

MINUTES OF THE SENATE TRANSPORTATION & TOURISM COMMITTEE.

The meeting was called to order by Chairperson Senator Ben Vidricksen at 9:10 a.m. on March 9, 2000 in Room 245-N of the Capitol.

All members were present except:

Committee staff present: Hank Avila, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
Marian F. Holeman, Secretary

Conferees appearing before the committee: Dale Lehning, KS Assn. Of Auto Recyclers
Don McNeely, Ks. Automobile Dealers Assn.
John Peterson, Insurance Auto Auctions
Sheila Walker, KDOR, Division of Motor Vehicles
Jim Welch, Kansas Attorney General's Office
Representative Hayzlett, Chair, House Transportation

Others attending: See attached list

HB 2561: Re motor vehicles; certificates of title (This bill is referred separately to Senate Financial Institutions and Insurance.)

Dale Lehning, on behalf of the Kansas Automotive Recyclers Association addressed the industry's need for this legislation. However, while they support the compromise in the new section, they believe there are still problems which need to be addressed (Attachment 1).

Don L. McNeely, Kansas Automobile Dealers Association advised that while his organization supports **HB 2561** they also believe there are several items to be addressed (Attachment 2). Would like the opportunity work with the various entities to successfully address the issues.

John Peterson, Insurance Auto Auctions, appeared in support of the bill; stating that this is an issue which has been around for several years. It has also been considered at the federal level as pointed out in Don McNeely's testimony. **HB 2561** is patterned after the one at the federal level. They appeared in opposition to the original House bill, but a House sub-committee did a great deal of work and came up with several compromises; therefore, they now support the bill. He stated that there are at least three amendments that are needed and would like to have time to meet with concerned parties to work it out. (No written testimony).

Sheila Walker, Kansas Department of Revenue, Division of Motor Vehicles, explained the three new certificate of title brands proposed in this legislation; advising it would become consistent with pending federal legislation (Attachment 3).

Jim Welch, Assistant Attorney General for Consumer Protection presented testimony on behalf of the Attorney General. He advised of their many concerns with the bill as it is currently written. They feel it will leave consumers unprotected (Attachment 4).

Members questioned conferees and discussed the bill. Rep. Hayzlett reported he had appointed a House Transportation Sub-committee to work out a compromise which resulted in the bill now before this Committee. The concerns just raised by the Attorney General's office were not previously expressed in any of the House meetings.. Chairman Vidricksen recommended all concerned parties meet and work out perceived problems with this bill. The Committee will return to consideration of **HB 2561**, Thursday, March 16, 2000.

HB 2258: Re Auxiliary Driving Lamps and Fog Lamps, Restrictions

Representative Hayzlett, Chairman, House Transportation Committee briefly addressed the background and details of this bill as it was presented in the House Transportation Committee. He advised members

CONTINUATION SHEET
MINUTES OF THE SENATE TRANSPORTATION & TOURISM COMMITTEE
March 9, 2000

that this bill does not deal with factory installed auxiliary lights. Rather it deals with add-on, high intensity lights which may be turned off and the bill would simply require dimming under the same regulations as high beam driving lights. Members reported on their personal observations regarding these auxiliary lamps. The majority did not experience any problems. Federal law requires that any lamps on a vehicle which exceed 300 candle power must be directed away from the eyes.

Staff advised that National Highway Traffic Safety Administration does not yet have any data on the problem. The National Committee on Uniform Traffic Laws and Ordinances is also interested in looking at this matter, since it is beginning to be perceived as a problem.. Kansas does have representation on the National Committee. Members agreed to draft a letter to Kansas Department of Transportation, requesting the Kansas representative to present the matter to the National Committee on Uniform Traffic Laws and Ordinances, and to keep the Senate and House Transportation Committees advised of progress in the matter.

The meeting adjourned at 10:10 a.m.

As previously explained, a field trip is scheduled for Monday, March 13, 2000. Departure time is 1:15 p.m. The next regularly scheduled 9:10 a.m. meeting will be Tuesday, March 14, 2000.

**SENATE TRANSPORTATION & TOURISM COMMITTEE
GUEST LIST**

DATE: MARCH 9, 2000

NAME	REPRESENTING
STEVE KEANEY	KS AUTO RECYCLERS
Don Johnson	KS Auto Wreckers
PAUL JAVIS	KS AUTO RECYCLERS
Carl Jones	KS AUTO RECYCLERS
Jeff Bottenberg	State Farm
Scott Brunner	DOB
Richard Wilhoorn	Alliance
Kevin Davis	Am. Family Ins.
Eric Pope	Capitol Experience
Brad Rice	Capitol Experience
Nick Ward	Capitol Experience
Dick Bauman	KDOT
Sheila Walker	KDOR - DMV
Rick Scheibe	KDOR Vehicles
John Peterson	Ins Auto Auction
Don McNeely	KANSAS AUTOMOBILE DEALERS ASSN.
PAT BARANES	KS. Automobile Dealers Assoc.
Becky Sherman	KANSAS Capitol Experience
Tracy Sieve	Capitol Experience
Tina Boose	Capitol Experience
Jim Welch	KS AAG
STEVE BARRICK	ATTORNEY GENERAL

State of Kansas Tax Reductions Enacted during Graves' Administration

(Dollars in Millions)

	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001
Property Taxes:							
Car Tax Reductions	\$0.0	7.1	35.6	80.6	132.4	187.3	237.0
General Property Tax Reduction	0.0	0.0	0.0	115.6	266.2	321.4	331.7
Property Tax Subtotal	\$ 0.00	\$ 7.1	\$ 35.6	\$ 196.2	\$ 398.6	\$ 508.7	\$ 568.7
Income Taxes:							
Education Savings Program	0.0	0.0	0.0	0.0	0.0	0.0	0.5
Alternative Fuel Credits	0.0	0.0	0.0	0.0	0.0	0.2	0.2
Oil Property Tax Credits	0.0	0.0	0.0	0.0	1.5	4.8	2.8
Tax Credit for Adoptions	0.0	0.0	0.0	1.3	1.3	1.3	1.3
Single Income Rate Reductions	0.0	0.0	0.0	16.3	39.3	49.3	51.5
Increase Standard Deduction	0.0	0.0	0.0	0.0	18.4	14.4	14.6
Increase Personal Exemption	0.0	0.0	0.0	0.0	36.3	28.8	29.7
Tax Credit for Business Machinery	0.0	0.0	0.0	0.0	16.0	25.8	28.4
Earned Income Tax Credit	0.0	0.0	0.0	0.0	12.6	13.4	14.0
Food Sales Tax Rebate	0.0	0.0	0.0	0.0	13.4	13.4	13.4
Endangered Species Tax Credit	0.0	0.0	0.0	1.5	1.5	1.5	1.5
Income Tax Subtotal	\$ 0.00	\$ 0.00	\$ 0.00	\$ 19.1	\$ 140.3	\$ 152.9	\$ 157.8
Replace Inheritance Tax with Estate	\$0.0	\$0.0	\$0.0	\$0.0	30.5	63.3	66.4
Sales Tax Exemptions for:							
Grain Storage and Transportation	0.0	0.0	0.0	0.0	0.0	1.1	0.0
Property Consumed in One Year	0.0	0.0	0.0	0.0	0.0	0.5	0.5
Health Clinic Exemptions	0.0	0.0	0.0	0.0	0.0	0.2	0.2
New Construction Services	2.1	17.7	18.5	19.4	20.3	21.2	22.1
Utilities Cons. in the Prod. Proc.	0.0	12.4	13.0	13.6	14.3	14.9	15.5
Various Other Exemptions	0.0	1.8	1.9	2.0	2.1	2.1	2.1
Residential Remodeling	0.0	0.0	0.0	0.0	14.7	16.6	17.3
Miscellaneous Exemptions	0.0	0.0	0.0	0.0	7.6	8.6	8.9
Alsop Sand Decision	0.0	0.0	0.0	0.0	1.4	1.6	1.7
Sales Tax Subtotal	\$ 2.1	\$ 31.9	\$ 33.4	\$ 35.0	\$ 60.4	\$ 66.8	\$ 68.3
Insurance Taxes:							
Production Exemptions	0.0	0.0	0.0	0.0	2.7	4.8	4.8
Insurance Premiums Taxes	0.0	0.0	0.0	1.5	6.7	8.6	9.0
Reductions in Employers' Contributions:							
Unemployment Contributions	51.4	145.8	167.7	199.1	217.5	117.3	0.0
Total Tax Reductions	\$ 53.5	\$ 184.8	\$ 236.7	\$ 450.9	\$ 856.7	\$ 922.4	\$ 875.0
Cumulative Reductions	\$ 53.5	\$ 238.3	\$ 475.0	\$ 925.9	\$ 1,782.6	\$ 2,705.0	\$ 3,580.0

New tax reductions are in italics.

Testimony concerning House Bill 2561
Before the Senate Transportation Committee
Presented by Dale Lehning
on behalf of the Kansas Automotive Recyclers Association

Chairman Vidricksen and members of the Senate Transportation Committee:

Thank you for the opportunity to appear concerning House Bill 2561. This measure amends Kansas Law relating to motor vehicle titles, establishing three new types of certificates of title. It also brings Kansas titling law into closer conformity with other states.

Last year, the Kansas Automotive Recyclers Association requested introduction of a bill that would establish a branded title notifying consumers that a vehicle had been damaged to a fixed percentage of the retail value of the vehicle and that would establish a higher threshold of damage that would cause the vehicle to be removed permanently from Kansas roads. You will find these concepts embodied in HB 2561 as "salvage vehicles" and "nonrepairable vehicles" respectively.

While the percentage of damage for "salvage vehicle" and the threshold for "nonrepairable vehicle" are not the definitions contained in the bill as introduced, they represent a compromise on these concepts from the stakeholders in this legislation as a result of the work of the House sub-Committee and the House Committee. As is the case with most compromises, the product before you is not viewed as perfect by the stakeholders, but as a middle ground that embraces the original concepts.

While we support the compromise language before you, we believe that the amendments in the House made to the antiquated nonhighway title language inadvertently eliminated an important provision of consumer notification of previous damage in the chain of title. The language we refer to is the stricken language on page 12 of the bill as amended, beginning on line 39, and continuing on page 13, lines 1-6.

This language obligates an insurer under our current system of titling to obtain a title if they acquire a vehicle from one of their customers having settled a claim obligated by an insurance policy with that customer. Without similar language in House Bill 2561, the consumer will have no notice in the chain of title of previous damage until a vehicle is damaged to 75% of its retail value.

We believe that this is an unintended consequence of the House amendments and are still committed to the compromise language in the new sections, if language can be drafted to correct this concern.

I would be happy to answer any questions.

SENATE TRANSPORTATION & TOURISM
COMMITTEE -DATE: 3-09-00
ATTACHMENT: 1



KANSAS AUTOMOBILE DEALERS ASSOCIATION

March 9, 2000

To: Chairman Ben Vidricksen and the Members of the Senate Transportation Committee

From: Don L. McNeely, KADA President

Re: House Bill 2561

Chairman Vidricksen and Members of the Committee:

Good Morning, my name is Don McNeely, and I serve as the President of the Kansas Automobile Dealers Association. I appear before you today to offer some comments in regard to House Bill 2561. While KADA supports HB 2561, we still believe there are several items that need to be addressed.

Today, the practice of selling rebuilt salvage vehicles as undamaged used vehicles costs consumers and the auto industry more than \$4 billion annually. You may have noticed I said the consumers and the auto industry because dealers, as well as consumers, are often the unwitting purchasers of these rebuilt vehicles. It is reported that in some states, as many as 70 percent of all "totaled" vehicles may return to the roads after being purchased by unsuspecting consumers and dealers. While most states require some type of disclosure on the title to indicate the vehicle history, the requirements vary from state to state. The states use dozens of different terms and definitions for these types of disclosures or brands. Kansas, for example, is the only state to use the terms "non-highway" and "formerly non-highway". Some states do not even "carry forward" the brands of another state when issuing a new title. Kansas, by the way, does carry forward other states' brands. Taking advantage of this confusion are unscrupulous rebuilders, which are victimizing both consumers and dealers by obtaining "clean" titles for severely damaged vehicles that should have had branded titles. This has been made possible by the lack of uniformity among state motor vehicle title laws.

Realizing this fact, a congressionally mandated Motor Vehicle Titling, Registration and Salvage Advisory Committee was formed in 1994 to develop recommendations to address this problem. The task forces recommendations are essentially contained in S. 655, which was introduced by Senator Lott (R-MS) in the U.S. Senate this past year. S. 655 represents years of public debate and was changed before

800 S.W. Jackson, Su

Telephone (785) 233.

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introduction this past year to address concerns expressed by various State attorney generals and consumer groups. It is our opinion that if Kansas is going to enact legislation addressing title branding, it should be along the lines of the elements contained in S. 655.

Some of the issues we have with the legislation before you relate to the fact that many of the elements are subjective, confusing and, in some aspects not in the economic interest of the consumer. For instance, if the insurance company does not acquire ownership of a vehicle due to a damage settlement, the bill requires the owner of the vehicle to make application for a "salvage" or "rebuilt salvage" title. How many vehicle owners are going to make an application for a branded title, when they risk losing 20 to 30 percent of the value of their vehicle? Shouldn't that be the responsibility of the insurance company? Also, the legislation omits one of the major contributors to this problem, the rebuilders. Outside the requirement to have the vehicle identification number verified or reassigned when necessary by the Highway Patrol, the rebuilders should, at a minimum, be responsible and required to permanently affix a decal to the driver's door jamb, as well as a window sticker, to indicate that the vehicle was previously salvaged and has been rebuilt. Also, the legislation requires that application for a branded title be made within 30 days after the damage occurs to the vehicle. This time period may not be reasonable considering the time necessary to obtain estimates to determine whether or not the vehicles' damage reaches the threshold for branding.

These are some of our issues, regarding HB 2561. I would like to thank the Kansas Automotive Recyclers Association for bringing this problem to the Legislature's attention, and we look forward to working with the various entities to successfully address this issue. On behalf, of the Kansas Automobile Dealers Association, I would like to thank the Committee for allowing me to appear this morning, and I would be more than happy to respond to any questions the Committee may have.

Sheila J. Walker, Director
Division of Vehicles
915 SW Harrison St.
Topeka, KS 66626-0001



(785) 296-3601
FAX (785) 291-3755
Hearing Impaired TTY (785) 296-3909
Internet Address: www.ink.org/public/kdor

Division of Vehicles

TESTIMONY

TO: Chairman Ben Vidricksen
Members of the Senate Transportation Committee

FROM: Sheila J. Walker, Director of Vehicles *Sheila J. Walker*

DATE: March 9, 2000

SUBJECT: House Bill 2561

Chairman Vidricksen and members of the Senate Transportation Committee, my name is Sheila Walker, and I serve as Director of the Kansas Division of Vehicles. Thank you for allowing me to provide testimony today regarding House Bill 2561. Among other things, this bill creates new certificate of title brands for salvage vehicles – a concept the Division of Vehicles supports.

When a vehicle is wrecked or damaged, burned or flooded, Kansas currently prints “non-highway” near the top of the certificate of title. We are the only state to use this “non-highway” brand. We print the “non-highway” brand generally when an insurance company takes ownership of a vehicle due to the total loss of the vehicle.

House Bill 2561 proposes three new types of certificates of title: “salvage” title, “rebuilt salvage” title and “non-repairable vehicle” certificate.

SALVAGE

Under this bill, titles will be branded “salvage” when a vehicle is no more than seven years old, and it suffers more than 75 percent damage. Under these circumstances, we will brand the title salvage “due to the vehicle being damaged, destroyed or wrecked” or “due to the vehicle being burned” or “due to the vehicle being submerged in water” (flooded).

REBUILT SALVAGE

Titles will be branded “rebuilt salvage” when a salvage vehicle has been repaired and it passes a Highway Patrol vehicle inspection (MVE-1).

– over –

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NON-REPAIRABLE

Titles will be branded "non-repairable" when a vehicle has no resale value except as a source of parts or scrap only. (This is also known as a "junk" title or "kill" title.)

NON-HIGHWAY

This bill allows the division to continue issuing non-highway titles on vehicles that are not manufactured for street use and on vehicles that have discontinued liability insurance.

BENEFITS

These proposed brands are consistent with federal legislation that has been pending for several years. The purpose for proposing these changes is to eventually have a uniform title brand for all wrecked and damaged vehicles. This will help prevent "title washing" in other states.

Most states already use a "salvage" or similar title brand. Kansas supports a nationwide brand for wrecked or damaged vehicles, and this bill is a step in the right direction.

Regarding the percentages of damages for certain types of brands, the Division has no position on that part of the bill.

In closing, the Kansas Division of Vehicles will cooperatively implement this bill if it becomes law. Thank you for your interest in this issue.



CARLA J. STOVALL
ATTORNEY GENERAL

State of Kansas

Office of the Attorney General

CONSUMER PROTECTION/ANTITRUST DIVISION

120 S.W. 10TH AVENUE, 2ND FLOOR, TOPEKA, KANSAS 66612-1597
PHONE: (785) 296-3751 FAX: 291-3699

Testimony of

Jim Welch, Assistant Attorney General

Consumer Protection Division

Office of Attorney General Carla J. Stovall

Before the Senate Transportation & Tourism Committee

Re: HB 2561

March 9, 2000

CONSUMER HOTLINE
1-800-432-2310

Chairperson Vidricksen and Members of the Committee:

Thank you for the opportunity to appear on behalf of Attorney General Carla J. Stovall today in regard to HB 2561. My name is Jim Welch and I am an Assistant Attorney General for Consumer Protection.

All 50 states and the District of Columbia have statutes regulating the resale of and issuance of title for salvage vehicles. Most other states use the term "salvage" in their title statutes. Kansas currently uses the phrase "formerly nonhighway title." This phrase is often confusing and fails to disclose the prior damage to the vehicle.

This bill was originally intended to require disclosure of previously damaged vehicles and to keep unsafe vehicles off Kansas roadways. As amended in the House, however, this bill now puts Kansans more at risk than they are under current law. Currently, a wrecked vehicle must be titled as a nonhighway vehicle by an insurer who buys it after significant damage. This nonhighway title, although not as descriptive as one would hope, at least puts subsequent buyers on notice of the prior damage. The use of this title is useful to the Consumer Protection Division because it is evident that certain owners in the chain of title had knowledge that the vehicle had previously been wrecked. If this bill is passed, however, an insurer will have no duty to title an unsafe, wrecked vehicle as long as the damage does not exceed 75%. As a result, in many cases it will be difficult, if not impossible, for us to prove sellers of damaged vehicles had knowledge of the prior damage to the vehicle. As a result, consumers will be left holding the bag, financially speaking.

Our concerns with HB 2561 are many:

- We believe suppliers will attempt to use the 75% damage threshold as a defense to a Kansas Consumer Protection Act (KCPA) claim that they have failed to disclose material damage after rebuilding a vehicle (page 1, line 28). Consumers may therefore lose existing consumer protection from deceptive acts if this law is passed as written.

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- The "nonrepairable vehicle" definition is so low that it will continue to allow unsafe and defective rebuilt vehicles to be sold and driven in Kansas (page 2, lines 14-26). To be effective, there must be an ascertainable level of noncosmetic damage that requires a vehicle be branded nonrepairable.
- There is no exception in the "salvage vehicle" definition for vehicles that suffer only cosmetic damage, such as hail damage, that does not render a vehicle unsafe (page 1, line 24-38). The definition of a salvaged vehicle should be set at 65% without consideration of cosmetic damage. I have attached copies of documentation of a vehicle with about 65% damage. Under this bill, this vehicle's title would never indicate it had been in a wreck.
- The "late model motor vehicle" definition will effectively allow vehicles over seven years old to avoid any salvage or nonrepairable branding even though the vehicle was damaged to 100% of its value and rendered unsafe (page 2, lines 36-39). Combined with the amendment to the definition of the "nonhighway vehicle" at page 6, lines 4-29, the bill will effectively make vehicles formerly titled as nonhighway vehicles (because of damage rendering them hazardous), now suddenly available for clean title because they will no longer be under the definition of a nonhighway vehicle and are not within the salvage and nonrepairable definitions (because they are over 7 years old). This is expressly acknowledged at page 11, lines 33-34.
- The bill fails completely to recognize and require carryover of other state title branding. This should be remedied to avoid making Kansas a dumping ground for salvage vehicles. An amendment with language as simple as "a rebuilt salvage vehicle that has been issued a salvage title or similar designation by any state shall retain a salvage title designation when a State of Kansas title indicating ownership is obtained" would solve this problem.
- The bill provides at page 6, lines 27-29, that "[t]he term "nonhighway vehicle" shall not include any motor vehicle which is defined under the provisions of section 2 and amendments thereto." Unfortunately, Section 2 does not contain any definitions of motor vehicles. Section 1 contains the definitions of salvage vehicle, salvage title, rebuilt salvage title, nonrepairable vehicle, and nonrepairable vehicle certificate.
- The amendment to the definition of a "nonhighway vehicle" at page 6, lines 10-20, combined with the amendments at page 12, lines 35-43, page 13, lines 1-6 now completely relieve insurance companies of the current responsibility to obtain a nonhighway title and imposes no duty to obtain a salvage title if the vehicle was damaged under 75% of its value. Under this bill, if a vehicle is damaged under 75% of its value, an insurance company can obtain completely clean title for a substantially damaged and potentially unsafe vehicle. This is certainly not in the best interest of consumers or anyone traveling on our highways.
- The law has no effective enforcement mechanism. The only remedy under HB 2561 is a Class C misdemeanor. It is our understanding that only three states make violation of their

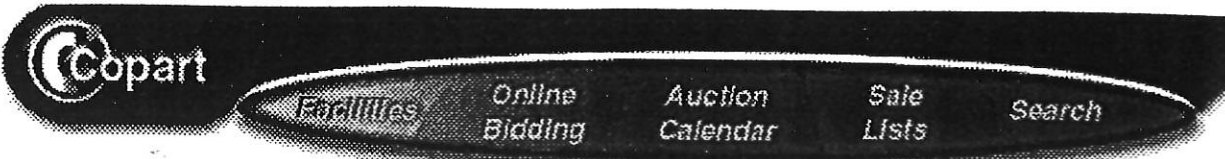
salvage law solely a criminal offense. The overwhelming number of states, however, provide for civil remedies in addition to any existing criminal offense.

A Class C misdemeanor carries a punishment of up to 30 days in jail, and up to a \$500 fine. This punishment is simply not enough to deter violations of a salvage law, nor can most overworked prosecutors take such cases.

However, we do not recommend making a violation of this law, as drafted, a violation of the KCPA because this proposed law is not as effective as current law without salvage branding. Under current law, we can prosecute the failure to disclose material damage to a vehicle as a deceptive act in violation of the KCPA.

Finally, if this bill is recommended for passage, we strongly urge this Committee to add the following amendment: "Compliance with the provisions of this act shall not be a defense to any action brought against a manufacturer, seller, rebuilder, or supplier for any cause of action including, but not limited to, personal injury, fraud, breach of contract, breach of warranty, or Kansas Consumer Protection Act violations." Sellers of previously wrecked and unsafe vehicles should not be able to use this proposed law as a shield to long-established remedies available to consumers for the financial and physical harm caused by those who negligently and/or fraudulently sell previously wrecked vehicles to unsuspecting victims.

On behalf of Attorney General Stovall, I urge you not to recommend this bill favorably as drafted. It weakens consumer protections contained in current law and puts Kansans at risk financially when buying previously wrecked vehicles and at risk of serious bodily injury or death by putting potentially unsafe vehicles back on the road. If the Committee recommends this bill, in any form, we urge the Committee to amend the bill to specifically provide that compliance with the act shall not be a defense to consumer actions brought against those who sell previously wrecked or damaged vehicles. I would be happy to answer questions of the Chair or any member of the Committee.

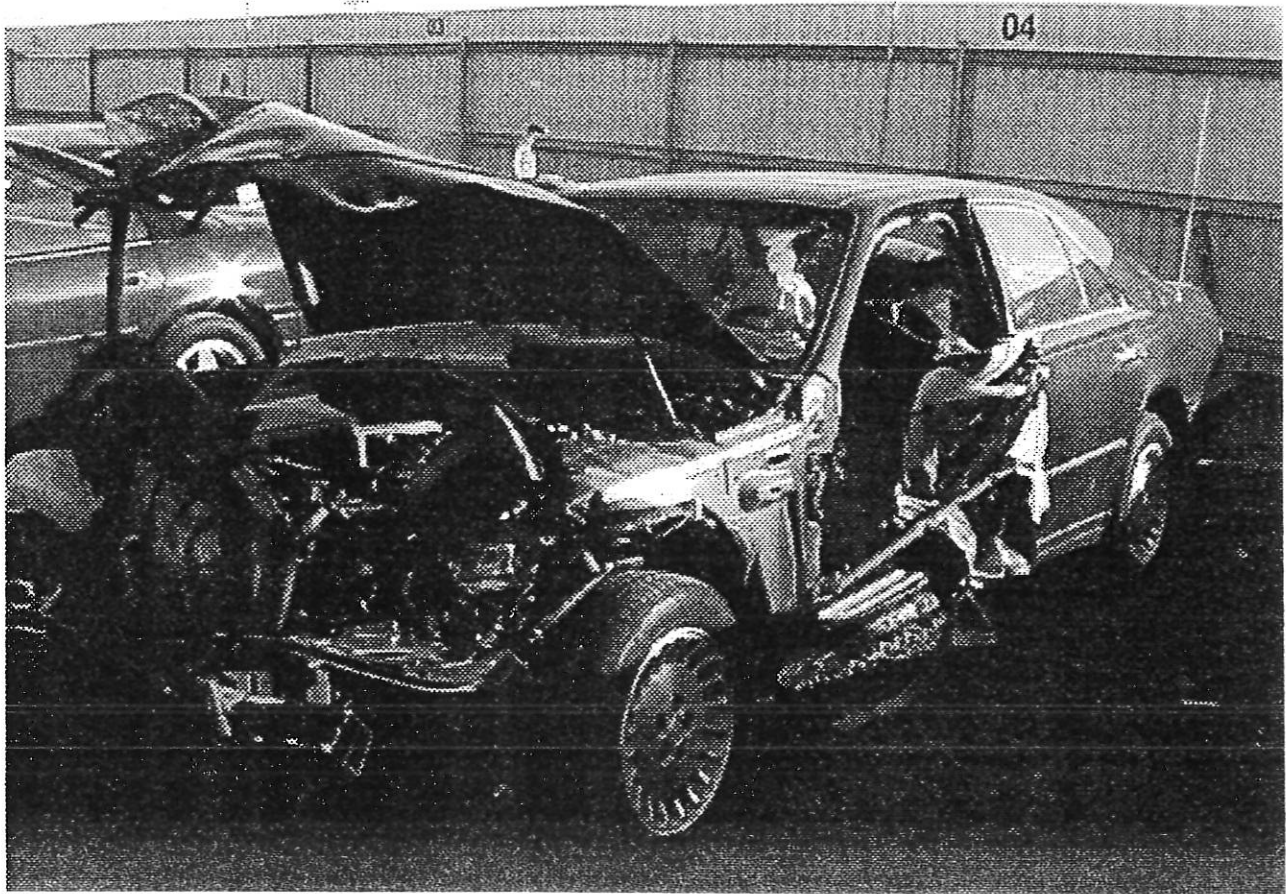


Explanation Of Odometer Codes Explanation Of Damage Types

Facility : HAMMOND
 Sale Date : 3/13/00
 Description : 1997 INFINITI Q45
 Color : BURG
 VIN : JNKBY31D2VM005400
 Mileage : 18,977 A
 ACV : 35225.00
 Repair Cost : 22703.00
 Title Type : IN SALVAGE TITLE
 Damage Type : AO

Enter A Bid

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4-5



4-6