

S T A T E O F N E W Y O R K

5037--A

2013-2014 Regular Sessions

I N S E N A T E

May 7, 2013

Introduced by Sens. ZELDIN, LARKIN, MARCHIONE, MAZIARZ -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law and the penal law, in relation to counterfeit and non-functional airbags

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. This act shall be known and may be referred to as the
2 "counterfeit airbag prevention act."

3 S 2. The general business law is amended by adding a new section 349-e
4 to read as follows:

5 S 349-E. COUNTERFEIT AND NON-FUNCTIONAL AIRBAGS. 1. AS USED IN THIS
6 SECTION:

7 (A) "AIRBAG" SHALL MEAN ANY COMPONENT OF AN INFLATABLE RESTRAINT
8 SYSTEM, AS SUCH TERM IS DEFINED IN SECTION ONE HUNDRED NINETEEN-B OF THE
9 VEHICLE AND TRAFFIC LAW, AND THAT IS DESIGNED FOR THE SPECIFIC MAKE,
10 MODEL, AND YEAR OF THE MOTOR VEHICLE TO BE INSTALLED AND TO OPERATE IN
11 THE EVENT OF A CRASH. AIRBAG COMPONENTS INCLUDE BUT ARE NOT LIMITED TO
12 THE COVER, SENSORS, CONTROLLERS, INFLATOR, WIRING, AND THE AIRBAG
13 ITSELF.

14 (B) "COUNTERFEIT AIRBAG" SHALL MEAN AN AIRBAG THAT BEARS, WITHOUT
15 AUTHORIZATION, A MARK IDENTICAL WITH, OR SUBSTANTIALLY SIMILAR TO, THE
16 GENUINE MARK OF THE MANUFACTURER OF SUCH MOTOR VEHICLE.

17 (C) "NON-FUNCTIONAL AIRBAG" SHALL MEAN A REPLACEMENT AIRBAG THAT HAS
18 BEEN PREVIOUSLY DEPLOYED OR DAMAGED, OR THAT HAS AN ELECTRICAL FAULT
19 THAT IS DETECTED BY THE READINESS INDICATOR LIGHT, AS SUCH TERM IS
20 DEFINED IN SECTION ONE HUNDRED NINETEEN-B OF THE VEHICLE AND TRAFFIC
21 LAW, AFTER THE INSTALLATION PROCEDURE IS COMPLETED. "NON-FUNCTIONAL
22 AIRBAG" SHALL ALSO MEAN ANY OBJECT, INCLUDING A COUNTERFEIT OR REPAIRED

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD10779-02-3

1 AIRBAG COMPONENT INSTALLED TO DECEIVE THE VEHICLE OWNER OR OPERATOR INTO
2 BELIEVING A FUNCTIONAL AIRBAG IS INSTALLED.

3 (D) "PERSON" SHALL MEAN ANY PERSON, PARTNERSHIP, FIRM, CORPORATION,
4 COMPANY, TRUST, ASSOCIATION, OR ANY AGENT OR EMPLOYEE THEREOF.

5 2. (A) IT SHALL BE UNLAWFUL FOR ANY PERSON TO KNOWINGLY:

6 (I) MAKE, OFFER TO DISTRIBUTE OR DISTRIBUTE, OFFER TO SELL OR SELL A
7 COUNTERFEIT OR A NON-FUNCTIONAL AIRBAG;

8 (II) INSTALL OR REINSTALL A COUNTERFEIT AIRBAG OR A NON-FUNCTIONAL
9 AIRBAG IN ANY MOTOR VEHICLE, AS THAT TERM IS DEFINED IN SECTION ONE
10 HUNDRED TWENTY-FIVE OF THE VEHICLE AND TRAFFIC LAW;

11 (III) OFFER TO DISTRIBUTE OR DISTRIBUTE, OFFER TO SELL OR SELL,
12 INSTALL OR REINSTALL A COUNTERFEIT OR NON-FUNCTIONAL AIRBAG SO THAT THE
13 READINESS INDICATOR LIGHT, AS SUCH TERM IS DEFINED IN SECTION ONE
14 HUNDRED NINETEEN-B OF THE VEHICLE AND TRAFFIC LAW, FALSELY DISPLAYS THAT
15 THE AIRBAG IS IN PROPER WORKING ORDER; OR

16 (IV) REPRESENT TO ANOTHER PERSON THAT A COUNTERFEIT AIRBAG OR A
17 NON-FUNCTIONAL AIRBAG INSTALLED OR REINSTALLED IN A MOTOR VEHICLE IS AN
18 AIRBAG.

19 (B) ANY PERSON WHO VIOLATES ANY PROVISION OF THIS SUBDIVISION IS GUIL-
20 TY OF A CLASS A MISDEMEANOR PUNISHABLE AS PROVIDED FOR IN THE PENAL LAW.

21 3. WHENEVER THERE SHALL BE A VIOLATION OF THIS ARTICLE, APPLICATION
22 MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE
23 STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION BY A SPECIAL
24 PROCEEDING TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE DEFENDANT OF
25 NOT LESS THAN FIVE DAYS, TO ENJOIN AND RESTRAIN THE CONTINUANCE OF SUCH
26 VIOLATION; AND IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR
27 JUSTICE THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS ARTICLE, AN
28 INJUNCTION MAY BE ISSUED BY SUCH COURT OR JUSTICE, ENJOINING AND
29 RESTRAINING ANY FURTHER VIOLATION, WITHOUT REQUIRING PROOF THAT ANY
30 PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. IN CONNECTION WITH
31 ANY SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL IS AUTHORIZED TO
32 TAKE PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE
33 SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES. WHENEVER
34 THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS ARTICLE HAS OCCURRED,
35 THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN ONE THOUSAND
36 DOLLARS FOR A SINGLE VIOLATION AND NOT MORE THAN ONE HUNDRED THOUSAND
37 DOLLARS FOR MULTIPLE VIOLATIONS RESULTING FROM A SINGLE ACT OR INCIDENT.
38 THE SECOND VIOLATION AND ANY VIOLATION COMMITTED THEREAFTER SHALL BE
39 PUNISHABLE BY A CIVIL PENALTY OF NOT MORE THAN FIVE THOUSAND DOLLARS FOR
40 A SINGLE VIOLATION AND NOT MORE THAN TWO HUNDRED FIFTY THOUSAND DOLLARS
41 FOR MULTIPLE VIOLATIONS RESULTING FROM A SINGLE ACT OR INCIDENT. NO
42 PERSON, FIRM, PARTNERSHIP, ASSOCIATION OR CORPORATION SHALL BE DEEMED TO
43 HAVE VIOLATED THE PROVISIONS OF THIS ARTICLE IF SUCH PERSON, FIRM, PART-
44 NERSHIP, ASSOCIATION OR CORPORATION SHOWS, BY A PREPONDERANCE OF THE
45 EVIDENCE, THAT THE VIOLATION WAS NOT INTENTIONAL AND RESULTED FROM A
46 BONA FIDE ERROR MADE NOTWITHSTANDING THE MAINTENANCE OF PROCEDURES
47 REASONABLY ADOPTED TO AVOID SUCH ERROR.

48 S 3. This act shall take effect the first of November next succeeding
49 the date on which it shall have become a law.