

COUNTERFEIT OR NONFUNCTIONAL AIRBAGS

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House Bill 4923 as reported from committee
Sponsor: Rep. Jim Lilly

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4924 (H-2) as reported from committee
Sponsor: Rep. Sarah Anthony

1st Committee: Transportation
2nd Committee: Judiciary
Complete to 2-7-20

SUMMARY:

House Bills 4923 and 4924 would prohibit and provide criminal penalties for the manufacture, importation, sale, or installation of counterfeit supplemental restraint (airbag) systems or nonfunctional airbags or the sale, lease, or trade of a vehicle known to have been installed with a counterfeit supplemental restraint system or nonfunctional airbag.

House Bill 4924 would add section 421d to the Michigan Penal Code to prohibit a person from knowingly and intentionally doing any of the following:

- Importing, manufacturing, selling, offering for sale, distributing, installing, or reinstalling in a motor vehicle a device to replace a supplemental restraining system component if the device is a **counterfeit supplemental restraint system** component, a **nonfunctional airbag**, or an object that the person knows was not designed to comply with federal motor vehicle safety standards for the make, model, and year of that motor vehicle.
- Selling, offering for sale, installing, or reinstalling in a motor vehicle a device that the person knows will cause the motor vehicle's diagnostic system to inaccurately indicate that it is equipped with a properly functioning **supplemental restraint system**.
- Selling, leasing, or trading a motor vehicle to a consumer if the person has actual knowledge that a counterfeit supplemental restraint system component, a nonfunctional airbag, or an object that the person has actual knowledge was not designed to comply with federal motor vehicle safety standards for the make, model, and year of that motor vehicle has been installed as part of the vehicle's inflatable restraint system.

Supplemental restraint system would mean an inflatable restraint system as defined in 49 CFR 571.208¹ that is designed for use in conjunction with active restraint systems. A supplemental restraint system would include one or more **airbags** and all components required to ensure that an airbag functions as designed by the manufacturer.

Airbag would mean a motor vehicle inflatable occupant restraint system device that is part of a supplemental restraint system.

¹ <https://www.govinfo.gov/content/pkg/CFR-2011-title49-vol6/pdf/CFR-2011-title49-vol6-sec571-208.pdf>

Counterfeit supplemental restraint system would mean a replacement supplemental restraint system component that displays a mark that is identical or substantially similar to the genuine mark of a manufacturer or supplier of parts but without the authorization of the manufacturer or supplier.

Nonfunctional airbag would mean a replacement airbag that meets one or more of the following:

- The airbag was previously deployed or damaged.
- The airbag has an electric fault that is detected by a motor vehicle's diagnostic system when installation is complete and the motor vehicle is returned to the customer who requested the work or when ownership of the vehicle is intended to be transferred.
- The airbag includes a part or object, including a supplemental restraint system component installed in a motor vehicle to mislead the owner or operator of the motor vehicle into believing that a functional airbag has been installed.
- The airbag violates federal motor vehicle safety standards.

A violation would be a felony punishable by imprisonment for up to four years or a fine of up to \$10,000, or both.

The new section would not apply to the owner or employee of a new or used motor vehicle dealership who did not have actual knowledge of the presence of a counterfeit supplemental restraint system component or nonfunctional airbag before the vehicle was sold. The bill would not require or create a duty for the owner of the new or used dealership to inspect any vehicle in the dealership's possession for counterfeit supplemental restraint system components or nonfunctional airbags before the sale of the vehicle.

The new section also would not apply to a person who installs an airbag used solely for research and development of airbag technology on motor vehicles that will not be driven on public roadways.

Proposed MCL 750.421d

House Bill 4923 would amend the Code of Criminal Procedure to add violation of proposed section 421d of the Michigan Penal Code to the sentencing guidelines. A violation would be a Class F felony against the public safety with a maximum term of imprisonment of four years. The bill is tie-barred to HB 4924, which means that it could not take effect unless HB 4924 were enacted.

MCL 777.16u

Each bill would take effect 90 days after its enactment.

BACKGROUND:

Airbag systems are referred to as supplemental restraint because they are designed to work in combination with seat belts (lap and shoulder belts) and also to deploy only in certain kinds of crashes. Frontal airbags have been standard equipment in passenger cars since the 1998 model year and in SUVs, vans, and pickup trucks since model year 1999.² According to the National Highway Traffic Safety Administration (NHTSA), frontal airbags saved 50,457 lives from 1987 to 2017, including 2,790 lives in 2017 alone. The NHTSA has estimated that frontal airbags reduce fatalities by 14% when no seat belts are used and by 11% when used in conjunction with seat belts.³

In 2012, the NHTSA issued a consumer safety advisory to alert vehicle owners and car repair professionals of the dangers of counterfeit airbags—equipment being made to resemble certified manufacturer parts (including automaker insignia and branding) but not up to the federal safety standards required for such equipment. Testing by the NHTSA showed consistent malfunctioning ranging from nondeployment to “the expulsion of metal shrapnel during deployment.”⁴

In addition to the problem of counterfeit airbags, unscrupulous repair shops will sometimes fraudulently bill an insurance company to replace a car’s airbags after a crash but fail to install a functioning airbag, pocketing the difference in cost. News reports and committee testimony have cited instances of airbag compartments filled with rags, sawdust, newspaper, beer cans, packing peanuts, or nothing at all.⁵

According to the Automotive Anti-Counterfeiting Council, a vehicle manufacturer association, 22 states have passed legislation similar to the bills under consideration.⁶

FISCAL IMPACT:

House Bill 4924 would have an indeterminate fiscal impact on the state and on local units of government. The number of felony convictions that would result under provisions of the bill is not known. New felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2019, the average cost of prison incarceration in a state facility was roughly \$39,400 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,800 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. The fiscal impact on local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. Increased costs could be offset, to some degree, depending on the amount of additional court-imposed fee revenue generated. Any increase

² <https://www.nhtsa.gov/equipment/air-bags>

³ <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812691>

⁴ <https://www.ice.gov/news/releases/nhtsa-ice-alert-consumers-dangers-counterfeit-air-bags>

⁵ See, for example, <https://www.npr.org/templates/story/story.php?storyId=95604121>

⁶ Alabama, California, Connecticut, Florida, Georgia, Iowa, Louisiana, Maryland, Massachusetts, Nebraska, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Rhode Island, South Carolina, Tennessee, Texas, Virginia, and Washington. See <https://a2c2.com/resources>

in penal fine revenue would increase funding for public libraries, which are the constitutionally designated recipients of those revenues.

House Bill 4923 is a companion bill to HB 4924 and amends sentencing guidelines. House Bill 4923 would not have a direct fiscal impact on the state or on local units of government.

POSITIONS:

Representatives of the following entities testified in support of the bills (11-5-19):

- Alliance of Automobile Manufacturers
- Honda North America

The following entities indicated support for the bills:

- Michigan State Police (11-5-19)
- General Motors (11-5-19)
- Ford Motor Company (11-5-19)
- Toyota Motor North America (11-5-19)
- AAA Michigan (2-4-20)
- MICHauto (11-5-19)
- Michigan Manufacturers Association (12-4-19)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.