

LKQ CORPORATION
Proposed Amendments to Draft NCOIL 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”~~ “Recyclable 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
- 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~~ OEM non-deployed airbags; records*
1. Any person engaged in the business of purchasing, selling, or installing ~~salvaged airbags~~ OEM non-deployed airbags shall maintain a manual or electronic record of the purchase, sale, or installation, which must include the identification number of the airbag, if practicable; the vehicle identification number of the vehicle from which the ~~salvaged airbag~~ OEM non-deployed airbag was removed; the name, address, and driver's license number or other means of identification of the person from whom the ~~salvaged airbag~~ OEM non-deployed airbag was purchased; and, in the event that the ~~salvaged airbag~~ OEM non-deployed airbag is installed, the vehicle identification number of the vehicle into which the airbag is installed. No OEM non-deployed airbag shall be sold or installed which is or has been subject to a 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 an salvaged airbag OEM non-deployed airbag must disclose to the purchaser or consumer that the airbag is salvaged an OEM non-deployed airbag.
 4. The person or business that installs a new or ~~salvaged airbag~~ OEM non-deployed 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.
- 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~~ OEM non-deployed 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 or an OEM non-deployed airbag, 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, unless the vehicle has been declared a total loss vehicle and is being sold or traded for end of life processing.
- 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.