

JAN 20 2010

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# A BILL FOR AN ACT

RELATING TO MOTOR VEHICLES.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that airbag system fraud  
2 is a public safety concern for consumers and the motor vehicle  
3 insurance industry. The purpose of this Act is to:

4           (1) Establish criminal penalties for fraudulent  
5 installation or reinstallation of an airbag, with more  
6 severe penalties for persons whose airbag fraud  
7 results in serious injury or death;

8           (2) Require that any person engaged in the business of  
9 purchasing, selling, or installing an airbag maintain  
10 detailed records of airbags they purchase, sell, or  
11 install;

12           (3) Mandate that any person engaged in the business of  
13 installing an airbag submit an affidavit to a vehicle  
14 owner saying that an airbag was installed properly;

15           (4) Require a person repairing a vehicle to affix a  
16 permanent dashboard label disclosing whether a  
17 salvaged airbag had been used;



- 1 (5) Establish that police accident reports must note
- 2 whether an airbag deployed; and
- 3 (6) Provide that a person trading or selling a motor
- 4 vehicle must disclose whether an airbag is inoperable.

5 SECTION 2. The Hawaii Revised Statutes is amended by  
6 adding a new chapter to title 26 to be appropriately designated  
7 and to read as follows:

8 **"CHAPTER**

9 **MOTOR VEHICLE AIRBAG FRAUD**

10 § -1 **Definitions.** As used in this chapter:

11 "Airbag" means any component of an inflatable occupant  
12 restraint system that is designed in accordance with federal  
13 safety regulations for the make, model, and year of the vehicle  
14 to be installed and to operate in a motor vehicle to activate,  
15 as specified by the vehicle manufacturer, in the event of a  
16 crash. Airbag components include but are not limited to  
17 sensors, controllers, wiring, and the airbag itself.

18 "Light manipulating system" means anything that would mask  
19 or cause the inaccurate indication of the airbag system status,  
20 condition, or operability.

21 "Person" means any natural person, corporation,  
22 partnership, unincorporated association, or other entity.



1 "Salvaged airbag" means an original equipment manufacturer  
2 non-deployed airbag that has been removed from a motor vehicle  
3 for use in another vehicle.

4 § -2 Installation or reinstallation of any fraudulent  
5 airbag; deceptive trade practices; criminal liability. (a) It  
6 is a deceptive trade practice for any person to:

7 (1) Install or reinstall, as part of a vehicle inflatable  
8 occupant restraint system, any object in lieu of an  
9 airbag, including any light manipulating system;

10 (2) Sell or offer for sale any device with the intent that  
11 the device will replace an airbag in any motor vehicle  
12 if the person knows or reasonably should know that the  
13 device does not meet federal safety requirements;

14 (3) Sell or offer for sale any device that when installed  
15 in any motor vehicle gives the impression that a  
16 viable airbag is installed in that vehicle, including  
17 any light manipulating system; or

18 (4) Intentionally misrepresent the presence of an airbag  
19 when one does not exist.

20 (b) Violation of this section is a class C felony.

21 (c) For a conviction under this section, the sentence  
22 shall be:



1 (1) For a violation of subsection (a)(1) that results in  
2 serious bodily injury or death:

3 (A) An indeterminate term of imprisonment for not  
4 more than years;

5 (B) A fine of not more than \$ ; or

6 (C) Both; or

7 (2) For all other violations of this section:

8 (A) An indeterminate term of imprisonment for not  
9 more than years;

10 (B) A fine of not more than \$ ; or

11 (C) Both.

12 § -3 Purchase, sale, or installation of new or salvaged

13 **airbag; records.** (a) Any person engaged in the business of  
14 purchasing, selling, or installing salvaged airbags shall

15 maintain a manual or electronic record of the purchase, sale, or  
16 installation, which must include:

17 (1) The identification number of the airbag;

18 (2) The vehicle identification number of the vehicle from  
19 which the salvaged airbag was removed;

20 (3) The name, address, and driver's license number or  
21 other means of identification of the person from whom  
22 the salvaged airbag was purchased; and



1           (4) In the event that the salvaged airbag is installed,  
2                   the vehicle identification number of the vehicle into  
3                   which the airbag is installed.

4 No new or salvaged airbag shall be sold or installed which is or  
5 has been subject to a specific manufacturer's or appropriate  
6 authority's notice of recall.

7           (b) In the case of a new replacement airbag, any person  
8 engaged in installing any airbag shall maintain the name and tax  
9 identification number of the supplier of the airbag and record  
10 the vehicle identification number of the vehicle into which the  
11 airbag is installed, as well as the identification number of the  
12 airbag being installed. Additionally, the airbag identification  
13 of the previously deployed airbag being replaced shall be  
14 recorded. Upon request of any law enforcement officer of this  
15 State or other authorized representative of the department of  
16 commerce and consumer affairs, the installer shall produce the  
17 records required by this subsection and permit the department or  
18 police officer to examine them.

19           (c) Any person who installs a salvaged airbag in a vehicle  
20 shall apply a permanent, durable label that clearly states that  
21 the vehicle contains a salvaged airbag. The label shall be



1 permanently installed on the dashboard of the vehicle. No  
2 person shall willfully remove such a label.

3 (d) Any person who sells a vehicle with a salvaged airbag  
4 or who installs a salvaged airbag shall disclose to the  
5 purchaser and vehicle owner that the airbag is salvaged.

6 (e) Any person who installs a new or salvaged airbag shall  
7 submit an affidavit to the vehicle owner or their representative  
8 stating that the replacement airbag has been properly installed.

9 (f) All records shall be maintained for not less than five  
10 years following the transaction and may be inspected during  
11 normal business hours by any law enforcement officer of this  
12 State or other authorized representative of the department of  
13 commerce and consumer affairs.

14 Upon request, information within a portion of the records  
15 required by this subsection pertaining to a specific transaction  
16 shall be provided to the vehicle insurer and the vehicle owner.

17 (g) Persons engaged in the business of selling salvaged  
18 airbags shall comply with rules adopted under chapter 91 by the  
19 department of commerce and consumer affairs.

20 (h) The department of commerce and consumer affairs shall  
21 adopt rules in accordance with chapter 91 for the purposes of



1 this section. The rules regarding the sale of salvaged airbags  
2 shall include but not be limited to the following standards:

- 3 (1) Identification of the supplier of the airbag;
- 4 (2) Identification of the recipient vehicle, including  
5 vehicle identification number, year, make, and model;
- 6 (3) Identification of the airbag module cover color (and  
7 color code if available);
- 8 (4) Identification of the donor vehicle, including vehicle  
9 identification number, year, make, and model;
- 10 (5) Supplier's internal stock number or locator number;
- 11 (6) Indication of source of interchange information (i.e.,  
12 interchange manual or part number, original equipment  
13 manufacturer information, etc.);
- 14 (7) A supplier certificate indicating that all the  
15 requirements of the inspection protocol have been  
16 successfully achieved and identifying the person who  
17 completed the inspection; and
- 18 (8) A document containing the vehicle description,  
19 including the year, make, and model for which the  
20 airbag system component is required when being sold to  
21 the end-user.



1 Salvaged airbags conforming to the foregoing standards shall be  
2 accompanied by a certificate of conformance that shall be  
3 retained by the installer.

4 § -4 **Prohibitions; penalties.** (a) It is unlawful for  
5 any person to knowingly possess, sell, or install:

6 (1) A stolen airbag;

7 (2) An airbag from which the manufacturer's part number  
8 labeling or vehicle identification number has been  
9 removed, altered, or defaced; or

10 (3) An airbag taken from a stolen motor vehicle.

11 Violation of this subsection is a class C felony.

12 (b) Failure to maintain complete and accurate records,  
13 prepare complete and accurate documents, provide information  
14 from the record upon request, or properly disclose that an  
15 airbag is salvaged, as required by this chapter, is a  
16 misdemeanor.

17 (c) Violation of any other provision of this chapter for  
18 which a separate penalty is not otherwise provided, shall be a  
19 misdemeanor.

20 § -5 **Accidents; police report.** Any traffic accident  
21 report required under chapter 291C shall clearly contain a





1 notation as to whether the motor vehicle's airbag or inflatable  
2 restraint system had been deployed in the accident.

3 § -6 Sale or trade of motor vehicle with an inoperable  
4 airbag. (a) Any person selling or trading a motor vehicle who  
5 has actual knowledge that the motor vehicle's airbag is  
6 inoperable shall notify the buyer or the person acquiring the  
7 trade, in writing, that the airbag is inoperable.

8 (b) Violation of this section shall be a deceptive trade  
9 practice and the violator shall be subject to the penalties  
10 under section -2."

11 SECTION 3. This Act does not affect rights and duties that  
12 matured, penalties that were incurred, and proceedings that were  
13 begun before its effective date.

14 SECTION 4. This Act shall take effect upon its approval.

15

INTRODUCED BY: Rosely J. Baker  
By Request



**Report Title:**

Motor Vehicles; Airbag Fraud

**Description:**

Establishes criminal penalties for fraudulent installation or reinstallation of an airbag. 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. Requires that a person trading or selling a motor vehicle must disclose whether an airbag is inoperable.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*



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**MEMORANDUM**

**TO:** Senator Rosalyn H. Baker  
Chair, Committee on Commerce and Consumer Protection  
**Via Email: CPNTestimony@Capitol.hawaii.gov**

**FROM:** Gary M. Slovin

**DATE:** January 26, 2010

**RE:** S.B. 2022 – Relating to Motor Vehicles  
Hearing: Wednesday, January 27, 2010 at 9:00 a.m., Room 229

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I am Gary Slovin, testifying on behalf of the Alliance of Automobile Manufacturers (“Alliance”). Senate Bill 2022 will establish criminal penalties for fraudulent installation or reinstallation of airbags, require certain records, reports, and disclosures to be made by those engaged in the business of purchasing, selling, and/or installing airbags, and mandate police accident reports to include information about the deployment of airbags. The Alliance opposes S.B. 2022 to the extent that the bill permits the installation and use of salvaged airbags.

The Alliance is a trade association representing eleven car and light truck manufacturers, including: BMW, Chrysler, Ford, GM, Jaguar Land Rover, Mazda, Mercedes-Benz, Mitsubishi, Porsche, Toyota, and Volkswagen.

Of the many issues dealt with by the auto industry, passenger safety is of the paramount concern. In combination with safety belts and superior car design, airbags are a critical component to help protect passengers. The Alliance believes the best and perhaps only way to ensure an absolutely functioning airbag is to replace any used airbag with a new original equipment manufacturer airbag.

Salvaged airbags increase the risk of injury to consumers by diminishing the important standard of safety assurance. Airbags serve a critical safety function that demands the highest degree of assurance regarding part stewardship and installation; a salvage yard environment—where recycled airbags are exposed to uncontrolled and

January 25, 2010

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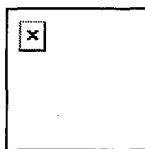
harmful environmental conditions—can never provide this.

In addition, each airbag is designed to work as part of the overall occupant safety restraint system. Installation of a salvaged airbag into a vehicle for which it was not designed (even if a different model year) poses a huge—and potentially deadly—risk. Repair facilities may not know the make or model of the vehicle from which a salvaged airbag was recovered, making the installation and use of salvaged airbags a perilous endeavor.

Airbags are highly engineered safety devices that require proper handling and care. At this time, there is no certifiable evidence demonstrating that salvaged airbags can be properly and reliably installed in motor vehicles, or that they will work properly in a real world car crash—the precise function for which airbags are installed. Until such assurances can be made, the Alliance cannot recommend the use of salvaged airbags to its customers and does not support passage of any legislation endorsing the use of salvaged airbags.

For these reasons, the Alliance opposes S.B. 2022 and respectfully requests the bill be held in committee unless the provisions regarding salvaged airbags are removed.

Thank you very much for the opportunity to provide testimony on this measure.



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Telephone: (571) 208-0428      Telefax: (571) 208-0430

January 26, 2010

The Honorable Rosalyn H. Baker  
Hawaii State Capitol, Room 231  
415 South Beretania Street  
Honolulu, Hawaii 96813

**RE: SENATE BILL 2022**

Dear Ms. Baker:

The Automotive Recyclers Association (ARA) wants to ensure you fully appreciate the implications of a bill, SB 2022, which will be before the Hawaiian Senate Consumer Protection Committee tomorrow. The measure will have profound negative effects on Hawaiian consumers and the environment.

The ARA, an international trade association representing over 4,500 automotive recycling facilities in the United States and fourteen other countries around the world, proudly represents an industry dedicated to the environmentally efficient removal and reuse of automotive parts, and the recycling of inoperable motor vehicles. ARA advances the automotive recycling industry through various services and programs to increase public awareness of the industry's role in conserving the planet's resources through automotive recycling and to foster awareness of the industry's value as a high quality, low cost "green" auto part alternative for the automotive consumer.

Unfortunately, some of the language in SB 2022 has not received sufficient review and oversight. **By requiring a vehicle's dashboard to be permanently affixed with a label warning that a salvage airbag has been used, implies that an OEM non-deployed airbag is inferior and unsafe and is DISCRIMINATORY will discourage consumers from choosing a more affordable alternative replacement part.**

Inconsistent disclosures of part types may confuse and mislead consumers as to the best use and the beneficial aspects of each part type and inadvertently cause market discrimination. ARA supports the uniform treatment and consistent use of part type disclosure on repair and maintenance estimates and oppose any legislative or regulatory mandates that require the disclosure of any single part type on repair and maintenance estimates while remaining silent on other part types.

In view of the issues above, ARA respectfully requests that you not support the discriminatory parts language in the bill as currently written.

Again, I ask you **not to support SB 2022** as currently written. If you have any questions, please contact me at (571) 208-0428 or [michael@ar-a.org](mailto:michael@ar-a.org).

Sincerely,

Michael E. Wilson  
Executive Vice President

## SB 2022 - Important Issues and Concerns

- Automotive recyclers have been selling these units for over 20 years and we know of no case where there was a claim or a cause of action involving a non-deployed recycled airbag failure to that would warrant such a warning
- A U.S. General Accounting Office (GAO) study in 2001 “concluded that recycled airbags function within their original specifications when undamaged and properly handled and installed...The two studies on the safety of recycled airbags that we identified concluded that they can be a potentially safe, economical alternative to new airbags as long as they are undamaged and properly handled and installed.”
- New OEM replacement airbags should be subjected to the same level of regulation, thus SB 2022 as currently written would legislate a competitive advantage to automotive manufacturing companies
- The Automotive Recyclers Association (ARA) has created a protocol for its members and any recycler that wishes to participate, which includes standards for removal, storage, sales, installation, record keeping and checks against recalls.
- Recycled airbags provide consumers with a lower cost option for securing the safe operation of a vehicle at an estimated 20%-50% savings from new airbags
- The use of OEM recycled airbags may save the consumer several hundred dollars and be the difference between declaring the vehicle a total loss and being able to repair it
- SB 2022 unjustifiably influences and constrains consumer choice and restricts the automotive industry’s ability to conserve environmental resources.

Testimony in OPPOSITION to SB 2022  
RELATING TO MOTOR VEHICLES

Presented by the Hawaii Automobile Dealers Association  
Hawaii's franchised new car dealers  
For the hearing by the Committee on Commerce and Consumer Protection  
9 a.m. Wednesday, January 27, 2010  
in Conference Room 229, Hawaii State Capitol

Chair Baker, Vice Chair Ige, and members of the committee:

Among many provisions, this bill establishes Class C felony penalties if a person selling a vehicle does not disclose that an airbag is inoperable if the fact is known.

Such provisions may have the inadvertent consequence of discouraging inspections of used cars taken in trade. To establish workability of an airbag that is not of the make the dealer sells may require equipment or technical knowledge not possessed by the dealer or the dealership's employees.

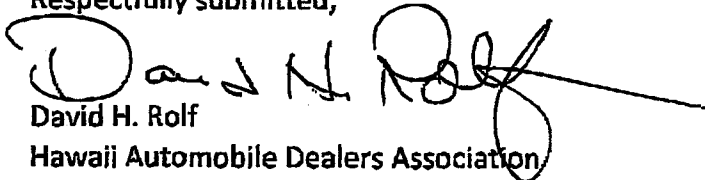
A dealer, to protect the dealership, may have to opt for the NO INSPECTION disclosure option under the disclosure requirement in HRS481-J4.

The safety of the drivers and passengers of vehicles is of paramount concern for auto dealers, but requirements to validate and certify the operability of airbags in vehicles for which the dealership is not the factory-trained and authorized service facility for the vehicle is problematic.

A BMW dealer taking a Nissan vehicle in trade may have to send the vehicle to a Nissan facility with factory-trained technicians to have a comfort level that the Nissan airbags are operable.

We respectfully request that you defer this measure until such issues have been resolved.

Respectfully submitted,



David H. Rolf

Hawaii Automobile Dealers Association

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