



Coalition Against Insurance Fraud

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Dennis Jay
Executive Director

A national coalition of consumers, government agencies and insurers dedicated to combating all forms of insurance fraud through public information and advocacy.

February 4, 2019

Representative Henry J.C. Aquino
Chairman, Hawaii House Transportation Committee
Hawaii State Capitol
Room 419
415 South Beretania Street
Honolulu, HI 96813

RE: HB 253 (counterfeit air bags)

Dear Representative Aquino,

I am writing on behalf of the Coalition Against Insurance Fraud in support of HB 253, targeting the use of counterfeit airbags and other equipment used in automobile repair. The bill is scheduled to be considered by your committee in the coming days.

The Coalition Against Insurance Fraud is a national broad-based alliance of consumer groups, insurers and government organizations dedicated to combating all forms of insurance fraud through education, research and advocacy. We are recognized as one of the leading anti-fraud organizations. We work closely with legislators and regulators to strengthen state efforts to target fraud against America's insurance system and consumers.

The Coalition has been concerned about airbag theft and fraud for several years and we have worked to strengthen state laws protecting consumers from these phony airbags. We worked closely with the National Conference of Insurance Legislators (NCSL) in crafting a model airbag theft and fraud law that is a comprehensive approach to the issue.

Airbags are there to protect us from serious injuries or worse and we have the expectation that when we get into an auto the airbags will indeed protect us. The use of counterfeit or non-functional airbags puts that expectation in jeopardy.

However, the latest trend of marketing and installation of counterfeit and non-functional airbags as well as other safety parts needs to be addressed. 18 states already have enacted a version of this bill in the past several years. HB 253 would add protections to Hawaii consumers.

The Coalition has two main reasons supporting the need for this legislation:

1. **Consumer Protection.** Consumers believe when an airbag is replaced in their auto it is the actual, and correct, manufacturer's airbag for their vehicle. We all assume the airbag will work as it is supposed to – protecting us in a crash from serious injury or death. Counterfeit airbags do not give any such protection. This is one of the worst types of insurance fraud as consumers have no way to know if they are the victim of a counterfeit airbag installation until another accident occurs and this crucial safety device fails to deploy.

2. **Insurance Fraud.** These counterfeit airbags are marketed through the “black market” and through websites like eBay and Craigslist to repair shops as original manufacturer's replacement airbags. However, the cost is a small fraction of what an actual replacement airbag would cost a repair shop to purchase. These shady repair shops knowingly purchase phony airbags. Yet, they turn around and charge the insurer the actual cost of a manufacturer's replacement airbag. Insurers pay the claim for the airbag that usually is in excess of \$1,000 for each airbag. The ethically-challenged repair shop obviously pockets the difference committing insurance fraud against both the consumer and the insurer.

HB 253 is intended to address these issues and will help protect Hawaii consumers from these counterfeit airbags and other safety parts. The Coalition strongly supports its passage. If there is any further assistance we may provide, please contact me at anytime. Thank your for your support.

Sincerely,



Matthew J. Smith, Esq.
Director of Government Affairs & General Counsel

copy: Mr. Craig Orlan, Honda North America, Inc.



Honda North America, Inc.
1001 G Street, N.W. Suite 950
Washington, D.C. 20001
Phone (202) 661-4400

February 6, 2019

The Honorable Henry J.C. Aquino
Hawaii State Capitol
Room 419
415 South Beretania Street
Honolulu, HI 96813

Re: Support for HB 253

Dear Chairman Aquino and Members of the House Transportation Committee,

Thank you for the opportunity to express Honda's strong support for Representative Morikawa's legislation to prohibit the knowing and intentional trafficking of counterfeit supplemental restraint systems and nonfunctional airbags. These products have the potential to seriously injure or even kill motorists. To combat this problem Honda is taking a holistic approach, and has spent the past several years working with a broad coalition of stakeholders to raise awareness of this problem, remove internet listings of these products, support federal law enforcement investigations and prosecutions, and to supplement federal law with state laws to protect consumers from these dangerous knockoffs.

While counterfeit parts are not new to the industry, automakers have seen a dramatic rise in the number of counterfeit and otherwise "nonfunctional" critical safety components entering the marketplace in recent years. These products primarily originate in China and are imported to the United States. Here they are sold online to unscrupulous repair shops who install these products in the vehicles of unknowing consumers. While consumers may not be able to tell the difference between real and fake airbags, those manufacturing, selling and installing these products can. There are a number of physical tells and other red flags that are obvious to repair professionals, several of which are explained in detail on the attached "SPOT A FAKE" handout.

Thousands of these imitation airbags have been tested over the years and in every case these knockoffs have failed to meet federal crash worthiness standards, often catastrophically. In 2012 The National Highway Traffic Safety Administration (NHTSA) issued a consumer advisory warning the public about this problem and released a now famous video showing just how dangerous these products can be.¹ Because of the cost and precision involved in replicating airbag technology, many counterfeiters do not even bother to try. Instead they chose to fill airbags with sawdust, newspaper, paper towels, Styrofoam or other debris that were never intended to provide vehicle occupants with protection during a crash.

The automotive industry is working closely with federal authorities in Homeland Security, Customs and Border Protection and the FBI to identify counterfeit airbags and prosecute those responsible when possible. Unfortunately, despite their best efforts, federal agents have limited authority to combat this problem. Federal authorities are only able to prosecute counterfeiters when they violate federal

¹ <https://www.youtube.com/watch?v=TSk2JUuQ3j0>

trademark law. This occurs when a registered trademark or a mark substantially similar to a registered trademark is used on an airbag without approval. Because the majority of legitimate airbags and airbag components do not contain trademarks those trafficking in fakes cannot be prosecuted under trademark law. Even when these fakes are discovered by authorities they are often eventually released and can eventually find their way into the marketplace. Additionally, in some cases counterfeiters are shipping airbags without an affixed trademark in order to avoid confiscation and prosecution. Once in the country, the manufacturer's insignia is attached and the counterfeit is sold.

Because of these shortcomings, Honda has worked with a coalition of stakeholders to push for legislation in states across the country to supplement federal law. Over time, this coalition has grown to include automakers, auto dealers, insurers, automotive recyclers and several local safety groups. Over the past four years, our coalition has enacted similar laws in eighteen states with overwhelming bipartisan support. This legislative effort has also been adopted as model legislation by the Council of State Governments in their 2015 "Suggested State Legislation" docket and was endorsed by the National Foundation of Women Legislators in November of 2017. Honda respectfully asks for your support in enacting this important consumer safety legislation in Hawaii as well.

Thank you again for your time and interest in this important safety issue. Customer safety has always been at the core of Honda's philosophy, which is why ten Honda and Acura models earned the Insurance Institute for Highway Safety's Top Safety Pick or Top Safety Pick + awards for model year 2017, and why Honda is considered a safety leader in the industry.

Honda is proud of our relationship with Hawaii, which is home to 49 authorized Honda and Acura dealers who employ over 900 people and provide Hawaii consumers with a wide range of products that utilize the latest environmental and safety technologies. For more information on Honda's presence in Hawaii or our safety leadership, please visit www.hondainamerica.com or follow us on Twitter at @HondainAmerica.

Thank you for your time and attention on this very important consumer protection issue. If you have any questions, or if Honda can otherwise be a resource for you please do not hesitate to contact me.

Sincerely,



Craig Orlan
Sr. State Relations Specialist
Honda North America, Inc.

SPOT A FAKE



HOW TO IDENTIFY A COUNTERFEIT AIRBAG?



Counterfeit airbags are out there, and pose a serious risk to consumer safety!

The following 18 states have enacted Honda's model legislation to prohibit the trafficking of dangerous counterfeit and nonfunctional airbags:
AL | CA | CT | FL | GA | IA | LA | MA | MD | NJ | NM | NY | OH | RI | SC | TN | TX | WA



Still images taken from NHTSA's test video of counterfeit airbags in 2012

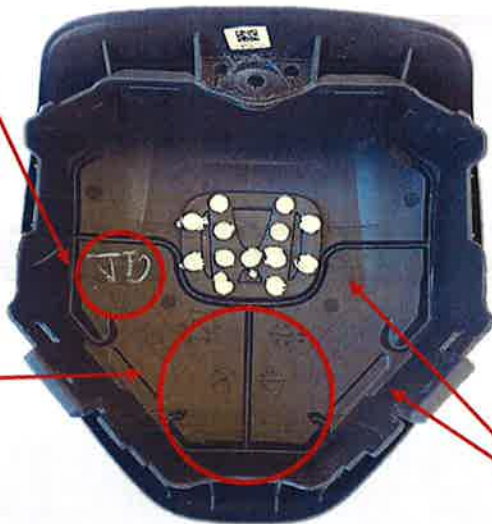
Over the past several years, tens of thousands of ineffective counterfeit airbags have been discovered by multiple law enforcement agencies in raids across the country. These products are imported to the United States where they are sold online to unscrupulous repair shops who knowingly and intentionally install these products in the vehicles of unwitting consumers. In 2012 the National Highway Traffic Safety Administration (NHTSA) issued a consumer advisory alerting vehicle owners about the danger these airbags pose. This is a problem that impacts not just Honda vehicles, but nearly every make and model vehicle on the road, putting thousands of motorists at risk for serious injury or death.

Flip the page to learn more about the key differences between genuine OEM airbags and counterfeit airbags

HONDA

Quality inspector's initials

Genuine Honda



Information used for quality control

OVERALL REAR DESIGN OF THE COUNTERFEIT IS NOT CONSISTENT WITH THAT OF THE GENUINE

Counterfeit



Emblem improperly attached by melting with heat

Genuine Honda



Airbag covers are engineered so that upon deployment, the cover splits along well designed tear seams. This creates a flap that allows the rapidly inflating bag to pass through the cover and create an air cushion without injuring the vehicle occupants. Counterfeits use poor quality molds and materials that do not open as designed.

Genuine OEM inflators are precisely secured and carefully fitted over a metal plate to ensure that the inflator remains in its proper position in the event of a collision. Counterfeit inflators are often very loosely attached presenting a serious safety risk to motorists if the inflator were to deploy.

Counterfeit



Genuine Honda



Counterfeit



Genuine airbags are labeled and precisely folded to ensure a consistent and safe deployment in the event of a collision. Counterfeit airbags are often haphazardly packed and folded, which can result in an improper and extremely dangerous deployment. Because of the cost and precision involved in replicating genuine airbag technology, many counterfeiters do not even bother to try. Instead they chose to fill airbags with Styrofoam or other debris that will not provide occupants with any protection in the event of a collision.

Genuine Honda



Counterfeit



New genuine OEM airbags can only be purchased from authorized OEM dealerships as required by state motor vehicle franchise laws and OEM / dealer contracts. Because of the explosive nature of these products, they are carefully packaged and labeled as a Class 9 Hazmat as required by federal law. Counterfeit airbags are sold over the internet on various e-commerce websites, often at unreasonably low price points. They are improperly packaged without proper indications that a hazardous material is in the box.

While some of these differences may not be obvious to consumers, they are to automotive repair professionals!

If you have any questions please feel free to reach out to Ember Brillhart or Craig Orlan in Honda's Government Affairs office at 202.661.4400



SanHi

GOVERNMENT STRATEGIES
A LIMITED LIABILITY LAW PARTNERSHIP

DATE: February 5, 2019

TO: Representative Henry Aquino
Chair, Committee on Transportation
Submitted Via Capitol Website

FROM: Tiffany Yajima

RE: **H.B. 253 – Relating to Motor Vehicles**
Hearing Date: Wednesday, February 6, 2019 at 10:00 a.m.
Conference Room: 423

Dear Chair Aquino and Members of the Committee on Transportation:

We submit this testimony on behalf of the Alliance of Automobile Manufacturers (“Alliance”).

The Alliance is a trade association of twelve car and light truck manufacturers including BMW Group, Fiat Chrysler Automobiles, Ford Motor Company, General Motors Company, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche, Toyota, Volkswagen Group of North America, and Volvo Car USA.

The Alliance supports H.B. 253, which would prohibit a person from intentionally or knowingly manufacturing, importing, installing, reinstalling, distributing, selling, or offering for sale any counterfeit supplemental restraint system component, nonfunctional airbag, or airbag that does not meet federal safety requirements.

Supplemental restraint systems, commonly referred to as airbags, are one of the most important safety features of today’s automobile. These devices have saved countless lives and reduced the severity of injury of those involved in automobile accidents an immeasurable number of times.

Counterfeit airbags present a serious public safety risk to consumers. Counterfeit airbags are known to malfunction by either failing to inflate or by inflating but expelling dangerous shrapnel. We believe regulation of counterfeit airbags will play an important role in maintaining the integrity of this life-saving device.

Thank you for the opportunity to submit testimony in support of this measure.

HB-253

Submitted on: 2/5/2019 10:14:17 AM

Testimony for TRN on 2/6/2019 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Howard Handler	National Insurance Crime Bureau	Support	No

Comments:

February 5, 2019

Chair Henry Aquino and Members of the Committee
House Committee on Transportation
Hawaii House of Representatives

RE: House Bill 253 – Counterfeit Airbags

Dear Chair Aquino and Members of the Committee:

The National Insurance Crime Bureau (NICB) is a national, not-for-profit organization supported by approximately 1,100 property and casualty insurance companies including many who write business in Hawaii. Working hand-in-hand with our member companies and law enforcement, we investigate organized criminal conspiracies dealing with insurance fraud and vehicle crime.

Counterfeit airbags are a national and growing concern. The National Highway Traffic Safety Administration (NHTSA) states that counterfeit airbags have been shown to “consistently malfunction,” from non-deployment to the expulsion of metal shrapnel during deployment. John Morton, then-director of U.S. Immigration and Customs Enforcement warned: “These airbags don't work. They're not going to save you in an accident. They are a fraud and a danger from start to finish, and you don't want them in your car, period.”

How counterfeit airbags are procured varies, from consumer unwittingly purchasing them on eBay to unscrupulous body shops purposely installing counterfeit bags while billing consumers and insurers for genuine, original bags.

No matter how counterfeit airbags are obtained and installed in the vehicles of unsuspecting motorists, the results can be deadly. For this reason, the NICB urges a yes vote on HB 253.

Thank you for your review and consideration; if you have any questions or need additional information, please contact me at hhandler@nicb.org or 847-544-7083.

Sincerely,

Howard Handler
Director, Government Affairs

February 6, 2019

The Honorable Henry J.C. Aquino
Chairman, Hawaii House Transportation Committee
Hawaii State Capitol
Room 419
415 South Beretania Street
Honolulu, HI 96813

Re: Support for HB 253 (Counterfeit Airbag Prohibition)

Dear Chairman Aquino and Members of the House Transportation Committee,

On behalf of the Automotive Anti-Counterfeiting Council, Inc. (A2C2) and our membership, I write to express our strong support for HB 253, which prohibits the trafficking of replacement counterfeit and nonfunctional airbags and supplemental restraint systems (SRS) in Hawaii.

The A2C2 is a collaborative industry group comprised of BMW, FCA US, Ford, General Motors, Honda, Hyundai, Kia, Nissan, Subaru, Toyota, Volkswagen Group of America, and their subsidiary brands. Our mission is collaboration among automakers and their partners that strives to eliminate counterfeit automotive components that could harm U.S. consumers. A2C2 is a platform for member companies to collaborate with federal and state authorities in response to increasing trends in automotive counterfeiting.

The emergence and increase of counterfeit airbags and other critical safety parts in the marketplace is extremely troubling, as they jeopardize the safety of vehicle occupants. In October 2012, the National Highway Traffic Safety Administration (NHTSA) and multiple federal law enforcement agencies issued a consumer advisory¹ alerting vehicle owners and repair professionals to the dangers of counterfeit airbags and their prevalence in the marketplace. Airbags are a key component of vehicle supplemental restraint systems, which are credited with saving countless lives nationwide over the course of their history. A single counterfeit airbag or SRS component part can disrupt an entire SRS system and put occupants at risk for serious injury. Because of the complexity of such parts and the need for effective quality control, many counterfeiters refrain from attempting to replicate the life-saving technology contained in SRS systems. For example, many of the counterfeit airbags that have been recovered and examined in recent years were filled with newspaper or other debris.

¹ NHTSA / ICE Safety Advisory Alerting Consumers to Dangers of Counterfeit Air Bags:
<https://www.ice.gov/news/releases/nhtsa-ice-alert-consumers-dangers-counterfeit-air-bags>



While federal law addresses counterfeiting in a broader sense, the A2C2 feels that state legislation prohibiting the trafficking, sale or installation of counterfeit and nonfunctional airbags and supplemental restraint systems is important because it provides an additional disincentive to would-be counterfeiters and unscrupulous repair shops. Hawaii currently has no laws to protect consumers from persons who knowingly manufacture, import, sell, or install these dangerous products in the vehicles of unknowing consumers.

A2C2 commends the 18 states that have already enacted similar legislation to address this problem, and urges Hawaii to join them. If you have any questions, or if the A2C2 can otherwise be of assistance to you, please do not hesitate to let me know.

Thank you for your time and consideration.

Sincerely,



Joseph Cammiso
President
Automotive Anti-Counterfeiting Council, Inc.
www.a2c2.com





John Uekawa, President
Dave Rolf, Executive Director

LATE

HADA TESTIMONY with COMMENTS
on HB253
RELATING TO MOTOR VEHICLES
Presented to the House Committee on Transportation
At the Public Hearing, 10 a.m. Wednesday, February 6, 2019
Conference Room 423, Hawaii State Capitol

Chair Aquino, vice chair Hashimoto and members of the committee:

This bill, while well-intended, may have the unintended consequence of exposing to felony prosecution anyone who sells or trades in (sells) a used vehicle.

This bill includes language that prohibits any person from knowingly or intentionally selling any counterfeit supplemental restraint system component, nonfunctional airbag, or airbag that does not meet federal safety requirements.

Again, while well-intended, the bill's "knowingly or intentionally" language is too broad, the penalties too severe, and the enforcement too ill-defined make the bill workable, when possibly applied to the sale of any vehicles which have such airbags.

However, when "intent to replace" language is applied to persons who knowingly or intentionally install or sell any counterfeit air bag with the intent that such device "replace" an auto manufacturer-supplied airbag in a vehicle, then the bill becomes more workable.

Language from a bill submitted in Connecticut proposes a felony penalty for anyone who engages in the sale of such non-authorized products with the intent that such devices be used to "replace" the original equipment manufacturer (automaker) airbags.

[(a)] (b) No person shall manufacture, import, install, reinstall, sell or offer for sale any device **with the intent that such device replace an air bag in any motor vehicle** if such person knows or reasonably should know that such device is a counterfeit air bag, a nonfunctional air bag or does not meet federal safety requirements as provided in 49 CFR 571.208.

Thank you for the opportunity to testify on this measure.

Respectfully submitted,
David Rolf for the members of the Hawaii Automobile Dealers Association

HB-253

Submitted on: 2/5/2019 9:43:05 AM

Testimony for TRN on 2/6/2019 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i	Support	No

Comments: