

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 X **Amendment**
Correction **Substitute**

Date January 29, 2013
Bill No: HB 118--305

Sponsor: Rep. William "Bill" R. Rehm
Short No Alteration on Counterfeit
Title: Airbags

Reviewing Attorney General's Office
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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.

Under Section D of HB 118, a violation of the provisions (1-8) that results in “great bodily harm” appears to be a per se third degree felony violation. That is so long as a person knowingly violated any of the provision of subsection 1-8 of HB that results in great bodily harm is punishable as a third degree felony. Thus HB 118 appears to be intended to safeguard the safety and health of New Mexicans by outlawing the intentional installation of counterfeit airbags.

Although, if no “great bodily harm” results, then persons who suffer minor injuries are not included in the third degree provisions of HB 118. The provision of HB 118 may help to deter persons from, making, selling, installing, counterfeit airbags.

HB 118 defines “counterfeit airbag: as an airbag that does not meet all applicable federal safety regulations for an airbag designed to be installed in a motor vehicle of particular make, model and year.” This may mean that if a person knowingly “makes” (as used in Section A subsection 3) an airbag that not intended to be installed – the counterfeit airbag may be excluded. However, the maker of the airbag may still be covered if it “assists another.”

HB 118 Section A subsection 6, may encourage any person who knowingly sells a motor vehicle to warn the purchaser, in writing, of the counterfeit airbag and the safety hazards associated with the airbag. Under HB 118 who first warns a purchaser in writing may not be subject to criminal penalties.

HB 118 does not contain a definition for the word “person.” HB 118 does not make it clear if the term “person” applies to corporations, etc.

In addition, HB 118 does not define “motor vehicle” and is not clear if the term is applicable to any motor vehicle as defined under the Motor Vehicle Code e.g. “bicycle” which is a motor vehicle under the Motor Vehicle code. See Section 66-1-4.2 If so, a bicycle that is offered for hire or rent that is not equipped with airbags would violate HB 118.

HB 118 lack of definitions for the term “person” and “motor vehicle” may be subject to an overbroad or vagueness challenge. The Motor Vehicle Code defines various vehicles that are routinely rented or offered for hire though they are not equipped with airbags.

BILL SUMMARY

Summary Synopsis:

HB 118 sets out the elements for criminal sanctions under the Motor Vehicle Code. HB 118 makes it unlawful for any person to knowingly: fail to install an airbag; install a counterfeit airbag; make or sell a counterfeit airbag; represent to another that a counterfeit airbag is not counterfeit; intentionally alter an airbag that causes it to become a counterfeit airbag; sell a counterfeit airbag without written warning of the safety hazards; rent or offer for hire a motor vehicle not equipped with airbags meeting federal safety regulations; and to assist another in violating the provisions of this section.

HB 118 penalty provisions range from a misdemeanor (under Section 31-19-1) for a first conviction; a fourth degree felony for a second conviction (under Section 31-18-15); any violation of HB 118 that results in great bodily harm is a third degree felony (under Section 31-18-5).

HB 118 Section F subsection 1 defines “counterfeit airbag” and subsection 2 defines “great bodily harm.”

HB 118 Section E excludes motor vehicles operated solely on a closed course or track.

HB 118 does not define “person” or “motor vehicle.”

FISCAL IMPLICATIONS WITH ENACTING THIS BILL

To determine whether an airbag is counterfeit is not will require some kind of evidence analysis. Would our state crime labs here be able to analyze the airbags? Would the supposedly counterfeit airbags have to be sent out of State? This evidence analysis would incur additional costs to law enforcement agencies and prosecution aka DA’s offices.

Furthermore, training would be required for law enforcement to help them determine if an airbag is counterfeit. Additionally, more experts would have to be hired to discuss counterfeit airbags if law enforcement officers were not qualified to testify about the issues at trial.

SIGNIFICANT LEGAL ISSUES

Bill may need to define “motor vehicle” and the term “person.” Otherwise, HB 118 may apply to motor vehicle not intended to have airbags.

It is unclear if an airbag that meets all applicable federal safety regulations for an airbag but is not designed to be installed in a motor vehicle of a particular make, model and year violates HB 118. That is although airbag met all applicable federal safety regulation for a particular make, model and year but instead is installed on a different make, model and years – this airbag would be a counterfeit airbag under HB 118.

PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL

May require additional law enforcement training or expertise within law enforcement to show the airbag was a “counterfeit airbag” i.e. knowledge of if the airbag met or failed to meet all applicable federal safety regulations for an airbag.

ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL

None

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

None known

TECHNICAL ISSUES OR DRAFTING ERROR

What statistics are prompting this bill to be introduced? What types of airbags and cars/trucks/SUVS is this bill aimed at?

OTHER SUBSTANTIVE LEGAL ISSUES

Because “motor vehicle is not defined – HB 118 may be subject to overbroad and vague challenge. HB 118 does not appear to be intended to apply to “motor vehicles” that do not normally have airbags but “motor vehicles” is not narrowly defined.

ALTERNATIVES TO ENACTING THIS BILL

No suggestions or alternatives offered.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

A person who knowingly violates HB 118 will not be subject to criminal prosecution under this bill.

AMENDMENTS NEEDED TO IMPROVE THIS BILL

There needs to be some differentiation between what kind of airbags this bill is aimed toward addressing. Airbags from 2005 to 2010? Airbags on all Fords or Chevy trucks? The bill is not specific as to what type of airbags it wants to address.