

AUTOMOTIVE RECYCLERS ASSOCIATION (ARA)

Proposed Amendments to Draft 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.

Section 2. Summary

The Act establishes criminal penalties for fraudulent 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 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; 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 in the event of a crash.
- B. “Salvaged airbag” means an **OEM non-deployed recycled** 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 repairing a motor vehicle fails to replace a deployed airbag with a suitable replacement and the subject motor vehicle was originally equipped with airbags (Airbag Omission)

- 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. **No salvaged airbag shall be sold or installed which is or has been subject to a specific manufacturer's or appropriate authority's notice of recall.**
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.
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.~~
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 consumer.

7. Automobile recyclers engaged in the business of selling salvage airbags shall comply with industry standards such as those standards established or endorsed by a national trade or industry association for the extraction, inspection, handling, storage, and shipping of salvage airbags.

8. Salvage airbags conforming to such industry standards shall be accompanied by a Certificate of Conformance which shall be retained by the installer or motor vehicle repair facility.

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 shall be subject to a fine of not more than \$ ____.

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.

ADDENDUM

The ARA believes that when states adopt rules regarding the sale of salvaged airbags such standards should include but not be limited to:

- Identification of the supplier of the unit.
- Identification of the recipient vehicle, including VIN, year, make and model.
- Identification of the airbag module cover color (and color code if available).
- Identification of the donor vehicle, including VIN, year, make and model.
- Suppliers internal stock number or locator number.
- Indication of source of interchange information (i.e. Interchange manual/part number, OEM info, etc.).
- A supplier certificate indicating all the requirements of the inspection protocol have been successfully achieved and the identification of the person who completed the inspection.
- A document containing the vehicle description including the year, make and model for which the airbag system component is required when being sold to the end-user.

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