Model Law: Safer Cars at the Point of Sale Act

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Unsafe cars, whether caused by prior wreck or flood damage, or other causes, are a danger to drivers, passengers, and other road users. Serious flood damage to vehicles is a regular and growing occurrence. In 2017, Hurricanes Irma and Harvey flooded almost one million cars in a two week period. And estimates are that about half of those vehicles will end up back in the consumer market.[1] Approximately 12 to 14 percent of all crashes result in a car being declared a total loss.[2] Many of these cars are returned to the road. These unsafe cars represent a danger to drivers, passengers, and everyone else on the road.

This Act seeks to keep unsafe cars off the road by requiring dealers to disclose prior to sale if a federal database or the state department of motor vehicles shows that a used vehicle has suffered serious damage.

The Act places minimal burdens on dealers. Dealers must simply review the vehicle's title and go online to check a federal database that reports on a vehicle's wreck, flood, and other history of defects, and disclose this information to prospective buyers. Since dealers can easily comply with this requirement, it is unreasonable to instead require each individual vehicle purchaser to know to and perform these investigations.

SAFER CARS AT THE POINT OF SALE ACT

§ 1 Purpose:

The purpose of this Act is to assist consumers in avoiding unsafe cars by requiring dealers to inform consumers of reported vehicle history information available through the National Motor Vehicle Title Information System and brands on certificates of title.

Comment: This law is partly modeled on Cal. Veh. Code §§ 11713.26.

§ 2 Definitions

- **NMVTIS** means the National Motor Vehicle Title Information System as established by 49 U.S.C. § 30502.
- **NMVTIS vehicle** history report means a report obtained from an entity authorized by the NMVTIS operator as an access portal provider for NMVTIS that contains:

1. The date of the report.
2. Any disclaimer required by the operator of NMVTIS.
3. If available from NMVTIS, information establishing the following:
4. Whether the vehicle is titled in a particular state.
5. Whether the title to the vehicle was branded by a state.
6. The validity and status of a document purporting to be a certificate of title for the vehicle.

7. Whether the vehicle is or has been a junk automobile or a salvage automobile.
8. The odometer mileage disclosure required pursuant to Section 32705 of Title 49 of the United States
Code for that vehicle on the date the certificate of title for that vehicle was issued and any later mileage information.

9. Whether the vehicle has been reported as a junk automobile or a salvage automobile pursuant to
Section 30504 of Title 49 of the United States Code.

- **"Junk automobile," "operator,"** and **"salvage automobile"** shall have the same meanings as defined in § 25.52 of Title 28 of the Code of Federal Regulations.

Comment: Because many states already include definitions for terms such as dealer, title brand, motor vehicle, and used motor vehicle in their motor vehicle dealer licensure and consumer protection statutes, this Model Act does not provide such definitions here. States may wish to insert cross-references to those definitions, or to define the terms here if no other statutes provide appropriate definitions. Because this act addresses data from both NMVTIS and certificates of title, the definition of motor vehicle should be as broad as possible to capture the variety of vehicles for which such records might exist.

§ 3 Dealer Requirements

- A motor vehicle dealer, before selling, displaying, or offering for sale at retail any used vehicle, must perform an inquiry of a NMVTIS data provider and, if the NMVTIS system has information on the vehicle, must obtain a NMVTIS vehicle history report from a NMVTIS data provider. A copy of such report shall be provided to a used vehicle purchaser prior to the consummation of a vehicle sale.
- If the NMVTIS vehicle history report for the vehicle indicates the vehicle has been reported as a junk automobile or a salvage automobile or if the certificate of title contains a brand, the dealer shall post the following disclosure on the vehicle while it is displayed for sale at retail in at least 18-point bold black type, except for the title "Warning" which shall be in at least 24-point bold black type, on at least a 8 x 5.5 inch red background in close proximity to the Federal Trade Commission's Buyer's Guide:

"WARNING
This vehicle has been reported as a total-loss, salvage, or junk vehicle, or has a title brand which may materially affect the value, safety, and/or condition of the vehicle. You may ask the dealer to show you the title or a copy of the report. You may independently obtain the report by checking the vehicle identification number (VIN) at www.vehiclehistory.gov."

Comment: This model law incorporates some substantive changes from the California statute. One change is that it requires disclosure of any report from NMVTIS that a vehicle is junk or salvage, rather than just a report from a junk yard, salvage yard, or insurance carrier. NMVTIS includes data not just from junk and salvage yards and insurance carriers, but from states and other entities.

§4 Enforcement

- Any person aggrieved by a violation of §3 may recover the greater of two thousand five hundred dollars ($2,500) or three times the actual damages sustained, together with costs and reasonable attorney's fees.[3]

- A violation of § 3 is a violation of [the state unfair and deceptive practices statute].
- A violation of § 3 is grounds for revocation of a motor vehicle dealer's license under [the revocation provision of the state motor vehicle dealer licensing statute].
- It is a misdemeanor subject to a minimum fine of one thousand dollars ($1,000) for any person or entity to knowingly violate [§3 or §4].[4]
- A civil penalty may be imposed on any person or entity who violates [§3 or §4] in an amount not to exceed the greater of one thousand dollars ($1,000) per violation.

For more information, please contact National Consumer Law Center attorney John Van Alst: jvanalst@nclc.org

[1] Charles Krome, Hurricane Harvey and the Flood of Water-damaged Used Cars, CarFax Blog, Sept. 6th, 2017, available at: https://www.carfax.com/blog/hurricane-harvey-water-damaged-cars.
[2] Gary L. Wickert and Lee R. Wickert, Recovery of Sales Tax After Vehicle Total Loss Claims Journal, August 6, 2015, available at: https://www.claimsjournal.com/news/national/2015/08/06/264926.htm.
[3] Adapted from Ind. Code § 9-32-9-27.
[4] Copied from Tenn. Code Ann. § 55-3-203(d).