

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (www.nmlegis.gov). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 02/09/13

SPONSOR HJC LAST UPDATED 03/15/13 HB 118/HJCS/aSJC

SHORT TITLE No Alteration Or Counterfeit Airbags SB _____

ANALYST Boerner

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$0.0	\$0.0	\$0.0	Nonrecurring	None

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From
Attorney General's Office (AGO)

SUMMARY

Synopsis of SJC Amendment

The SJC first amendment strikes language on page 2, Subsection B to indicate that any conviction (as opposed to a "first" conviction) under Section 1 (see original bill synopsis below) is a misdemeanor and shall be sentenced under Section 31-19-1 NMSA 1978.

The SJC second amendment strikes language previously stating that a second or subsequent conviction under Section 1 would be a fourth degree felony.

Finally, the SJC fourth amendment provides that a violation under Section 1 that results in great bodily harm is now a fourth degree felony rather than a third degree felony.

Synopsis of Original Bill

The House Judiciary Committee substitute to House Bill 118 adds a new section to the Motor Vehicle Code that criminalizes knowingly (1) failing to install an airbag after representing to another person that it would be installed, (2) installing a counterfeit or substandard airbag, (3) making or selling a counterfeit or substandard airbag to be installed in a vehicle, (4) representing to another than a counterfeit or substandard airbag is not substandard, (5) intentionally altering an airbag in a way that makes it counterfeit or substandard, (6) selling a vehicle while knowing at

the time of sale that the vehicle has a counterfeit or substandard airbag without first warning the purchaser in writing, (7) renting a vehicle not equipped with airbags required by applicable federal safety regulations, or (8) assisting another in violating any of these provisions.

A first offense is designated as a misdemeanor; a second or subsequent offense is designated as a fourth degree felony. A violation resulting in great bodily harm is designated as a third degree felony. The bill provides an exception for airbags in vehicles operated solely on a closed course or track.

Airbag, counterfeit/substandard airbag, great bodily harm and knowingly/known are defined.

FISCAL IMPLICATIONS

None noted.

SIGNIFICANT ISSUES

The AGO noted (regarding 118/HBICS) that the bill provides a definition of “knowingly” or “known” as having actual knowledge of something; however, the AGO questions whether the possession of such knowledge could easily be 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.

CEB/svb:blm