

5037--A

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 -- 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.