

5037

2013-2014 Regular Sessions

I N   S E N A T E

May 7, 2013

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Introduced by Sens. ZELDIN, LARKIN, MARCHIONE, MAZIARZ -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

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. Short title. This act shall be known and may be cited as  
2     the "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 DESIGNATED 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 HAD  
18    BEEN PREVIOUSLY DEPLOYED OR DAMAGED, OR THAT HAS AN ELECTRICAL FAULT  
19    THAT IS DETECTED BY THE VEHICLE AIRBAG DIAGNOSTIC SYSTEM AFTER THE  
20    INSTALLATION PROCEDURE IS COMPLETED. "NON-FUNCTIONAL AIRBAG" SHALL ALSO  
21    MEAN ANY OBJECT, INCLUDING A COUNTERFEIT OR REPAIRED AIRBAG COMPONENT  
22    INSTALLED TO DECEIVE THE VEHICLE OWNER OR OPERATOR INTO BELIEVING A  
23    FUNCTIONAL AIRBAG IS INSTALLED.

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

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(D) "PERSON" SHALL MEAN A PERSON OR ANY DOMESTIC OR FOREIGN PARTNER-SHIP, FIRM, CORPORATION, COMPANY, TRUST, ASSOCIATION, GOVERNMENT, GOVERNMENTAL ENTITY, OR ANY AGENT OR EMPLOYEE THEREOF.

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

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

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

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

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

(B) ANY PERSON WHO VIOLATES ANY PROVISION OF THIS SUBDIVISION SHALL BE GUILTY OF A CLASS A MISDEMEANOR PUNISHABLE AS PROVIDED FOR IN THE PENAL LAW.

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

S 3. Section 120.05 of the penal law is amended by adding a new subdivision 13 to read as follows:

13. HE COMMITS A VIOLATION OF SECTION THREE HUNDRED FORTY-NINE-E OF THE GENERAL BUSINESS LAW, AND SUCH ACT RESULTS IN OR SUBSTANTIALLY CONTRIBUTES TO SERIOUS PHYSICAL INJURY TO ANOTHER PERSON.

S 4. Section 125.15 of the penal law is amended by adding a new subdivision 4 to read as follows:

1       4. HE COMMITS A VIOLATION OF SECTION THREE HUNDRED FORTY-NINE-E OF THE  
2 GENERAL BUSINESS LAW, AND SUCH ACT RESULTS IN OR SUBSTANTIALLY CONTRIB-  
3 UTES TO THE DEATH OF ANOTHER PERSON.

4       S 5. This act shall take effect on the first of November next succeed-  
5 ing the date on which it shall have become a law; provided, however,  
6 that violations of sections three and four of this act shall apply only  
7 to counterfeit or non-functional airbags installed on or after such  
8 date.