

SUBJECT: Adding penalties and violations for installing counterfeit airbags

COMMITTEE: Transportation — committee substitute recommended

VOTE: 6 ayes — Krusee, Harper-Brown, Harless, Hill, Macias, Murphy

0 nays

3 absent — Phillips, Deshotel, Haggerty

WITNESSES: (*On original version:*)

For — Tom “Smitty” Smith, Public Citizen.

Against — Tom Blanton, Texas Automobile Dealers Association; Dave England, Texas Independent Auto Resellers Association. (*Registered, but did not testify:* Jimmy Evans, Texas Independent Automobile Dealers Association)

BACKGROUND: The 77th Legislature in 2001 enacted SB 113 by Moncrief, creating Transportation Code, sec. 547.614 to establish an offense for failing to properly install an airbag. A person violates the law if the person installs or claims to install an airbag in a vehicle and does not install an airbag that meets federal safety regulations covering the vehicle’s make, model, and year. A violation under this section is subject to a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000).

DIGEST: CSHB 71 would amend Transportation Code, sec. 547.614 to expand actions that would constitute an offense for improper installation of an airbag and would add additional penalties for repeat offenders and those whose actions resulted in injury.

It would be a violation of this section if a person:

- installed or claimed to install an airbag but did not;
- made or sold a counterfeit airbag – one that did not meet federal safety standards for the make, model, and year of the vehicle in which it was installed – to be installed in a vehicle;

- intentionally altered an airbag so it no longer conformed to federal safety standards;
- claimed a counterfeit airbag was real and fully operational; or
- caused a person to violate these restrictions.

The offense for violating this section would be a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000). The penalty would increase to a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) if the violator previously had been convicted under this section. It would increase to a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000) if the offense were shown to have resulted in bodily injury.

The bill would take effect September 1, 2007, and would apply to offenses occurring on or after that date.

**SUPPORTERS  
SAY:**

CSHB 71 would increase penalties and violations for an indefensible activity in which people tried to make money while putting drivers' lives at risk. As more vehicles are equipped with more airbags, the opportunities for associated scams will only increase. This bill would help prevent con artists from deciding to prey on innocent drivers, which would save lives and keep the roads safer. The substitute includes compromise language supported by consumer advocates and car dealers, who had opposed the original version because they believed it could have punished people who unknowingly sold or traded vehicles with faulty airbags.

Federal law has required since 1998 that all new vehicles come equipped with driver and front-passenger airbags. A 2006 National Highway Traffic Safety Administration study found that at least 22,000 people are alive today because of frontal airbags. Once deployed, an airbag must be replaced. Design standards and government regulations, however, have contributed to replacement costs that range from \$1,000 to \$3,000 per airbag. The cost has created a market, both for criminals who steal and sell airbags from working vehicles and for those employing fake airbags to reduce repair costs for vehicles involved in collisions.

A variety of scams are used to fool a public generally unaware that airbag fraud is a real concern. Some con artists have taken to filling the area that would have contained an airbag with items ranging from garbage to Styrofoam that would approximate the weight of an existing airbag. Others tamper with the warning light to remove the indicator that the

airbag is not working. Even for drivers in the know, testing for a working airbag is fairly expensive and time consuming, an endeavor that most people buying a car probably would not undertake. Although some states use inspection tests to check for airbags, that usually consists of little more than checking to ensure the airbag light is working properly and not actually examining whether the airbag itself is properly installed.

Airbag fraud only will get worse if the state does not act to prevent it. By September 2009, all new cars must come equipped with side-impact airbags under new federal guidelines. At least a dozen other states have acted to rein in these scams, and Texas should join them.

**OPPONENTS  
SAY:**

This bill would not go far enough to deter those seeking to profit by compromising motorists' safety. Other states provide a good template for actions Texas could take, including adding a manslaughter charge for cases in which a person knowingly installed a faulty airbag. Other states include inspection tests for working airbags. One state requires any deployed airbag to be repaired to its original operating condition. Given the potential impact of this illegal activity, the bill should aim higher to raise penalties and expand ways to safeguard vehicles involved in serious accidents.

**NOTES:**

The original version of HB 71 would have included provisions for vehicle sellers to document the airbag deployment history of a vehicle on its title and would have added suspension of a driver's license as a possible penalty for certain violations. The committee substitute removed those provisions