

SB 256 A -A2 STAFF MEASURE SUMMARY

House Committee On Judiciary

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Meeting Dates: 5/11, 5/16

WHAT THE MEASURE DOES:

Prohibits manufacture, sale, import, distribution, transfer and installation of a counterfeit automobile supplemental restraint system component, a nonfunctioning airbag or a noncompliant replacement part of a supplemental restraint system. Proscribes installation of any such component or part that causes the vehicle's diagnostic system to fail to warn a vehicle operator of the component. Restricts the sale, lease, trade or transfer of any vehicle with such components. Makes a violation an unlawful practice under the Unlawful Trade Practices Act.

REVENUE: Has minimal revenue impact

FISCAL: Has minimal fiscal impact

SENATE VOTE: Ayes 25; Nays, 4

ISSUES DISCUSSED:

- Limitations of current federal and state laws
- Takata airbag recall discovered thousands of fake airbags installed
- Some fake airbags are stuffed with paper, foam or other material
- State prohibition would allow federal law enforcement to seize at border
- Criminal penalties
- How insurers deal with not-at-fault drivers injured by counterfeit airbags in accidents
- Consumers do not usually buy and install themselves; airbags need professional installation

EFFECT OF AMENDMENT:

-A2 Provides exception from definition of 'nonfunctional airbag' for an unrepaired deployed airbag or an airbag installed in a vehicle that has been declared a total loss or is a totaled vehicle, or for which vehicle the owner has a salvage certificate or similar title from another state. Removes prohibition on the sale, lease, trade or transfer of any vehicle with a nonfunctioning airbag or a counterfeit or noncompliant supplemental restraint system component.

BACKGROUND:

The National Highway Transportation Safety Agency reported that counterfeit airbags have been shown to consistently malfunction, including non-deployment and sometimes expulsion of metal shrapnel. In Oregon, the improper repair of a vehicle inflatable restraint system is a Class A misdemeanor. Violation of the federal crime of trafficking in counterfeit goods can carry up to a ten-year prison sentence and a fine of up to \$2 million for an individual, or \$5 million for a person other than individual. In one example from 2019, Oregon U.S. Attorneys prosecuted a California man who re-sold imported counterfeit airbags to five purchasers on e-bay. The man received a six-month sentence. However, the federal crime does not apply if no deceptive mark or label is affixed to the object.

The Attorney General or a district attorney can enforce an Unlawful Trade Practices Act (UTPA) violation by issuing an investigative demand and bringing a civil action to enjoin the unlawful practice. Additionally, the UTPA provides individuals a private right of action for violations of ORS 646.608 (listing certain unlawful trade practices).

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A person who suffers an ascertainable loss of money or property because of an unlawful act can sue within one year for actual damages or statutory damages, punitive damages, and equitable relief, and can recover attorney fees and costs if successful.

Senate Bill 256 A prohibits the manufacture, sale, import, transfer, or installation of a counterfeit automobile supplemental restraint system component and the sale or transfer of any vehicle with such component, and provides a remedy under the Unlawful Trade Practices Act.