

HOUSE BILL REPORT

SSB 6160

As Reported by House Committee On:
Public Safety
General Government & Information Technology

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: Senate Committee on Law & Justice (originally sponsored by Senators O'Ban, Frockt, Fain, Hobbs, Nelson, Rolfes, Conway and Becker).

Brief History:

Committee Activity:

Public Safety: 2/19/16, 2/23/16 [DPA];

General Government & Information Technology: 2/26/16, 2/29/16 [DPA(GGIT w/o PS)].

**Brief Summary of Substitute Bill
(As Amended by Committee)**

- 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: Do pass as amended. 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.

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.

Staff: Kelly Leonard (786-7147).

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:

<u>Classification</u>	<u>Maximum Confinement</u>	<u>Maximum Fine</u>
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.

The Consumer Protection Act. The Consumer Protection Act (CPA) prohibits unfair or deceptive trade practices. A private person or the Attorney General may bring a civil action to enforce the provisions of the CPA. A person or entity found to have violated the CPA is subject to treble damages and attorney's fees.

Summary of Amended 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.

The definition of "nondeployed salvage air bag" is modified to include a portion of an inflatable restraint system that has not been previously activated or inflated as a result of a collision or other incident.

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.

The Consumer Protection Act. Committing a crime involving air bags constitutes an unreasonable act, unfair and deceptive act in trade or commerce, and an unfair method of competition for the purpose of applying the Consumer Protection Act.

Amended Bill Compared to Substitute Bill:

The definition of "nondeployed salvage air bag" is modified to include a portion of an inflatable restraint system that has not been previously activated or inflated as a result of a collision or other incident, thereby excluding the installation of those parts from the crimes in the bill involving the sale and installation of air bags not meeting certain standards.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended 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) Twelve bills have been passed around the country relating to air bags. This bill is important to Honda and several other automobile companies. The facts that are driving this bill are due to counterfeit air bags that are entering Washington. Federal law enforcement on counterfeit laws depend on trademark violations. Although some of the enforcement laws have been successful, they are limited in scope because they require the use of a trademark.

It is also important to provide Washington with additional enforcement authority to not only focus on the importing of counterfeit air bags that are coming into the state that violate trademark violations but also focus on the manufacture, sale, and installation of nonfunctioning air bags.

Vehicle recyclers sell used undeployed air bags and they also support the current version of the bill.

(Opposed) None.

(Other) Metal recyclers often remove various pieces of an old car and sell the individual pieces to people that use them as replacement parts. A technical amendment to the bill is needed to ensure the protection for salvage is complete. The bill as currently drafted is unclear as to whether an entire system is deemed to have been deployed if any portion of the system is deployed. This issue can be fixed by adding a few words to the definition of "nondeployed salvage air bag" so that the definition is consistent with the definition of previously deployed air bag and an air bag in general.

There is also concern that the bill goes too far in penalizing mistaken or inadvertent action. The standard in the bill is criminal negligence and it is believed that it should be moved to the reckless standard. Criminal negligence is a failure to be aware of a substantial risk and recklessness is when a person knows of and disregards a substantial risk. The Washington Defender Association wants to make sure that mechanics are not caught up in a felony offense but instead penalize those that have the actual knowledge and does the act anyway.

Persons Testifying: (In support) Tom McBride, Honda North America; and Gary Smith, Independent Business Association.

(Other) Brad Tower, Schnitzer; and Bob Cooper, Washington Defender Association and Washington Association of Criminal Defense Lawyers.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON GENERAL GOVERNMENT & INFORMATION TECHNOLOGY

Majority Report: Do pass as amended by Committee on General Government & Information Technology and without amendment by Committee on Public Safety. Signed by 7 members: Representatives Hudgins, Chair; Kuderer, Vice Chair; MacEwen, Ranking Minority Member; Caldier, Assistant Ranking Minority Member; Johnson, Morris and Senn.

Staff: Rachelle Harris (786-7137).

Summary of Recommendation of Committee On General Government & Information Technology Compared to Recommendation of Committee On Public Safety:

The bill, as recommended by the General Government and Information Technology Committee, changes the culpability standard for the sale, offering for sale, installation, or reinstallation of motor vehicle air bags that are counterfeit, nonfunctional, previously deployed or damaged, or an airbag which does not otherwise meet all federal safety standards from "with criminal negligence" to "in a reckless manner." The amended bill also contains a null and void clause, making the bill null and void unless specific funding is provided in the supplemental operating budget.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony:

(In support) This bill passed the Senate and the House Public Safety Committee unanimously, as did the House companion bill out of Public Safety. There is definitely some interplay between federal law and state law with regard to this issue. The existing federal law is referenced in this bill. Federal enforcement activities tend to be focused on importation of counterfeit airbags, a crime which depends on proving a trademark violation. Some of these imports, however, are coming in without the trademark to get around the counterfeit airbag restrictions. There are about 16 examples of federal enforcement shown in the letter from Honda, and of those, six are in Washington. This bill aims to be a complement to federal law by expanding it to apply to counterfeit airbags and any airbags

that are not compliant with other federal regulations. The bill fills a void that currently exists in federal law and provides some additional enforcement opportunities to keep Washingtonians safe. Hopefully this bill acts as a deterrent to the crime, so the fiscal impact will be low. The installation of recalled but not counterfeit bags would likely not be an issue. In many cases, current federal laws are ineffective. The example of the trademark removal is a good display of why they are ineffective, because then the bag is not counted as counterfeit. This bill is not aiming to enforce federal laws. Instead, it adds new state-level violations so that even if an airbag gets around the federal standards, the crime can be prosecuted under state laws. The criminal negligence standard is clear and specific. Recklessness is too high a threshold to meet because there are some professional installers who ought to be held up to a criminal negligence standard which is understood to be a reasonable one elsewhere in the industry.

(Opposed) None.

(Other) The evidence standard is currently set in the bill at criminal negligence, which is a problem. This standard equates to acting while failing to be aware of a substantial risk. It would be better policy to set the standard at recklessness because recklessness is to act while knowingly disregarding a risk. We want to avoid individual mechanics from getting into criminal trouble by unknowingly installing a bad airbag that they do not know is not real. Under the current criminal negligence standard in the bill, this could easily happen. This same individual who inadvertently does something that falls under this law would be spared under a reckless standard. Changing the bill to reflect this and narrow the standard a bit would be a good idea.

Persons Testifying: (In support) Tom McBride, Honda North America.

(Other) Bob Cooper, Washington Association of Criminal Defense Lawyers.

Persons Signed In To Testify But Not Testifying: None.