

LFC Requester:	Christine Boerner
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**AGENCY BILL ANALYSIS
2013 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

And

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original **Amendment**
Correction **Substitute**

Date February 4, 2013

Bill No: HB-118(CS)-305

Sponsor: Rep William "Bill" R. Rehm

Reviewing Attorney General's Office

Short No alteration on counterfeit

Person Writing Donna Bevacqua-Young

Title: airbags

Phone: 827-6939 **Email** dbyoung@nmag.gov

SECTION II: FISCAL IMPACT **FOR LFC OFFICIAL PURPOSES******
AGO STAFF SHOULD LEAVE SHAGED AREAS BLANK

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY13	FY14		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Opinion Letter. This is a staff analysis in response to the agency’s committee’s or legislator’s request.

BILL SUMMARY

Summary Synopsis:

This is a substitute to the original bill. The only additional information appears to be the definition of “knowingly” or “known” added to Section 1, F (3) on page 3, line 18 & 19.

FISCAL IMPLICATIONS WITH ENACTING THIS BILL

Training of police officers, mechanics, auto industry folks and prosecutors in the detection of counterfeit airbags.

SIGNIFICANT LEGAL ISSUES

The definition of “knowingly” or “known” is listed as having actual knowledge of something. How is actual knowledge that the airbags are stolen or counterfeit proven?

In case law, actual knowledge is defined in several ways: 1) knowledge of the character of the object and the unlawfulness of possession thereof as embraced within the concept of a specific intent to violate the law or 2) knowledge of the presence of the object as embraced within the concept of “physical control with the intent to exercise such control” which constitutes possession denounced by the statute. See Gory at 28 Cal. 2d at 455-456

A person has knowledge of stolen property if he or she either (1) actually knows the property is stolen, (2) believes the property is stolen or 3) has his or her suspicions definitely aroused and refuses to investigate for fear of discovering the property is stolen. *Rollin M. Perkins & Ronald N. Boyce, Criminal Law 401 (3d ed. 1982)* This definition can also be applied to determine if someone knows whether the property is counterfeit.

PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL

ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP WITH BILLS INTRODUCED THIS SESSION

TECHNICAL ISSUES OR DRAFTING ERROR

OTHER SUBSTANTIVE LEGAL ISSUES

May be difficult for prosecution and police to prove actual knowledge that an airbag is stolen or counterfeit. Does the airbag have any specific markings or a marker that would scream out “counterfeit”? How would an ordinary mechanic know whether an airbag has been compromised?

Under the Uniform Jury Instructions for Criminal cases- no. 14-5032 Proof of knowledge...knowledge is defined as the following:

Knowledge need not be established by direct evidence but may be inferred from all the surrounding circumstances, such as the manner in which the act was done, the means used, and the conduct of the defendant and any statements made by the defendant

ALTERNATIVES TO ENACTING THIS BILL

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS NEEDED TO IMPROVE THIS BILL

Define what actual knowledge is. There needs to be a more specific definition offered for clarification purposes.