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

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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 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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

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

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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:

(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. WHENEVER THERE SHALL BE A VIOLATION OF THIS SECTION INVOLVING TWENTY-FIVE OR MORE COUNTERFEIT AND/OR NON-FUNCTIONAL AIRBAGS, OR ANY SECOND OR SUBSEQUENT VIOLATION OF SUBDIVISION TWO OF THIS SECTION, 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 SECTION, 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. ANY PERSON WHO VIOLATES THIS SECTION AND SUCH VIOLATION INVOLVES TWENTY-FIVE OR MORE COUNTERFEIT AND/OR NON-FUNCTIONAL AIRBAGS, OR A SECOND OR SUBSEQUENT VIOLATION OF SUBDIVISION TWO OF THIS SECTION SHALL BE SUBJECT TO A CIVIL PENALTY OF NOT MORE THAN ONE THOUSAND DOLLARS FOR EACH VIOLATION. NO PERSON SHALL BE DEEMED TO HAVE VIOLATED THE PROVISIONS OF THIS SECTION IF SUCH PERSON, 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. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.