

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

January 27, 2023

1:30 p.m.

MEMBERS PRESENT

Senator Matt Claman, Chair
Senator Jesse Kiehl, Vice Chair
Senator James Kaufman
Senator Cathy Giessel
Senator Löki Tobin

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 37

"An Act establishing the crime of airbag fraud."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 37

SHORT TITLE: CRIME COUNTERFEIT/NONFUNCTIONING AIRBAG

SPONSOR(S): SENATOR(S) CLAMAN

01/18/23	(S)	PREFILE RELEASED 1/13/23
01/18/23	(S)	READ THE FIRST TIME - REFERRALS
01/18/23	(S)	JUD
01/27/23	(S)	JUD AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

EMILIE VIGNEAU, Intern
Senator Matt Claman
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented the sectional analysis for SB 37 on behalf of the sponsor.

CRAIG ORLAN, Director

State & Local Government Affairs
American Honda Motor Co, Inc.

POSITION STATEMENT: Provided invited testimony on SB 37.

HOWARD HANDLER, Senior Director
National Insurance Crime Bureau
Des Plaines, Illinois

POSITION STATEMENT: Provided invited testimony on SB 37.

ACTION NARRATIVE

[1:30:05 PM](#)

CHAIR MATT CLAMAN called the Senate Judiciary Standing Committee meeting to order at 1:30 p.m. Present at the call to order were Senators Kaufman, Tobin, Giessel, Kiehl, and Chair Claman.

SB 37-CRIME COUNTERFEIT/NONFUNCTIONING AIRBAG

[1:30:46 PM](#)

CHAIR CLAMAN announced the consideration of SENATE BILL NO. 37 "An Act establishing the crime of airbag fraud."

CHAIR CLAMAN stated that he would pass the gavel to Vice Chair Kiehl for the duration of the bill presentation.

SENATOR KIEHL invited the sponsor and his staff to the witness table.

[1:31:30 PM](#)

SENATOR CLAMAN, District H, speaking as the sponsor of SB 37, introduced the legislation with the following statement:

Senate Bill 37 was brought to my attention in 2021 by Honda Motor Company and the Automotive Anti-Counterfeiting Council. In Alaska today there is no law to prohibit the installation or reinstallation of airbags that do not meet federal safety standards. While airbags are made to protect us from serious injuries, counterfeit or nonfunctioning airbags are known to improperly deploy or not deploy at all potentially resulting in serious injuries.

By establishing airbag fraud as a crime, SB 37 prohibits dangerous actors from knowingly selling, installing, or manufacturing these dangerous and improper devices. The bill references both counterfeit and nonfunctioning airbags. A counterfeit airbag is

defined as a replacement airbag displaying an unauthorized mark that is similar to the mark of a motor vehicle manufacturer. A nonfunctioning airbag is an inoperable or damaged airbag, or an airbag that has previously been deployed or that was removed from a vehicle because it created an unreasonable safety risk.

Similar legislation has passed in 30 states. For example, the Michigan Penal Code takes a more severe approach to this crime and punishes airbag fraud as a felony punishable by 4 years of imprisonment or a fine of \$10,000.00. In comparison, SB 37 defines airbag fraud as a class A misdemeanor punishable by up to 1 year of imprisonment, a fine of up to \$25,000 or both and as a class C felony punishable by up to 5 years of imprisonment, a fine of up to \$50,000 or both if serious injury or death is involved.

Airbag fraud has real world implications. eBay has been a popular site for the sale of counterfeit or nonfunctioning airbags. This led the non-profit corporation Automotive Anti-Counterfeiting Council (A2C2) to call on eBay in October 2021 to prohibit the sale of all airbags after counterfeit airbags and related components were shown to be consistently available for sale on the site.

In response, eBay changed their Vehicles, parts and accessories policy by prohibiting the sale of deployed or rebuilt airbags and airbags covers. Airbags and their accessories still may be sold by verified sellers.

Senate Bill 37 is supported by the Coalition Against Insurance Fraud, which believes in the protection of consumers and the idea that consumers should be able to trust their airbags.

The state has a responsibility to protect all Alaskans from counterfeit and nonfunctioning airbags. This bill acknowledges all victims of airbag fraud and makes sure to punish every culprit that knowingly installs or provides dangerous devices. This bill also provides a protection for any party involved who might not be aware of this fraud, such as owners and employees of

dealerships who unknowingly install or sell those devices.

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EMILIE VIGNEAU, Intern, Senator Matt Claman, Alaska State Legislature, Juneau, Alaska, presented the sectional analysis for SB 37 on behalf of the sponsor. It read as follows:

Section 1

AS 28.35.248. Airbag fraud

Establishes and defines airbag fraud as knowingly selling, offering for sale, installing, reinstalling, or manufacturing a counterfeit or nonfunctioning airbag or device that is intended to conceal a counterfeit or nonfunctioning airbag, or intentionally selling, leasing or trading a vehicle that the person knows has a counterfeit or nonfunctioning airbag.

Establishes airbag fraud as a class A misdemeanor or a class C felony if death or serious physical injury to another person occurs as a result of the counterfeit or nonfunctioning airbag.

Establishes that the liability of any party in a civil action is not precluded. Provides that this legislation does not create a duty to inspect a vehicle for a counterfeit or nonfunctioning airbag before its sale.

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SENATOR KIEHL turned to invited testimony.

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CRAIG ORLAN, Director of State & Local Government Affairs, American Honda Motor Co, Inc. stated that the automobile industry saw foreign and domestic counterfeiters flooding the market with ineffective air bags. The counterfeit airbags would not provide protection in the event of a collision, resulting in potential death and or injury. Many of these faulty devices are imported from China. He agreed with the sponsor that 30 states have enacted similar legislation.

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MR. ORLAN stated that Honda worked with law enforcement officials on cases throughout the country. Similar legislation

led to the discovery of several counterfeit airbags across the nation. Enacting legislation like SB 37 allows for the removal of advertisements for counterfeit airbags on ecommerce sites.

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SENATOR TOBIN asked what point in the manufacturing process an airbag is installed in a vehicle.

MR. ORLAN said the problem occurs after an airbag is deployed, and a counterfeit replacement is installed.

SENATOR TOBIN asked if the airbags are inspected by dealers buying used cars.

MR. ORLAN replied that the independent dealerships did not have an obligation to remove and inspect an airbag to determine its validity. The vehicle history is available to the consumer.

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SENATOR KAUFMAN wondered about unintended consequences. He posed a hypothetical scenario regarding the sale of a vehicle that is not compliant with the proposed legislation. He questioned whether the bill was written with this potential scenario in mind.

SENATOR CLAMAN responded that a seller would not be liable if they installed what they thought was a legitimate part, even if it was not. He said he has been working with auto dealers and manufactures for several years, and this legislation was vetted by auto dealers in Alaska.

SENATOR KAUFMAN proposed a hypothetical scenario involving a steering wheel and liability.

SENATOR CLAMAN replied that using an off-label steering wheel in a car would not create liability.

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SENATOR GIESSEL asked if there would be benefit in having a "buyer beware" statement declaring that the airbag was not inspected.

MR. ORLAN replied that consumer education is very important. He wished to avoid placing an undue burden on dealers and consumers. He targeted airbags because of the critical safety nature of the equipment.

SENATOR GIESSEL requested more clarity.

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MR. ORLAN did not object to including consumer notification about counterfeit airbags in SB 37.

SENATOR TOBIN mentioned the Federal Trade Commission Act and wondered why selling a fraudulent airbag is not covered by that Act.

SENATOR CLAMAN replied that federal sanctions are often stronger than state sanctions and require extensive investigation. He explained that federal authorities had limited opportunities to intercept the faulty airbags. The proposed legislation would allow state prosecutors the opportunity to pursue small-time criminals.

SENATOR KIEHL asked Mr. Orlan to add his thoughts.

MR. ORLAN added that his industry works closely with international agencies. A violation of federal trademark law or a violation of hazardous material labeling attract the attention of these agencies. Other states enacting similar legislation work with the appropriate jurisdiction to seize those products and keep them out of the chain of commerce.

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SENATOR KAUFMAN referenced the term on page 2, line 23, paragraph (3) "nonfunctioning". He asked if a seller would be required to cite any recall issued for the vehicle.

SENATOR CLAMAN clarified whether the hypothetical recall was for the purpose of airbag issues.

SENATOR KAUFMAN wondered if he hypothetically owned the car and was unaware of an airbag recall. Does the bill require owners to check for recalls before selling?

SENATOR CLAMAN replied that in the scenario, the seller is innocent and thus not liable. You might have trouble proving lack of knowledge if a letter citing the recall was discovered.

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SENATOR KIEHL asked if the legislative intent was covered under Alaska's Unfair Trade Practices and Consumer Protection Act (UTPA). He asked if a criminal penalty was necessary for the

attorney general to seize the counterfeits and provide resources to federal authorities.

SENATOR CLAMAN replied that he would return to the committee with the answer after doing some research.

SENATOR KIEHL agreed that faulty airbags create a safety risk and added that deliberately malfunctioning smoke detectors and sprinkler systems were classified as B misdemeanors. He wondered if additional provisions were contrasted to set the proposed penalties in SB 37.

SENATOR CLAMAN replied that the decision about misdemeanor classification was based on the intentional conduct of installing counterfeit airbags.

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SENATOR KIEHL asked about the elevation to felony and how a prosecutor might prove that serious injury or death resulted from a faulty airbag. He pointed out that a fully functioning airbag might not be sufficient in preventing death during a car accident. He wondered how causality was shown.

SENATOR CLAMAN replied that is a question that is addressed at trial. Experts are available during hearings to provide evidence related to injury or death.

SENATOR TOBIN asked about the term "certified preowned." She wondered if an inspection of the airbag might prevent this type of crime.

SENATOR CLAMAN responded that the only way to evaluate an airbag is to remove it, which could create economic burdens. The actual number of counterfeit airbags is not significant. The seriousness of the crime warrants the strong penalty.

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MR. ORLAN agreed with the sponsor. He clarified that "certified preowned" meant that a vehicle was inspected by the dealership. Necessary repairs were made with original equipment parts. He continued that authorized dealerships tend to look for counterfeit parts. He responded to a question about recalls. He stated that the terms counterfeit and nonfunctional were carefully crafted in the proposed legislation. A recalled part would not be considered nonfunctional or counterfeit.

SENATOR TOBIN asked about an additional inspection. Did a preowned inspection include an airbag review following a prior collision and deployment?

MR. ORLAN replied that a certified preowned Honda dealership would inspect the airbag following a known deployment. He was not able to speak for other dealerships.

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SENATOR KAUFMAN wondered if there is a nondestructive way to inspect an uninstalled airbag.

MR. ORLAN replied that trained professionals could perform airbag inspections. If an airbag is sold on eBay or a similar platform, that is a red flag.

SENATOR KAUFMAN asked if a dealership could diagnostically detect a counterfeit airbag.

MR. ORLAN replied yes, diagnostics can provide a tool for inspection. He noted that the relevant diagnostic alerts and lights are often disabled by those installing the faulty equipment.

SENATOR KAUFMAN asked about counterfeit airbags that defeat the diagnostic utility.

MR. ORLAN responded that counterfeit airbags occasionally evade diagnostic evaluation.

SENATOR KIEHL asked Howard Handler to provide his invited testimony.

[2:11:17 PM](#)

HOWARD HANDLER, National Insurance Crime Bureau, Des Plaines, Illinois provided invited testimony on SB 37.

The National Insurance Crime Bureau (NICB) is a national, century-old, not-for-profit organization supported by approximately 1,200 property and casualty insurance companies, including many who write business in Alaska. Working hand-in-hand with our Member companies and Alaska law enforcement, we help to detect, prevent, and deter insurance crimes.

Counterfeit airbags are a national and growing concern. The National Highway Traffic Safety Administration (NHTSA) has

warned consumers that counterfeit airbags have been shown to consistently malfunction, from non-deployment to the expulsion of metal shrapnel during deployment. Vehicle safety equipment as important as airbags are subject to strict quality control standards to keep the public safe. Counterfeiters are much more likely to skirt these standards which can lead to disastrous consequences.

Counterfeit airbags are procured in many different ways, from consumers unwittingly purchasing them on online to unscrupulous body shops purposely installing counterfeits while billing consumers and insurers for genuine, original bags. Federal authorities in Philadelphia recently announced an indictment of an individual accused of fraudulently importing counterfeit airbags from China and installing them in salvaged automobiles which were then reintroduced to the market. No matter how counterfeit airbags are obtained and installed in the vehicles of unsuspecting motorists, the results can be deadly. NICB has provided more information for the public and policymakers on our website which can be found here.

Accordingly, we support SB 37 which creates a new criminal statute penalizing those who knowingly selling a counterfeit or nonfunctioning airbag. We thank you for this scheduling a hearing and for considering our views as you deliberate the merits of the bill.

SENATOR KIEHL returned the gavel to Senator Claman for public testimony.

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CHAIR CLAMAN opened public testimony on SB 37; finding none, he closed public testimony and held SB 37 in committee.

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There being no further business to come before the committee, Chair Claman adjourned the Senate Judiciary Standing Committee meeting at 2:14 p.m.