

**Society of Collision Repair Specialists (SCRS) markup of NCOIL Proposed Model:
Proposed Model Act Regarding Auto Airbag Fraud**

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Section 1. Purpose

Airbag fraud is a public safety concern for consumers and the automobile insurance system. Efforts to combat this problem—one that could place innocent consumers at risk of serious bodily injuries—have been piecemeal. This model is intended to address the issue in a coordinated way. It is through this collective effort that consumers will be protected and the integrity of the insurance system assured.

SCRS Comment: Typically NCOIL models are utilized by the state level Departments of Insurance. The DOI is not a regulatory agency over sellers, purchasers or installers of airbags. Regulation of those entities also seemingly fall beyond the scope of NCOIL's stated purpose which is to help legislators make informed decision on insurance issues that affect their constituents, improve the quality of insurance regulation, and to assert the prerogative of legislators in making state policy when it comes to insurance. While sections of this bill may provide valuable consumer protection, it is SCRS' opinion that they may extend beyond the scope of both this body and the governing bodies with who typically correspond to enforcement of your stated purpose. SCRS would need better definition of who would be the intended enforcement agencies in the event that we could support such language. Additionally, we believe that it would be within the scope of NCOIL to not focus on the purchasers installers and sellers of airbags, but to assert what insurer's are responsible for in the process of indemnifying the policy holder. This may require a complete redraft of the bill, as language referencing insurer responsibility and installer, purchaser, seller responsibility should technically not be tied through the same legislation.

Section 2. Summary

The Act establishes criminal penalties for fraudulent installation or reinstallation, request for fraudulent installation or reinstallation, or reimbursement for fraudulent or improper installation or reinstallation of an airbag, with more severe penalties for persons whose airbag fraud results in serious injury or death; requires that auto repair facilities businesses maintain detailed records of airbags they purchase, sell, or install; mandates that a repair facility submit an affidavit to a vehicle owner saying that an airbag was installed and calibrated properly; mandates the insurance carrier provide necessary coverage of all operations required to properly install new replacement airbags and any related safety restraint system (SRS) component; establishes that police accident reports must note

whether an airbag deployed; and provides that a person trading or selling a motor vehicle must disclose whether an airbag is inoperable.

Section 3. Definitions

- A. “Airbag” means an inflatable restraint system that is designed to be installed and to operate in a motor vehicle to activate as specified by the vehicle manufacturer in the event of a crash.

SCRS Comment: Not all collision would justify the deployment of an airbag. Each manufacturer has specific tolerances that define when an airbag is deployed during a collision.

- B. “Salvaged airbag” means an airbag that has been removed from a motor vehicle for use in another vehicle.

Section 4. Installation or reinstallation of false airbag; deceptive trade practices; criminal liability

- A. It is a deceptive trade practice when:

1. a person installs or reinstalls, as part of a vehicle inflatable restraint system, any object in lieu of an airbag that was designed in accordance with federal safety regulations for the make, model, and year of the vehicle
2. a person sells or offers for sale any device with the intent that such device will replace an airbag in any motor vehicle if such person knows or reasonably should know that such device does not meet federal safety requirements
3. a person sells or offers for sale an airbag cover that when installed in any motor vehicle gives the impression that a viable airbag is installed in that vehicle
4. a person representing an insurance carrier limits liability of the policy, or coverage limitations, to the use of any object in lieu of an airbag that was designed in accordance with federal safety regulation for the make, model, and year of the vehicle, any device that will replace an airbag in any motor vehicle, any salvaged airbag or safety restraint system component, or denies any necessary part, operation, or labor necessary to ensure the proper operation of the SRS system.

- B. Any person who violates this section is guilty of a felony and, upon conviction thereof, shall be punished by a fine of not less than \$ ____ and not more than \$ ____ per violation, or imprisonment in *[insert facility]* for up to ____ year(s), or both.
- C. A person whose violation of subsection A(1) of this section results in serious bodily injury or death shall be imprisoned for not more than ____ years or fined not more than \$____, or both.

Section 5. Airbag antitheft

- A. *Purchase, sale, or installation of new or salvaged airbags; records*

1. ~~Any person engaged in the business of purchasing, selling, or installing salvaged airbags shall maintain a manual or electronic record of the purchase, sale, or installation, which must include the identification number of the airbag; the vehicle identification number of the vehicle from which the salvaged airbag was removed;~~

~~the name, address, and driver's license number or other means of identification of the person from whom the salvaged airbag was purchased; and, in the event that the salvaged airbag is installed, the vehicle identification number of the vehicle into which the airbag is installed.~~

SCRS Comment: SCRS is strongly opposed to any section that provides requirements in the case of a salvaged airbag. The acceptability of using salvaged airbags is both rigorously debated within the industry and an uncommon practice. By placing requirements for the proper approach to such practice codifies the practice and possibly opens the door for more widespread consideration.

2. In the case of a new replacement airbag, a motor vehicle repair shop shall maintain the name and tax identification number of the supplier of the airbag. Upon request of any law enforcement officer of this state or other authorized representative of the agency charged with administration of this section, the motor vehicle repair shop shall produce such records and permit said agent or police officer to examine them.

SCRS Comment: As it relates to the "or other authorized representative of the agency charged with administration of this section," SCRS believes that it is imperative for the legislators and the states to fully understand the difference in the roles of the enforcement agencies. The Departments of Insurance do not, and would not, regulate any activity outside of the business of insurance. Selling, purchasing, and installing airbags or any component on a vehicle would be considered outside of the business of insurance and would be typically be regulated by state Departments of Safety.

3. ~~Any person who sells a salvaged airbag or who installs a salvaged airbag must disclose to the purchaser or consumer that the airbag is salvaged.~~
4. ~~The person or business that installs a new or salvaged airbag shall submit an affidavit to the vehicle owner or their representative stating that the replacement airbag had been properly installed, including that it had been calibrated correctly.~~

SCRS Comment: There is no calibration process in the installation of the airbag module. The unit is installed in the vehicle. This section would require an affidavit of a process that is not currently employed in the repair process. There is, however, calibration processes on other SRS components such as airbag sensors that may or may not be required in the documented manufacturer replacement process.

5. All records must be maintained for not less than five years following the transaction and may be inspected during normal business hours by any law enforcement officer of this state or other authorized representative of the agency charged with administration of this section.
6. Upon request, information within a portion of such record pertaining to a specific transaction must be provided to ~~an insurer or the~~ consumer.

SCRS Comment: The language leaves a large blanket for any consumer or any insurer to make a request on any transaction. The consumer involved in the specific transaction should be entitled to the specific information, but not to any information on transactions they were not involved in. The repairer is contract by the consumer, not the insurer, in the instance of a repair. The repair facility should have no legal

requirement to provide information relative to the transaction to anyone other than the individual who contracted the transaction themselves.

B. Prohibition; penalties

1. It is unlawful for any person to knowingly possess, sell, or install a stolen uninstalled airbag; a new or salvaged airbag from which the manufacturer's part identification number has been removed, altered, or defaced; or an airbag taken from a stolen motor vehicle. Any person who violates this paragraph commits a felony of the *[insert degree]*.
2. Any person who fails to maintain complete and accurate records, to prepare complete and accurate documents, to provide information within a portion of such record upon request, ~~or to properly disclose that an airbag is salvaged,~~ as required by this Act, commits a misdemeanor.

Section 6. Accidents; police authorities report

Any automobile vehicle accident report that is filed by the appropriate law enforcement agency shall clearly contain a notation as to whether the automobile's airbag or inflatable restraint system had been deployed in the accident.

Section 7. Sale or trade of motor vehicle with an inoperable airbag

- A. Any person selling or trading a motor vehicle who has actual knowledge that the motor vehicle's airbag is inoperable shall notify the buyer or the person acquiring the trade, in writing, that the airbag is inoperable.
- B. A person who violates subsection A of this section commits a misdemeanor and shall be subject to a fine of not more than \$ ____.

SCRS Comment: It would seem equitable to make the penalty for violating section 7A equitable to the charges raised by violating other sections of this document as deceiving a vehicle purchaser is equally as fraudulent.

Section 8. Severability

If any section, paragraph, sentence, clause, phrase, or any part of this Act passed is declared invalid, the remaining sections, paragraphs, sentences, clauses, phrases, or parts thereof shall be in no manner affected and shall remain in full force and effect.

Section 9. Effective Date

This Act shall take effect on *[insert months]* following enactment of the bill.

Additions indicated by <u>boldface underline</u> . Deletions indicated by boldface strikethrough .
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