

HOUSE BILL REPORT

HB 2314

As Reported by House Committee On: Public Safety

Title: An act relating to the manufacture, sale, distribution, and installation of motor vehicle air bags.

Brief Description: Regulating the manufacture, sale, distribution, and installation of motor vehicle air bags.

Sponsors: Representatives Goodman, Hayes, Pettigrew, Orcutt, Kilduff, Stanford, Fitzgibbon, Orwall, Magendanz, Kuderer, Fey, Senn and Wilson.

Brief History:

Committee Activity:

Public Safety: 1/13/16, 1/26/16 [DPS].

Brief Summary of Substitute Bill

- Makes it a class C felony to manufacture, import, sell, install, or reinstall counterfeit air bags, nonfunctional air bags, or other replacement air bag devices not meeting federal safety standards.
- Makes it a class C felony to sell, install, or reinstall a device causing a vehicle's diagnostic system to inaccurately indicate that a functional air bag is installed when a counterfeit or nonfunctional air bag or no air bag is installed.
- Makes it a class C felony to fail to comply with statutory requirements pertaining to the installation of air bags.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Goodman, Chair; Orwall, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Griffey, Moscoso, Pettigrew and Wilson.

Staff: Kelly Leonard (786-7147).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background:

Air Bags. An air bag is defined as an inflatable restraint system or portion of an inflatable restraint system installed in a motor vehicle. If an air bag from a previously deployed inflatable restraint system is replaced by either a new air bag or a nondeployed salvage air bag, the air bag must conform to the original equipment manufacturer requirements. The installer must verify that the self-diagnostic system for the inflatable restraint system indicates that the entire inflatable restraint system is operating properly.

It is a gross misdemeanor for a person to install, reinstall, or distribute an air bag for compensation he or she knows or reasonably should know is a previously deployed air bag.

Classification of Crimes and Sentencing. Crimes are classified as misdemeanors, gross misdemeanors, or felonies (of which there are class A, B, and C felonies). While there are exceptions, the classification of a crime generally determines the maximum term of confinement and/or fine for an offense. For each classification, the maximum terms of confinement and maximum fines are as follows:

<i>Classification</i>	<i>Maximum Confinement</i>	<i>Maximum Fine</i>
Misdemeanor	90 days	\$1,000
Gross Misdemeanor	364 days	\$5,000
Class C Felony	5 years	\$10,000
Class B Felony	10 years	\$20,000
Class A Felony	Life	\$50,000

When a person is convicted of a felony, the Sentencing Reform Act (SRA) applies and determines a specific range of sentence within the statutory maximum. Under the SRA, sentences for felony offenses are determined by reference to a sentencing grid. The sentencing grid provides a standard range of months for the sentence, based on both the severity, or "seriousness level," of the offense and the convicted person's "offender score," which is based on the offender's criminal history.

Summary of Substitute Bill:

Definitions. The definition of "air bag" is modified. An air bag is an inflatable restraint system or portion of an inflatable restraint system including, but not limited to, the cushion material, cover, sensors, controllers, inflators, and wiring, that operates in the event of a crash and is designed in accordance with federal motor vehicle safety standards for the specific make, model, and year of the motor vehicle in which it is or will be installed.

"Counterfeit air bag" means a replacement motor vehicle inflatable occupant restraint system, including all component parts including, but not limited to, the cushion material, cover, sensors, controllers, inflators, and wiring, displaying a mark identical or similar to the genuine mark of a motor vehicle manufacturer without authorization from the manufacturer.

"Nonfunctional air bag" means a replacement motor vehicle inflatable occupant restraint system, including all component parts including, but not limited to, the cushion material, cover, sensors, controllers, inflators, and wiring, which: was previously deployed or damaged; has an electric fault that is detected by the vehicle air bag diagnostic system after the installation procedure is completed; or includes any part or object including, but not limited to, a counterfeit or repaired air bag cover, installed in a motor vehicle to mislead the owner or operator of the motor vehicle into believing that a functional air bag has been installed.

Crimes Involving Air Bags. The crime of installing, reinstalling, or distributing previously deployed air bags is expanded and increased to a class C felony. A person is guilty of the offense if he or she, with criminal negligence, manufactures, imports, sells, offers for sale, installs, or reinstalls a device in a vehicle for compensation, distributes as an auto part, or replaces a motor vehicle air bag, that is: a counterfeit air bag; a nonfunctional air bag; a previously deployed or damaged air bag; or an air bag which does not otherwise meet all applicable federal safety standards for an air bag. The crime does not apply to nondeployed salvage air bags meeting the current statutory requirements for installation.

It is a class C felony offense for a person to sell, install, or reinstall a device that causes a vehicle's diagnostic system to inaccurately indicate that the vehicle is equipped with a functional air bag when a counterfeit air bag, a nonfunctional air bag, or no air bag is installed. The crime does not apply to nondeployed salvage air bags meeting current statutory requirements for installation.

If a person fails to install an air bag according to current statutory requirements, including complying with the original equipment manufacturer requirements and verifying the inflatable restraint system is operating properly, then he or she is guilty of a class C felony.

All three offenses are ranked as seriousness level VII offenses if bodily injury or death results and V in all other circumstances.

Substitute Bill Compared to Original Bill:

The substitute bill modifies the definition of "air bag," "counterfeit airbag," and "nonfunctional air bag" by adding cushion material as a component part of an inflatable restraint system.

The substitute bill modifies the crime pertaining to counterfeit, nonfunctional, and previously deployed air bags by specifying that the crime is committed when the actions are done with criminal negligence rather than when a person "knew" or "should have known." The substitute bill specifies that the crime pertaining to counterfeit, nonfunctional, and previously deployed air bags and the crime pertaining to air bag diagnostic systems do not apply to nondeployed salvage air bags when the air bag conforms to the original equipment manufacturer and diagnostic requirements.

The substitute bill changes the seriousness levels of the offenses to VII for violations resulting in bodily injury or death and V in all other circumstances (rather than IX).

The substitute bill adds findings specifying that committing the offenses created under the bill constitute unreasonable acts, unfair and deceptive acts in trade or commerce, and unfair methods of competition for the purpose of applying the Consumer Protection Act.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Nefarious persons are taking advantage of customers looking for a good deal, and they are doing so at the sake of public safety. A replacement air bag can cost \$600–\$900, but counterfeit air bags can be purchased for \$100–\$150. While these air bags save the customer money, they are not actually air bags. Some contain sawdust, putty, or foam, and they do not deploy or function properly when an accident occurs. There have been some prosecutions under federal trademark laws; however, federal law is too narrow. Importers and manufacturers have found ways to sidestep trademark laws. Guidance and restrictions on the state level would further public safety interests and deter the criminal activity occurring in the State of Washington.

(Opposed) This bill is intended to go after big fish, but it actually casts a wide net. The bill goes too far in criminalizing certain activities due to the "reasonably should have known" standard. There are good, well-intentioned mechanics following instructions from their supervisors who could be captured under this standard. There should be tiered culpability standards with exceptions to address these types of situations.

(Other) The bill requires amendments in order to clarify what types of activities are criminal. This is especially important in the area of automobile recycling and salvage. Professionals in the recycling industry salvage nondeployed air bags for reinstallation in other vehicles. The state should continue to encourage this practice. There are also necessary amendments to address technical issues in the bill.

Persons Testifying: (In support) Representative Goodman, prime sponsor; and Tom McBride and Steve Osborne, American Honda Motor Company.

(Opposed) Patricia Fulton, Washington Defender Association and Washington Association of Criminal Defense Lawyers.

(Other) Gary Smith, Independent Business Association; and Becky Bogard, General Motors.

Persons Signed In To Testify But Not Testifying: None.