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NATIONAL COUNCIL OF INSURANCE LEGISLATORS (NCOIL) Model Act Regarding Auto Airbag Fraud

Adopted by the NCOIL Executive Committee on November 22, 2009. Re-adopted by the NCOIL Property & Casualty Insurance Committee on July 12, 2018 and the NCOIL Executive Committee on July 15, 2018

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Section 1. Purpose

Airbag system 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 restraint 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 any person engaged in the business of purchasing, selling, or installing an airbag maintain detailed records of airbags they purchase, sell, or install; mandates that any person engaged in the business of installing an airbag submit an affidavit to a vehicle owner saying that an airbag was installed properly; requires a person repairing a vehicle to affix a permanent dashboard label disclosing that a salvaged airbag had been used; 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 any component of an inflatable occupant restraint system that is designed in accordance with federal safety regulations for the make, model, and year of the vehicle to be installed and to operate in a motor vehicle to activate, as specified by the vehicle manufacturer, in the event of a crash. Airbag components include but are not limited to sensors, controllers, wiring, and the airbag itself.
- B. "Light manipulating system" means anything that would mask or cause the inaccurate indication of the airbag system status, condition, or operability.
- C. "Person" means any natural person, corporation, partnership, unincorporated association, or other entity.
- D. "Salvaged airbag" means an OEM non-deployed airbag that has been removed from a motor vehicle for use in another vehicle.

Section 4. Installation or reinstallation of any 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 occupant restraint system, any object in lieu of an airbag, including any light manipulating system
 - 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 any device that when installed in any motor vehicle gives the impression that a viable airbag is installed in that vehicle, including any light manipulating system
 - 4. any person intentionally misrepresents the presence of an airbag when one does not exist
- 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 airbag; 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 new or 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, any person engaged in installing any airbag shall maintain the name and tax identification number of the supplier of the airbag and record the vehicle identification number of the vehicle into which the airbag is installed, as well as the identification number of the airbag being installed. Additionally, the airbag identification of the previously deployed airbag being replaced shall be recorded. Upon request of any law enforcement officer of this state or other authorized representative of the agency charged with administration of this section, the installer shall produce such records and permit said agent or police officer to examine them.

3. Any person who installs a salvaged airbag in a vehicle shall apply a permanent, durable label that clearly states that the vehicle contains a salvaged airbag. Such label must be permanently installed on the dashboard of the vehicle. Any person who removes such a label shall be guilty of a criminal offense.

4. Any person who sells a salvaged airbag or who installs a salvaged airbag must disclose to the purchaser and vehicle owner that the airbag is salvaged.

5. The person who 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.

6. 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.

7. Upon request, information within a portion of such record pertaining to a specific transaction must be provided to the insurer and the vehicle owner.

8. Persons engaged in the business of selling salvage airbags shall comply with regulations developed by the [insert appropriate state agency].

9. State rules regarding the sale of salvaged airbags shall include but not be limited to the following standards:

- a. identification of the supplier of the unit
- b. identification of the recipient vehicle, including VIN, year, make, and model
- c. identification of the airbag module cover color (and color code if available)
- d. identification of the donor vehicle, including VIN, year, make, and model
- e. supplier's internal stock number or locator number

f. indication of source of interchange information (i.e. interchange manual/part number, OEM info, etc.)

g. a supplier certificate indicating that all the requirements of the inspection protocol have been successfully achieved and identifying the person who completed the inspection

h. 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

10. Salvage airbags conforming to such standards shall be accompanied by a Certificate of Conformance which shall be retained by the installer.

Drafting Note: Each state should consider allowing the regulator to adopt a protocol to insure that only salvaged airbags that have met specific criteria are used.

B. Prohibition; penalties

1. It is unlawful for any person to knowingly possess, sell, or install a stolen airbag; an airbag from which the manufacturer's part number labeling and/or VIN 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 from 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.

Drafting Note: Airbag systems often contain seatbelt pretensioners that, once deployed, must be replaced in order to restore the integrity of the airbag system. In some crashes, the pretensioners will deploy in conjunction with the airbags and in other crashes the pretensioners will deploy even if the airbag does not. Because law enforcement officers may miss the pretensioner deployment if it is not accompanied by release of an airbag, officers should be educated to recognize and report that a pretensioner has deployed and must be replaced.

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 is subject to civil and/or criminal prosecution at the selection of the state.

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.

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