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

994--A

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. DESTITO, MILLMAN, LUPARDO, JAFFEE, COLTON, WEISENBERG, MAISEL, M. MILLER, P. RIVERA -- Multi-Sponsored by -- M. of A. BOYLAND, BURLING, CALHOUN, CRESPO, DUPREY, GIBSON, HIKIND, HOOPER, JEFFRIES, MAGEE, McENENY, PHEFFER, REILICH, SALADINO, SAYWARD -- read once and referred to the Committee on Transportation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the vehicle and traffic law, in relation to airbag safety; and to repeal certain provisions of such law relating thereto

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

Section 1. Legislative intent. The legislature finds that airbag system fraud is a public safety concern for both consumers and the auto insurance industry and that efforts to address this serious risk to consumers have been piecemeal, rather than coordinate, and that comprehensive coordinated legislation is necessary to protect consumers and insure the integrity of vehicle restraint systems.

S 2. Paragraph (e) of subdivision 6 of section 398-d of the vehicle and traffic law is REPEALED.

S 3. Section 415-c of the vehicle and traffic law is REPEALED and a new section 415-c is added to read as follows:

S 415-C. SALE AND INSTALLATION OF RECYCLED INFLATABLE RESTRAINT SYSTEMS; RESTRICTIONS. 1. FOR PURPOSES OF THIS SECTION THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) THE TERM "AIRBAG" SHALL MEAN ANY COMPONENT OF AN INFLATABLE OCCUPANT RESTRAINT SYSTEM THAT IS DESIGNED IN ACCORDANCE WITH FEDERAL SAFETY REGULATIONS FOR THE MAKE, MODEL, AND YEAR OF THE VEHICLE TO BE INSTALLED, OPERATE, AND ACTIVATE IN A MOTOR VEHICLE AS SPECIFIED BY THE VEHICLE MANUFACTURER, IN THE EVENT OF A CRASH. AIRBAG COMPONENTS

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

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INCLUDE, BUT ARE NOT LIMITED TO SENSORS, CONTROLLERS, WIRING, AND THE AIRBAG ITSELF.

(B) THE TERM "LIGHT MANIPULATING SYSTEM" MEANS ANYTHING THAT WOULD MASK OR CAUSE THE INACCURATE INDICATION OF THE AIRBAG SYSTEM STATUS, CONDITION, OR OPERABILITY.

(C) "PERSON" SHALL MEAN ANY NATURAL PERSON, CORPORATION, PARTNERSHIP, UNINCORPORATED ASSOCIATION, OR OTHER ENTITY.

(D) "RECYCLED AIRBAG" SHALL MEAN AN OEM NON-DEPLOYED AIRBAG THAT HAS BEEN REMOVED FROM A VEHICLE FOR USE IN ANOTHER VEHICLE.

2. (A) NO PERSON SHALL: (I) INSTALL OR REINSTALL, AS PART OF A VEHICLE INFLATABLE OCCUPANT RESTRAINT SYSTEM, ANY OBJECT OTHER THAN AN AIRBAG; (II) SELL OR OFFER FOR SALE ANY DEVICE WITH THE INTENT THAT SUCH DEVICE WILL REPLACE AN AIRBAG IN ANY MOTOR VEHICLE IF SUCH PERSON KNOWS OR REASONABLY SHOULD KNOW THAT SUCH DEVICE DOES NOT MEET FEDERAL SAFETY REQUIREMENTS; (III) SELL OR OFFER FOR SALE ANY DEVICE THAT WHEN INSTALLED IN ANY MOTOR VEHICLE GIVES THE IMPRESSION THAT A VIABLE AIRBAG IS INSTALLED IN THE VEHICLE, INCLUDING ANY LIGHT MANIPULATING SYSTEM; OR (IV) INTENTIONALLY MISREPRESENT THE PRESENCE OF AN AIRBAG WHEN ONE DOES NOT EXIST.

(B) ANY PERSON FOUND TO HAVE VIOLATED THE PROVISIONS OF THIS SUBDIVISION SHALL BE GUILTY OF A MISDEMEANOR, AND, UPON CONVICTION THEREOF, SHALL BE PUNISHED BY A FINE OF UP TO TWO THOUSAND FIVE HUNDRED DOLLARS PER VIOLATION AND/OR BY IMPRISONMENT FOR UP TO ONE HUNDRED EIGHTY DAYS.

(C) ANY PERSON WHO VIOLATES THE PROVISIONS OF THIS SUBDIVISION WHOSE VIOLATION RESULTS IN SERIOUS BODILY INJURY OR DEATH SHALL BE GUILTY OF A CLASS D FELONY.

3. (A) ANY PERSON ENGAGED IN THE BUSINESS OF PURCHASING, SELLING, OR INSTALLING RECYCLED AIRBAGS SHALL MAINTAIN A MANUAL OR ELECTRONIC RECORD OF THE PURCHASE, SALE, OR INSTALLATION, WHICH MUST INCLUDE THE IDENTIFICATION NUMBER OF THE AIRBAG; THE VEHICLE IDENTIFICATION NUMBER OF THE VEHICLE FROM WHICH THE RECYCLED AIRBAG WAS REMOVED; THE NAME, ADDRESS, AND DRIVER'S LICENSE NUMBER OR OTHER MEANS OF IDENTIFICATION OF THE PERSON FROM WHOM THE RECYCLED AIRBAG WAS PURCHASED; AND, IN THE EVENT THAT THE RECYCLED AIRBAG IS INSTALLED, THE VEHICLE IDENTIFICATION NUMBER OF THE VEHICLE INTO WHICH THE AIRBAG IS INSTALLED.

(B) NO NEW OR RECYCLED AIRBAG SHALL BE SOLD OR INSTALLED WHICH IS OR HAS BEEN SUBJECT TO A SPECIFIC MANUFACTURER'S OR APPROPRIATE AUTHORITY'S NOTICE OF RECALL.

(C) (I) IN THE CASE OF A NEW REPLACEMENT AIRBAG, ANY PERSON ENGAGED IN INSTALLING ANY AIRBAG SHALL MAINTAIN THE NAME AND TAX IDENTIFICATION NUMBER OF THE SUPPLIER OF THE AIRBAG AND RECORD THE VEHICLE IDENTIFICATION NUMBER OF THE VEHICLE INTO WHICH THE AIRBAG IS INSTALLED, AS WELL AS THE IDENTIFICATION NUMBER OF THE AIRBAG BEING INSTALLED.

(II) THE AIRBAG IDENTIFICATION NUMBER OF THE PREVIOUSLY DEPLOYED AIRBAG BEING REPLACED SHALL BE RECORDED.

(III) UPON ANY REQUEST OF A LAW ENFORCEMENT OFFICER OF THIS STATE OR OTHER AUTHORIZED REPRESENTATIVE OF THE AGENCY CHARGED WITH ADMINISTRATION OF THIS SECTION, THE INSTALLER SHALL PRODUCE SUCH RECORDS AND PERMIT SAID AGENT OR POLICE OFFICER TO EXAMINE THEM.

(D) ANY PERSON WHO SELLS A RECYCLED AIRBAG OR WHO INSTALLS A RECYCLED AIRBAG MUST DISCLOSE TO THE PURCHASER OR VEHICLE OWNER THAT THE AIRBAG IS RECYCLED.

(E) THE PERSON WHO INSTALLS A NEW OR RECYCLED AIRBAG SHALL SUBMIT AN AFFIDAVIT TO THE VEHICLE OWNER OR THEIR REPRESENTATIVE STATING THAT THE REPLACEMENT AIRBAG HAS BEEN PROPERLY INSTALLED.

(F) ALL RECORDS REQUIRED UNDER THIS SECTION MUST BE MAINTAINED FOR A MINIMUM OF FIVE YEARS FOLLOWING THE TRANSACTION AND MAY BE INSPECTED DURING NORMAL BUSINESS HOURS BY ANY POLICE OFFICER, PEACE OFFICER OR REPRESENTATIVE OF THE COMMISSIONER.

(G) UPON REQUEST, INFORMATION WITHIN A PORTION OF SUCH RECORD PERTAINING TO A SPECIFIC TRANSACTION MUST BE PROVIDED TO THE INSURER AND THE VEHICLE OWNER.

(H) PERSONS ENGAGED IN THE BUSINESS OF SELLING RECYCLED AIRBAGS SHALL COMPLY WITH REGULATIONS DEVELOPED BY THE COMMISSIONER WHICH SHALL INCLUDE BUT NOT BE LIMITED TO: (I) IDENTIFICATION OF THE SUPPLIER OF THE UNIT; (II) IDENTIFICATION OF THE RECIPIENT VEHICLE, INCLUDING VIN, YEAR, MAKE, AND MODEL; (III) IDENTIFICATION OF THE AIRBAG MODULE COVER COLOR AND COLOR CODE IF AVAILABLE; (IV) IDENTIFICATION OF THE DONOR VEHICLE, INCLUDING VIN, YEAR, MAKE, AND MODEL; (V) SUPPLIER'S INTERNAL STOCK NUMBER OR LOCATOR NUMBER; (VI) INDICATION OF SOURCE OF INTERCHANGE INFORMATION, INTERCHANGE MANUAL/PART NUMBER, OR OEM INFO; (VII) A SUPPLIER CERTIFICATE INDICATING THAT ALL THE REQUIREMENTS OF THE INSPECTION PROTOCOL HAVE BEEN SUCCESSFULLY ACHIEVED AND IDENTIFYING THE PERSON WHO COMPLETED THE INSPECTION; AND (VIII) A DOCUMENT CONTAINING THE VEHICLE DESCRIPTION INCLUDING THE YEAR, MAKE, AND MODEL FOR WHICH THE AIRBAG SYSTEM COMPONENT IS REQUIRED WHEN BEING SOLD TO THE END-USER.

(I) SALVAGE AIRBAGS CONFORMING TO SUCH STANDARDS SHALL BE ACCOMPANIED BY A CERTIFICATE OF CONFORMANCE WHICH SHALL BE RETAINED BY THE INSTALLER.

(J) ANY PERSON WHO FAILS TO MAINTAIN COMPLETE AND ACCURATE RECORDS, TO PREPARE COMPLETE AND ACCURATE DOCUMENTS, TO PROVIDE INFORMATION FROM SUCH RECORD UPON REQUEST OF THE DEPARTMENT OR ANY OTHER REGULATORY BODY, OR TO PROPERLY DISCLOSE THAT AN AIRBAG IS RECYCLED, AS REQUIRED BY THIS SUBDIVISION SHALL BE GUILTY OF A MISDEMEANOR.

4. (A) NO PERSON SHALL KNOWINGLY POSSESS, SELL, OR INSTALL A STOLEN AIRBAG; AN AIRBAG FROM WHICH THE MANUFACTURER'S PART NUMBER LABELING AND/OR VIN HAS BEEN REMOVED, ALTERED, OR DEFACED; OR AN AIRBAG TAKEN FROM A STOLEN MOTOR VEHICLE.

(B) ANY PERSON WHO VIOLATES THIS SUBDIVISION SHALL BE GUILTY OF A CLASS D FELONY.

5. ANY VEHICLE ACCIDENT REPORT THAT IS FILED BY THE APPROPRIATE LAW ENFORCEMENT AGENCY SHALL CLEARLY CONTAIN A NOTATION AS TO WHETHER THE AUTOMOBILE'S AIRBAG OR INFLATABLE RESTRAINT SYSTEM HAD BEEN DEPLOYED IN THE ACCIDENT.

6. (A) ANY PERSON SELLING OR TRADING A MOTOR VEHICLE WHO HAS ACTUAL KNOWLEDGE THAT THE MOTOR VEHICLE'S AIRBAG IS INOPERABLE SHALL NOTIFY THE BUYER OR THE PERSON ACQUIRING THE TRADE, IN WRITING, THAT THE AIRBAG IS INOPERABLE.

(B) A PERSON WHO KNOWINGLY VIOLATES THE PROVISIONS OF THIS SUBDIVISION SHALL BE GUILTY OF A CLASS A MISDEMEANOR.

THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO THE SALE OR TRADE OF A MOTOR VEHICLE: (A) VISIBLY CONTAINING A DEPLOYED AIRBAG; (B) SOLD BY AN INSURANCE COMPANY THAT ACQUIRED THE VEHICLE IN CONNECTION WITH A CLAIM SETTLEMENT; OR (C) THE SALE OF WHICH IS HANDLED BY A COMPANY, THE PRIMARY BUSINESS OF WHICH IS THE SALE OF VEHICLES FROM INSURANCE COMPANIES AND WHICH MAKES NO SALES TO END USERS.

S 4. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid and after all further judicial review, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part of this

act directly involved in the controversy in which the judgment shall have been rendered.

S 5. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however, that any rule or regulation necessary for its implementation may be immediately promulgated by the commissioner of motor vehicles.