

## **DID YOUR SON TOTAL YOUR CAR? DON'T ADD TO YOUR WOES- MAKE SURE YOU GET A "SALVAGE TITLE"**

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So junior totaled the new Toyota; junked the new Jag; or de-fendered the new Ford Fusion. Besides taking a hit for that “just left the new car lot” depreciation, what else could go wrong? Well, if you and your insurance company don’t ensure a proper “salvage title” is issued for the damaged goods - plenty.

In its original form, Indiana’s Salvage Act was determined to be ambiguous.<sup>1</sup> As such, an insurer who never obtained title to an insured’s damaged vehicle, determined it was not economical to repair the damaged vehicle, and, paid the insured and allowed the insured to keep the salvage was held to have no obligation under the Salvage Act.<sup>2</sup> Subsequent amendments to the Act in 1998 and 2006 removed these ambiguities so that both the insurer and the insured owner who retains title to the vehicle<sup>3</sup> needs to get a “salvage title” issued. The 2006/2007 version of Indiana’s Salvage Act<sup>4</sup> describes this procedure and prescribes the penalties available to a purchaser of a vehicle that should have been re-titled.

If an insurance company has determined that it is “economically impractical”<sup>5</sup> to repair a wrecked or damaged motor vehicle<sup>6</sup> or if the owner of such a vehicle retains possession of the vehicle,<sup>7</sup> then the insurance company needs to apply for a salvage title<sup>8</sup> or the owner should surrender the certificate of title to the insurance company (who then applies for a salvage tile).<sup>9</sup> The requirement to obtain a salvage title also applies to “[a]ny other person acquiring a wrecked or damaged motor vehicle” that meets any of the damage criteria contained in the Salvage Act.<sup>10</sup> Failure to correctly re-title such a salvage vehicle may result in some financial responsibility.<sup>11</sup> The civil penalties imposed by the Salvage Act *may* (i.e., these damages are not mandatory, but discretionary) include the recovery of actual damages, costs, and a reasonable attorney’s fees.<sup>12</sup> In addition, it appears that the *court* (not the jury) *may* increase the award of damages to the greater of three (3) times the actual damages or \$2,500.00.<sup>13</sup>

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<sup>1</sup> Allstate Ins. Co. v. Larkin’s Body Shop, 673 N.E.2d 846 (1996), reh. den. 676 N.E.2d 41 (1997).

<sup>2</sup> Id.

<sup>3</sup> Ind. Code § 9-22-3-3(c) was added 1998 and imposed a duty upon the insurer to apply for a salvage title if the vehicle sustained damages of 70% or more; Ind. Code § 9-22-3-3(c) and § 9-22-3-11 was modified in 2006 to extend the duty to an insured who retains title to his salvage. Subsection (d) of 9-22-3-3 was added as well in 2006 to impose these same duties upon a self-insured owner of a vehicle.

<sup>4</sup> Ind. Code § 9-22-3 *et seq.*

<sup>5</sup> This is not a defined term under the applicable statutes.

<sup>6</sup> Ind. Code § 9-22-3-3(a) (1).

<sup>7</sup> Ind. Code § 9-22-3-11 (b) and (c).

<sup>8</sup> Ind. Code § 9-22-3-3(c).

<sup>9</sup> Ind. Code § 9-22-3-11(c).

<sup>10</sup> Ind. Code § 9-22-3-11(e). Also note that once a salvage motor vehicle is rebuilt for operation upon the highways, the vehicle must be inspected by a police officer and there must be verified proof of ownership of the major component parts used to rebuild the car and the source of the major component parts. Ind. Code § 9-22-3-15.

<sup>11</sup> Ind. Code § 9-22-3-36.

<sup>12</sup> Ind. Code § 9-22-3-36.

<sup>13</sup> Id.

So, don't compound your problems. Make sure your insurance company has a salvage title issued when your new driver has totaled your new car.

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