

- SUBJECT:** Enhanced penalties for counterfeit airbag offenses
- COMMITTEE:** Transportation — favorable, without amendment
- VOTE:** 7 ayes — Phillips, Martinez, Burkett, Fletcher, Guerra, Lavender, Pickett
0 nays
4 absent — Y. Davis, Harper-Brown, McClendon, Riddle
- WITNESSES:** For — Bo Gilbert , USAA (*Registered, but did not testify*: Mary Calcote, Honda; Shanna Igo, Texas Municipal League)
Against — None
On — (*Registered, but did not testify*: William Harbeson, Texas Department of Motor Vehicles)
- BACKGROUND:** Transportation Code, sec. 547.614 makes certain actions involving counterfeit airbags crimes. It is an offense to:
- knowingly install a counterfeit airbag or claim to install an airbag and fail to do so;
 - make or sell counterfeit airbags;
 - intentionally alter a non-counterfeit airbag so it no longer conforms to federal safety regulations;
 - claim that an installed counterfeit airbag is not counterfeit; or
 - cause another person to commit these actions or assist another person in the actions.
- These offenses are class A misdemeanors (up to one year in jail and/or a maximum fine of \$4,000). Second and subsequent offenses are third-degree felonies (two to 10 years in prison and an optional fine of up to \$10,000). Offenses that result in bodily injury are second-degree felonies (two to 20 years in prison and an optional fine of up to \$10,000).
- DIGEST:** HB 38 would increase the penalty for first-time offenses relating to counterfeit airbags from a class A misdemeanor to a state-jail felony (180

days to two years in a state jail and an optional fine of up to \$10,000).

The bill would make counterfeit airbag offenses that resulted in the death of a person a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000).

The bill would take effect September 1, 2013, and apply only to offenses committed on or after that date.

**SUPPORTERS
SAY:**

HB 38 is necessary to address the increasing danger of counterfeit airbags sold to repair shops and consumers and installed in Texans' cars and trucks.

In 2012, the National Highway Transportation Safety Administration (NHTSA) issued a consumer safety advisory warning to consumers about the dangers of counterfeit airbags used as replacement parts after a crash. The agency reported the availability of counterfeit bags for at least 75 makes and models of vehicles. Sometimes counterfeit bags do not deploy, and sometimes when they do the bags expel metal shrapnel or other material. This creates a high risk of bodily injury or death from both a crash and the counterfeit airbag itself.

While it is a crime in Texas to install, make, or sell counterfeit airbags, the penalties are not severe enough to deter and punish these offenses. First offenses are class A misdemeanors, which is not in line with the harm that can be caused. Misdemeanors carry only small fines and no potential time in state incarceration facilities. Increasing this penalty to a state jail felony would appropriately allow incarceration in the state system for up to two years, instead of 180 days in a county jail, and fines of up to \$10,000, rather than \$4,000. The state jail felony was created for lower-level but serious crimes, making it a good fit for these first offenses when they do not cause injury but nevertheless endanger lives through dishonest business practices.

Currently, counterfeit airbag offenses that result in bodily injury are punished as second-degree felonies, but there is not a more severe punishment if death occurs. HB 38 would rectify this by creating a first-degree offense in cases of death, which would align counterfeit airbag crimes with other crimes that result in death. For example, the penalty for certain types of arson is a first-degree felony if bodily injury or death occurs.

Given that those dealing in counterfeit airbags know that the bags are critical safety equipment central to preventing death in a crash, a first-degree felony punishment is warranted if death occurs. Those dealing in counterfeit airbags know they are putting lives at risk, even if they did not intend to kill, and should be punished appropriately.

HB 38 would not overburden the state's criminal justice resources. The bill's fiscal note reports no significant impact on the programs and workload of state correctional agencies or on demand for state agency resources. In fiscal 2012, fewer than 10 people were arrested, placed on probation, or admitted to a state correctional facility for airbag offenses, according to the fiscal note. Although these offenses may have been relatively few in number in the past, they pose an increasing threat, and it is appropriate to use the state's resources to combat them.

OPPONENTS
SAY:

HB 38 is unnecessary because current law properly punishes counterfeit airbag crimes. Enhancing these offenses from a misdemeanor to a felony would be an unwarranted increase for first offenses that do not cause bodily injury, though they may fall along the lines of dishonest business practices. These cases are best dealt with as misdemeanors so state resources can be used for other crimes, especially those involving violent offenders. Even small increases in demand on state correctional facilities can add up to increased costs to the state.

Creating a new first-degree felony for counterfeit airbag offenses resulting in death would inappropriately put these crimes on par with other crimes, including certain types of murder, and would punish them more harshly than manslaughter or some types of sexual assault, which are second-degree felonies. In general, first-degree offenses, including arson, require that the crimes be committed intentionally or knowingly, standards not applied to all counterfeit airbag offenses. HB 38 could result in a life sentence for an unintentional death. Counterfeit airbag offenses involving death would continue to be adequately handled by the current second-degree felony punishment, which can carry up to 20 years in prison.

