COMMITTEE REPORT

April 13, 2016

**S. 1015**

Introduced by Senators Leatherman and Johnson

S. Printed 4/13/16--S. [SEC 4/14/16 5:34 PM]

Read the first time January 21, 2016.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 1015) to amend the Code of Laws of South Carolina, 1976, by adding Section 16‑13‑165 so as to make unlawful certain actions involving counterfeit or nonfunctional, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting language and inserting the following:

/ SECTION 1. Article 1, Chapter 13, Title 16 of the 1976 Code is amended by adding:

“Section 16‑13‑165. (A) It is unlawful for a person to:

(1) knowingly and intentionally import, manufacture, sell, offer for sale, install, or reinstall in a motor vehicle, a counterfeit airbag, a nonfunctional airbag, or an object that the person knows was not designed to comply with Federal Motor Vehicle Safety Standard Number 208 (49 CFR 571.208), as amended, for the make, model, and year of the motor vehicle;

(2) knowingly and intentionally sell, offer for sale, install, or reinstall in any motor vehicle a device that causes a motor vehicle’s diagnostic system to inaccurately indicate that the motor vehicle is equipped with a properly functioning airbag;

(3) knowingly and intentionally sell, lease, trade, or transfer a motor vehicle if the person knows that a counterfeit airbag, a nonfunctional airbag, or an object that the person knows was not designed to comply with Federal Motor Vehicle Safety Standard Number 208 (49 CFR 571.208), as amended, for the make, model, and year of the motor vehicle has been installed as part of the motor vehicle’s inflatable restraint system.

(B)(1) A person who violates the provisions of this section by knowingly and intentionally installing or reinstalling an airbag that is counterfeit, nonfunctional, does not comply with the federal regulations described in subsection (A), or installs or reinstalls a device that causes a motor vehicle’s diagnostic system to inaccurately indicate that the motor vehicle is equipped with a properly functioning airbag is:

(a) for a first offense, guilty of a misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned for not more than one year, or both;

(b) for a second or subsequent offense, guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than five years, or both.

(2) A person who violates the provisions of this section by knowingly and intentionally importing, manufacturing, selling, or offering to sell, an airbag that is counterfeit, nonfunctional, does not comply with the federal regulations described in subsection (A), or a device that causes a motor vehicle’s diagnostic system to inaccurately indicate that the motor vehicle is equipped with a properly functioning airbag is:

(a) for a first offense, guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than five years, or both;

(b) for a second or subsequent offense, guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned for not more than ten years, or both.

(3) A person who violates the provisions of this section by knowingly and intentionally selling, leasing, trading, or transferring a motor vehicle when the person knows that the motor vehicle contains an airbag that is counterfeit, nonfunctional or does not comply with the federal regulations described in subsection (A), is:

(a) for a first offense, guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than five years, or both;

(b) for a second or subsequent offense, guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned for not more than ten years, or both.

(4) A person whose violation of subsection (B)(2) or (B)(3) results in great bodily harm or death is:

(a) for a first offense, guilty of a felony and, upon conviction, must be fined not more than twenty‑five thousand dollars or imprisoned for not more than ten years, or both;

(b) for a second or subsequent offense, guilty of a felony and, upon conviction, must be fined not more than one hundred thousand dollars or imprisoned for not more than twenty years, or both.

(5) Persons other than individuals who violate the provisions of subsection (A) are:

(a) for a first offense, guilty of a felony and, upon conviction, must be fined not more than one million dollars or imprisoned subject to the discretion of the judge, or both;

(b) for a second or subsequent offense, guilty of a felony and, upon conviction, must be fined not more than ten million dollars or imprisoned subject to the discretion of the judge, or both.

(C) For purposes of this section:

(1) ‘Airbag’ means 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 (a) operates in the event of a crash, and (b) is designed in accordance with federal motor vehicle safety standards for the make, model, and year of the motor vehicle in which it is or will be installed.

(2) ‘Counterfeit airbag’ means an airbag that bears without authorization a mark identical or substantially similar to the genuine mark of the manufacturer of a motor vehicle or a supplier of parts to the manufacturer of a motor vehicle.

(3) ‘Nonfunctional airbag’ means a replacement airbag that has been previously deployed or damaged or that has an electrical fault that is detected by the vehicle diagnostic system after the installation procedure is completed. A nonfunctional airbag also includes any object, including a counterfeit or repaired airbag, airbag component, or other component intended to deceive a vehicle owner or operator into believing that it is a functional airbag.

(4) ‘Person’ or ‘persons’ means an individual, a group of individuals, whether incorporated or not, a corporation, a company, an association, an organization, a partnership, or any other form of legal entity.”

SECTION 2. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 3. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

KEVIN L. JOHNSON for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Fiscal Impact Summary**

This bill would have no expenditure impact on the general fund, federal funds, or other funds.

**Explanation of Fiscal Impact**

**State Expenditure**

This bill relates to counterfeit or nonfunctional airbags in motor vehicles and makes it unlawful to knowingly or intentionally import, manufacture, sell, offer for sale, install or reinstall such an airbag in a motor vehicle. It also makes it unlawful to knowingly or intentionally sell, offer for sale, install, or reinstall in a motor vehicle any device that would cause the diagnostic system to inaccurately indicate the vehicle is equipped with a working airbag. Further, it prohibits the sale, lease, trade, or transfer of a motor vehicle by a person who knows that the vehicle contains a counterfeit or nonfunctional airbag or other non-compliant object that has been installed as part of the vehicle’s inflatable restraint system. It also establishes penalties for violations of these provisions.

The Judicial Department reports that this bill would have no expenditure impact on the general fund, federal funds, or other funds.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 16‑13‑165 SO AS TO MAKE UNLAWFUL CERTAIN ACTIONS INVOLVING COUNTERFEIT OR NONFUNCTIONAL AIRBAGS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 1, Chapter 13, Title 16 of the 1976 Code is amended by adding:

“Section 16‑13‑165. (A) It is unlawful for a person to:

(1) knowingly or intentionally import, manufacture, sell, offer for sale, install, or reinstall in a motor vehicle, a counterfeit airbag, a nonfunctional airbag, or an object that does not comply with Federal Motor Vehicle Safety Standard Number 208 (49 CFR 571.208) for the make, model, and year of the motor vehicle;

(2) knowingly or intentionally sell, offer for sale, install, or reinstall in any motor vehicle a device that causes a motor vehicle’s diagnostic system to inaccurately indicate that the motor vehicle is equipped with a properly functioning airbag;

(3) knowingly or intentionally sell, lease, trade, or transfer a motor vehicle if the person knows that a counterfeit airbag, a nonfunctional airbag, or an object that does not comply with Federal Motor Vehicle Safety Standard Number 208 (49 CFR 571.208) for the make, model, and year of the motor vehicle has been installed as part of the motor vehicle’s inflatable restraint system.

(B) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than five thousand dollars, or both.

(C) For purposes of this section:

(1) ‘Airbag’ means a motor vehicle inflatable occupant restraint system, or any component part, such as, but not limited to, the 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 make, model, and year of the motor vehicle in which it is or will be installed.

(2) ‘Counterfeit airbag’ means a replacement motor vehicle inflatable occupant restraint system, or any component part, such as the cover, sensors, controllers, inflators, and wiring that bears without authorization a mark identical or substantially similar to the genuine mark of the manufacturer of a motor vehicle or a supplier of parts to the manufacturer of a motor vehicle.

(3) ‘Nonfunctional airbag’ means a replacement airbag that has been previously deployed or damaged or that has an electrical fault that is detected by the vehicle diagnostic system after the installation procedure is completed. A nonfunctional airbag also includes any object, including a counterfeit or repaired airbag or airbag component, intended to deceive a vehicle owner or operator into believing that it is a functional airbag.”

SECTION 2. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 3. This act takes effect upon approval by the Governor.

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