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

6378

2013-2014 Regular Sessions

I N A S S E M B L Y

March 26, 2013

Introduced by M. of A. DINOWITZ -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business 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:

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

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

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

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

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

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

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

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

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

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

(II) INSTALL OR REINSTALL A COUNTERFEIT AIRBAG OR A NON-FUNCTIONAL AIRBAG IN ANY MOTOR VEHICLE, AS THAT 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 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 IS GUILTY OF A CLASS A MISDEMEANOR PUNISHABLE AS PROVIDED FOR IN THE PENAL LAW.

3. (A) 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 ONE THOUSAND DOLLARS FOR A SINGLE VIOLATION AND NOT MORE THAN ONE HUNDRED 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 TWO HUNDRED FIFTY 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.

(B) IN ADDITION TO ANY RIGHT OF ACTION GRANTED TO THE ATTORNEY GENERAL PURSUANT TO THIS SECTION, ANY PERSON WHO HAS BEEN INJURED BY REASON OF ANY VIOLATION OF THIS SECTION MAY BRING AN ACTION IN HIS OR HER OWN NAME TO ENJOIN SUCH UNLAWFUL ACT OR PRACTICE, AN ACTION TO RECOVER HIS OR HER ACTUAL DAMAGES OR ONE THOUSAND DOLLARS, WHICHEVER IS GREATER, OR BOTH SUCH ACTIONS. THE COURT MAY, IN ITS DISCRETION, AWARD THE PREVAILING PLAINTIFF IN SUCH ACTION AN ADDITIONAL AWARD NOT TO EXCEED THREE TIMES THE ACTUAL DAMAGES, IF THE COURT FINDS THE DEFENDANT WILLFULLY VIOLATED THE PROVISIONS OF THIS SECTION. THE COURT MAY AWARD REASONABLE ATTORNEYS' FEES TO A PREVAILING PLAINTIFF.

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