

ACT 71

S.B. NO. 3158

A Bill for an Act Relating to Motor Vehicles.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that air bag systems are an essential and complicated component of vehicle safety systems. Federal regulations require automobiles to be equipped with several air bags throughout the cabin and prescribe how each air bag must respond in the event of a collision. The air bag system is designed so that each individual air bag works in concert with the other to provide optimal protection for all passengers. This is possible because in the milliseconds after an impact occurs, sensors throughout the vehicle register critical information about the collision, such as the speed of the vehicle, the point of impact, and the size, weight, and position of each passenger. This information is used to determine which air bags to deploy, in what order to deploy them, and the level of force at which to deploy them. The National Highway Traffic Safety Administration estimates that this advanced technology has saved the lives of tens of thousands of Americans over the past two decades.

In order to provide this level of protection, the entire system needs to work as it was designed; therefore, a single counterfeit air bag or air bag component can compromise the entire system. Unfortunately, foreign and domestic counterfeiters are flooding the market with cheap and ineffective knock-offs in an attempt to turn a profit by defrauding unknowing consumers. In many cases, these counterfeits are filled with sawdust, newspaper, or nothing at all. The presence of counterfeit air bags is creating a clear and present public safety risk to consumers.

The legislature further finds that over the past few years, tens of thousands of counterfeit air bags have been confiscated by federal agents in raids across the country. However, federal law enforcement agencies have limited authority to combat this problem because many fake air bags do not violate federal trademark law. As a result, several thousand potentially dangerous counterfeit air bags are able to enter the stream of commerce each year when they are sold over the Internet through legitimate and illegitimate websites, thereby placing Hawaii motorists at risk. There is no existing state law to protect Hawaii consumers from persons who knowingly manufacture, import, sell, or install these dangerous counterfeit air bag products.

The purpose of this Act is to prohibit a person from intentionally or knowingly:

- (1) Manufacturing, importing, installing, reinstalling, distributing, selling, or offering for sale any counterfeit supplemental restraint system component, nonfunctional air bag, or air bag that does not meet federal safety requirements, with the intent that such device replace an air bag in any air-bag-required motor vehicle; and
- (2) Selling, offering for sale, installing, or reinstalling in an air-bag-required motor vehicle any device that causes the air-bag-required motor vehicle's diagnostic systems to fail to warn that an air bag is not installed or the air-bag-required motor vehicle is equipped with a counterfeit supplemental restraint system component or nonfunctional air bag, as applicable.

SECTION 2. Chapter 286, Hawaii Revised Statutes, is amended by adding a new section to part IV to be appropriately designated and to read as follows:

“§286- Counterfeit air bags. (a) No person shall intentionally or knowingly manufacture, import, install, reinstall, distribute, sell, or offer for sale any counterfeit supplemental restraint system component, nonfunctional air bag, or air bag that does not meet federal safety requirements as provided in title 49 Code of Federal Regulations section 571.208, with the intent that such device replace an air bag in any air-bag-required motor vehicle.

(b) No person shall intentionally or knowingly sell, offer for sale, install, or reinstall in an air-bag-required motor vehicle any device that causes the air-bag-required motor vehicle's diagnostic systems to fail to warn that:

- (1) An air bag is not installed; or
- (2) The air-bag-required motor vehicle is equipped with:
 - (A) A counterfeit supplemental restraint system component;
 - (B) A nonfunctional air bag; or
 - (C) An air bag that does not meet federal safety requirements as provided in title 49 Code of Federal Regulations section 571.208.

(c) For purposes of this section, an installation or reinstallation shall not be deemed to have occurred until the work is complete.

(d) A violation of this section is a class C felony.

(e) The remedies prescribed in this section are cumulative and in addition to any other remedies provided by law.

(f) As used in this section:

“Air bag” means an air-bag-required motor vehicle inflatable occupant restraint system device that is part of a supplemental restraint system.

“Air-bag-required motor vehicle” means every vehicle that is required under title 49 Code of Federal Regulations section 571.208 to have an air bag installed.

“Counterfeit supplemental restraint system component” means a replacement supplemental restraint system component, including but not limited to an air bag, that displays a mark identical or substantially similar to the genuine mark of an air-bag-required motor vehicle manufacturer or a supplier of parts to the manufacturer of an air-bag-required motor vehicle without authorization from that manufacturer or supplier, respectively.

“Nonfunctional air bag” means a replacement air bag that meets any of the following criteria:

- (1) The air bag was previously deployed or damaged;

- (2) The air bag has an electric fault that is detected by the air-bag-required motor vehicle's air bag diagnostic systems when the installation procedure is completed and the air-bag-required motor vehicle is returned to the customer who requested the work to be performed or when ownership is intended to be transferred;
- (3) The air bag includes a part or object, including but not limited to a supplemental restraint system component, installed in an air-bag-required motor vehicle to mislead the owner or operator of the air-bag-required motor vehicle into believing that a functional air bag has been installed; or
- (4) The air bag is subject to the prohibitions of title 49 United States Code section 30120(j).

“Supplemental restraint system” means a passive inflatable air-bag-required motor vehicle occupant crash protection system designed for use in conjunction with active restraint systems as described in title 49 Code of Federal Regulations section 571.208. A supplemental restraint system includes one or more air bags and all components required to ensure that an air bag works as designed by the air-bag-required motor vehicle manufacturer, including:

- (1) The air bag operates in the event of a crash; and
- (2) The air bag is designed in accordance with federal air-bag-required motor vehicle safety standards for the specific make, model, and year of the air-bag-required motor vehicle in which it is or will be installed.”

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

SECTION 4. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval.

(Approved September 15, 2020.)

Note

1. Edited pursuant to HRS §23G-16.5.