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FISCAL IMPACT REPORT

ORIGINAL DATE 03/11/11

SPONSOR HBIC LAST UPDATED _____ HB 501/HBICS

SHORT TITLE Alteration & Counterfeit Airbags SB _____

ANALYST Burrows/Golebiewski

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
	NFI	NFI		

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)

Attorney General's Office (AGO)

Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Bill

The House Business and Industry Committee substitute for House Bill 501 would amend the Motor Vehicle Code to make it unlawful for a person to alter a vehicle airbag in a manner that keeps the airbag from meeting federal safety regulations. It also makes it illegal to knowingly manufacture or sell counterfeit airbags, and to misrepresent or deliberately install a counterfeit or defective airbag. The first conviction for either offense is a misdemeanor, the second or subsequent offenses are considered a third degree felony. A person that causes bodily harm to a human being as a result of a violation is guilty of a second degree felony. The substitute removes the applicability of the section to airbags in vehicles operated solely on a closed course or track.

The bill 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 a particular make, model, and year. It defines "great bodily harm" as an injury to a person that creates a high probability of death, serious disfigurement, or permanent or protracted loss of impairment of the function of any member or organ of the body.

The effective date of the provisions of this bill is July 1, 2011.

FISCAL IMPLICATIONS

There is no fiscal impact.

SIGNIFICANT ISSUES

According to the AOC:

Federal Motor Vehicle Safety Standards contain the primary regulations for occupant crash protection, including the use of airbags. Since the late 1990s, airbags have been required on all new automobiles, light trucks and vans, and in 2008 alone saved more than 2,500 lives. A problem has arisen regarding motor vehicles that have been wrecked or purchased from a salvage yard, because of the high cost of factory replacement parts, leading to black market auto shops falsifying repairs for unsuspecting customers. In fact, consumers face an “invisible crime” with the installation of fake, salvaged, or stolen airbags, which may have only been refolded and repacked or possibly filled with random items such as shop rags and trash and then re-covered; at times the airbag compartment may not even contain an airbag. People do not realize they have been victimized until an accident occurs and the airbag fails to deploy, resulting in the death or disability of the driver or passenger. Thousands of such scams are being reported in Miami, Los Angeles and other areas, leading states to adopt their own airbag laws to better address the crimes committed.

House Bill 501 takes the first step toward regulating the airbag replacement business in New Mexico.

The violations established in House Bill 501 carry the following penalties:

- For a first conviction, punishment would be a misdemeanor, consisting of a jail term of less than one year or the payment of a fine up to \$1,000 or both;
- For a second or subsequent conviction, punishment would be a third degree felony consisting of 3 years in prison and a possible \$5,000 fine;
- Punishment of a second degree felony, consisting of 9 years in prison and a possible \$10,000 fine, would be imposed upon a person convicted of causing great bodily harm as a result of violating this section.

PERFORMANCE IMPLICATIONS

AOC notes that the courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

ADMINISTRATIVE IMPLICATIONS

The AOC reports “there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws, and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.”

TECHNICAL ISSUES

AOC questions whether the bill's references to convictions of misdemeanors and felonies in Chapter 31 of the Criminal Procedure Act are incorrect. For example, the reference to Section 31-18-15 on page 2, line 13, may need to be to Section 31-19-1, which relates to sentencing for misdemeanors. Similarly, the references on page 2, lines 17 and 21 may need to refer to Section 31-18-15, which relates to sentencing for felonies.

OTHER SUBSTANTIVE ISSUES

The AGO notes that federal law (49 U.S.C. § 30122) prohibits an airbag from being made inoperable. However, the National Highway Traffic Safety Administration (NHTSA) allows airbags to be modified to accommodate drivers and passengers with specific medical conditions. House Bill 501 prohibits airbag alteration that does not meet all applicable federal safety regulations. A possible amendment would allow the intentional alteration of airbags, if such alteration meets the NHTSA exemption.

AMENDMENT

The AGO suggests the following amendments:

- Amend Section 1, subsection A(3) to require that any manufacturer or seller must have knowledge that the airbag will be used improperly to be subject to criminal penalty.
- Amend Section 1, subsection A(5) to allow the intentional alteration of an airbag, if such alteration meets the NHTSA exemption.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

There will be no legal consequences for the sale, installation or misrepresentation of counterfeit airbags or the alteration of airbags in a manner that causes the airbag to violate federal safety regulations.

LKB/mew:svb

The Legislative Finance Committee has adopted the following principles to guide responsible and effective tax policy decisions:

- 1. Adequacy:*** revenue should be adequate to fund government services.
- 2. Efficiency:*** tax base should be as broad as possible to minimize rates and the structure should minimize economic distortion and avoid excessive reliance on any single tax.
- 3. Equity:*** taxes should be fairly applied across similarly situated taxpayers and across taxpayers with different income levels.
- 4. Simplicity:*** taxes should be as simple as possible to encourage compliance and minimize administrative and audit costs.
- 5. Accountability/Transparency:*** Deductions, credits and exemptions should be easy to monitor and evaluate and be subject to periodic review.

More information about the LFC tax policy principles will soon be available on the LFC website at www.nmlegis.gov/lcs/lfc