional Directors in a May 2005 report stated: "it would seem very straight forward that the primary issue is, and for the foreseeable future will be, the availability of quality recyclable product. I have seen the statistic that 30% of the product sold by the insurance companies is leaving the country." The report furthermore identifies as the number one priority to be the available of quality salvage.

This issue is not new. Is there a shortage of salvage or is the salvage there and cost too much? For some, if we are buying we always want to buy for less so the cost is always too high. And some people say just pay more and you can buy all the salvage you want. True and we have been doing that for the past few years. Now add in all the surcharges, fees and additional transportation costs. It doesn't matter what you pay for the car, the parts are only worth so much.

The competition at the salvage pools and auctions for our industry raw material are the out of country buyers, the total loss re-builders and according to a recent FBI report thieves. None of these competitors have to comply with any part of the regulatory burden of the licensed automobile dismantler. Additionally the individual state governments have created a disjointed and ineffectual system of titling laws which are exploited by our competition.

There is a case for letting the market decide who buys the salvage. I realize that there is a world market, and emerging markets in Eastern Europe need North American salvage vehicles to fuel their fledging economies. The auction companies boast on their web sites how they sell the old Ford Probe in California to buyers in Russia. I am told that the soft U.S. dollar encourages the South and Central American buyers to enter our market buy salvage and take the vehicles back to their home countries.

What about the U.S. Economy? What about our employees and our contribution to our communities? The major problems of total loss vehicle salvage and total loss non-repairable vehicles availability is created by ineffectual state and federal regulations and legislation. We as licensed regulated businesses must be accountable and we must comply, where our competition does not. The remedy is a federal legislative initiative to create a uniform market for our industry. This has been tried before with limited success in 1992. ARA attempted to further the 1992 act on two occasions with help from Sen. Lott (R-Mississippi) and Sen. Feinstein (D-California), both attempts were unsuccessful. The Automotive Recyclers Association has had a long history in support of consumer protection and law enforcement initiatives to combat the use of Non-Repairable Total Loss, flood vehicles and the title documents from contributing to the crimes of Consumer Fraud, Vehicle Cloning and Auto Theft. The ARA served on The U.S. Department of

Transportation and The U.S. Department of Justice Advisory Committees to report to Congress on key provisions of the 1992 Anti Car Theft Act.

To act in the interest of the membership the ARA Executive Committee has created a legislative task force to take a leadership position on this vital industry problem and develop a legislative solution for introduction early in the 2006 to The U.S. Congress.

The Automotive Recyclers Association recently hosted a meeting of concerned parties that addressed flooded and salvage vehicle fraud in October of this year.

Attendees at the meeting included the Association of American Motor Vehicle Administrators, Consumers for Auto Reliability and Safety, GEICO, Locator Technologies, the North American Export Committee, and the Institute for Scrap Recycling Industries.

These groups discussed their common interest and ultimate goal: to eliminate flooded and salvage vehicle fraud by condemning the Vehicle Identification Numbers of non-repairable and exported vehicles. ARA has taken a leadership position on this issue. We have committed resources, we continue to gather additional support from other interested industry groups, and we have made contacts on the hill for sponsorship of our legislation. We look forward to a real solution in 2006 to this escalating industry problem.

Exhibit C

Powersource 02-06

We as an industry have debated the issue of salvage and total loss vehicles for years. We have all complained about the salvage vehicle problems and aside from some isolated instances we have not taken action on the issue. There has been some activity regarding state legislation, but there has not been a comprehensive solution advanced which would positively affect the entire industry. And state by state our opposition, the auctions and pools, will continue to open the market to unqualified buyers.

This issue of salvage vehicles and our ability to purchase them has become for our industry intolerable.

I have been told we cannot do anything about the problem. I guarantee that if we are not actively engaged in the legislative and regulatory process nothing will happen and our situation will continue to worsen. This problem was created by patchworks of ineffectual state and federal laws and regulations, the solution must be addressed in the same manor. Our short comings in the past have been centered on our failure as an industry to pull together and unite around a position which we can all live with. In a recent discussion I had with an active and involved ARA member he cautioned me on language which would affect less than 2% of the total number of vehicles targeted. The resulting comment was, well I would like to buy that 2%. Well, I would like to buy all the cars too! The problem is, even if those cars were at the auction our bid would loose out to the thieves and fraudsters. Why are we willing to manage or legislate for the exceptions? If we take that position we risk loosing the other 98%. And that number is approximately 4.8 million total loss cars, of which we only buy around 30%. Solve the problem and there are more than enough cars to go around.

ARA is taking action on the issue of total loss and salvage vehicles. The natural disasters of Wilma and Katrina have focused the attention of the press and congress on saltwater flood vehicles and in general total loss salvage. The questions of salvage and salvage disposal are being questioned. The black market for total loss salvage, exported thefts and flood vehicles is providing vehicles for car bombings in Iraq, donor vin numbers for to clone vehicles, funding mechanisms for Eurasian criminal organizations.

ARA has drafted federal legislation to address our concerns. This past February key members of the ARA leadership attended a briefing in Washington D.C. on the issue and took our message to Congress. ARA members meet with 75 congressional offices and we were well received.

Key Provisions included in the bill include:

1. Require insurers (per definition) to provide information to a publicly accessible electronic database on retired vin vehicles.
2. Require insurers (per definition) to provide information to a publicly accessible electronic database on Total Loss Vehicles
3. Establish a definition and class of damaged vehicle as "VIN Retired"
4. Give the Department of Transportation the authority to retire VIN and provide public access to the retired vin and total loss vin data.
5. Protect consumers form salvage related VIN fraud and theft.
6. Retire the VIN's of vehicles being exported form the U.S.A.

For more information on the issue or a copy of the bill visit the ARA website at

Exhibit D

There are two types of total loss vehicles. The first total loss class is the vehicle which has sustained significant damage, which after careful review by the trained repair technician and in consultation with the insurance company representative, who has become the secondary customer or primary decision maker, has determined that the subject vehicle cannot or should not ever be repaired and put back on the road again. In many instances these vehicles have partial estimates or no estimates written on them. They are not even counted in the average 13% total loss rate cited in a 2004 study by CCC information systems. And rightly so, those vehicles are obvious Total loss. We could talk about design for repair or manufacturer training or repairer's defined manufacturing process or speed limits but these vehicles cannot or should not be repaired. The second total loss class is the damaged vehicle for which you create an estimate. This is the 13% average, or as one insurance company reports on their web site, 17% of vehicles that have a claim are declared a total loss. Why? The total loss vehicle issue has reached pandemic proportion in the automobile repair industry. No longer is the problem regional or localized effecting a small but significant portion of the industry but this issue is international in scope and affects all segments of the automotive repair supply, parts distribution and support network.

Some of the insurance company comments are:

Total Loss Vehicle; Property that has sustained damage so extensive that repairing it is not reasonable.

Total Loss Vehicle: Generally, a vehicle is determined to be a total loss when the cost of repair exceeds the vehicle's pre-accident value.

Total losses do not occur frequently. A 17% total loss rate is not frequent? That is money out of your pocket! If these vehicles were not repairable then why are they not declared non repairable? Why do you allow these damaged vehicles are pulled from your repair facilities and sold at auction to who ever wants to buy them?

A Comment from a Salvage Auctions; "Many of the vehicles declared to be total losses are repairable," Our and other auto salvage auction companies act as sophisticated "recyclers" of vehicles that have been declared total losses by insurance companies by finding buyers who will rebuild the cars or use them for parts. Insurance companies don't want to deal with buying and selling cars, so they turn to companies like Ours that manage the total loss recovery process.

Amazing, declared a total loss by an insurance company and they are repairable? If the vehicle is repairable then why, was it not repaired? If the vehicle could not be repaired by a licensed trained, accountable body repair facility why should it be sold as "repairable" by the insurance company to some unknown individual? Each of the repairable vehicles, which you have created an estimate for and in essence have taken the time and effort to bid to repair, which is taken from your shop and sold at auction, is money out of your pocket.

I sell OEM used auto parts. I and may of my colleagues believe that repairable vehicles should not be declared a total loss and those repairable vehicles should be repaired at your facility. I do go to those auctions and I do bid and

buy some of the cars they sell. A huge segment of my industry relies on the total loss vehicle auctions to supply our industry with raw material. And we have the opportunity to supply 21% of the claims estimates with 13% of the included parts. There is a shortage of good quality OEM used parts currently in the market. We believe this is due to the increasing number of repairable total loss vehicles at the auctions. These repairable vehicles are sold at auction. But not to the OEM used part dealers for disassembly and the introduction of the OEM used parts into the part repair stream. These vehicles are sold to individuals who are repairing them and removing the OEM used parts from the market place. As you total more repairable vehicles you increase the demand for the repairable total loss vehicle, then the demand for the second and third tear total loss parts vehicle increases which is purchased by the rebuilder to provide the donor parts to fix the primary vehicle. The result is increased prices at the auctions for the totaled vehicles and a shortage of quality OEM used parts. As the salvage values increases so does the total loss rate for repairable vehicles. Salvage recovery value is added to the repair estimate and factored in to determining a total loss equation. The solution to the total loss pandemic, repair the repairable vehicles at the facilities which have the training, technology, tools and accountability to do so and require those vehicles which could not or should not be repaired to be disposed of by a federal certificate of destruction through the network of OEM used part dealers and Scrap processors certifying those total loss vehicles are used for parts or scrap and never titled again.

