

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 244

SPONSOR: Criminal Justice Committee and Senator Campbell

SUBJECT: Airbag Antitheft Act

DATE: March 10, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>White</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The Committee Substitute (CS) for Senate Bill 244 would create the "Airbag Antitheft Act." The CS would define an airbag as an inflatable restraint system in a motor vehicle which activates in the event of a crash, and a salvaged airbag as an airbag which has been removed from a motor vehicle.

The CS would require any person, who is engaged in the business of purchasing, selling, or installing salvaged airbags, to disclose to the consumer that the airbag is salvaged and to maintain a manual or electronic record of the purchase, sale, or installation. This record must be kept for thirty-six months following the transaction, and may be inspected by law enforcement officers or other authorized agency representatives. Moreover, information contained in the record must be provided, upon request, to an insurer or consumer.

The CS would provide that any person who fails to maintain complete and accurate records, to provide information within the record, or to disclose that an airbag is salvaged commits a first degree misdemeanor. Furthermore, any person who knowingly possesses, sells, or installs a stolen uninstalled airbag, any airbag with a missing or altered identification number, or an airbag taken from a stolen motor vehicle commits a third degree felony.

This CS creates an unnumbered section of the Florida Statutes.

II. Present Situation:

Since 1998, federal law has required newly manufactured cars and trucks to have driver and front passenger airbags. According to the Insurance Institute for Highway Safety, over 83 million of the 200 million cars and light trucks on U.S. roads have airbags. Through December 1998, almost 4 million airbags have inflated in vehicle crashes.

Once an airbag has inflated, it cannot be reused and must be replaced with either a new airbag or a not yet inflated airbag salvaged from another vehicle. Proper replacement requires replacement of the airbag, the clock spring under the airbag, and the airbag sensors. Airbag replacement costs range from \$400 to \$1500 each.

Within the past several years, it has become increasingly popular among thieves to steal airbags for resale purposes. Statistics from the National Insurance Crime Bureau reflect that well over 600 airbags are stolen each week nationwide. Airbag theft is growing because airbags are easily removed from vehicles, easily resold in an underground market for \$50 to \$200, and difficult to detect as stolen.

The existing system used by law enforcement to determine whether an airbag is stolen is inadequate. Airbags have serial numbers and the National Crime Information Center (NCIC) records stolen airbags by serial number *if* the number is known. However, given that many victims of airbag theft do not know the serial number, NCIC has fewer than 500 airbag theft records, despite the fact that more than 600 airbags are stolen weekly. Moreover, thieves thwart detection of the few stolen airbags recorded in NCIC by altering or removing the airbag's serial number.

The consequences of airbag theft are far-reaching. Economically, the public suffers because the theft results in higher insurance premiums and because dishonest repair shops may install stolen salvaged airbags while representing that the airbag is new. Furthermore, the public's safety is jeopardized because stolen airbags often do not comply with safety standards and thus, may not properly inflate.

To address the problems associated with airbag theft, many states have enacted or are considering legislation which requires airbag record keeping and which specifically criminalizes airbag theft. Currently, Florida Statutes do not require anyone to maintain records concerning airbags. The Florida Statutes do, however, penalize airbag theft with their general stolen property offenses:

- ◆ Section 812.014, F.S., proscribes theft of property and depending upon the value of the property stolen the offense may be a misdemeanor or felony.
- ◆ Section 812.016, F.S., provides that it is a first degree misdemeanor for a dealer to possess property he or she knew or should have known has removed or altered identifying features.
- ◆ Section 812.019, F.S., provides that it is a second degree felony to knowingly traffic in stolen property.

Section 319.33, F.S., also provides that it is a third degree felony to possess or sell a motor vehicle, mobile home, or a "major component part" which has identification that has been knowingly altered, defaced, or removed; however, an airbag is not covered by the definition of major component parts.

III. Effect of Proposed Changes:

The CS creates the “Airbag Antitheft Act.” The CS defines an airbag as an inflatable restraint system in a motor vehicle which activates in the event of a crash, and a salvaged airbag as an airbag which has been removed from a motor vehicle.

The CS requires any person, who is engaged in the business of purchasing, selling, or installing salvaged airbags, to disclose to the consumer that the airbag is salvaged and to maintain a manual or electronic record of the purchase, sale, or installation. This record must include:

- ◆ the identification number of the salvaged airbag;
- ◆ the vehicle identification number (VIN) of the vehicle from which a salvaged airbag was removed;
- ◆ the name, address, and driver license number or other means of identification of the person from whom the salvaged airbag is purchased; and
- ◆ in the event a salvaged airbag is installed, the VIN of the vehicle into which the airbag is installed.

This record must be maintained for thirty-six months following the transaction, and may be inspected by law enforcement officers or other authorized agency representatives. Moreover, information contained in the record must be provided, upon request, to an insurer or consumer.

The CS provides that it is a first degree misdemeanor for any person to fail to maintain complete and accurate records, provide information within the transaction record to an insurer or consumer, or disclose that an airbag is salvaged. Furthermore, it is a third degree felony for any person to knowingly possess, sell, or install a stolen uninstalled airbag, any airbag with a missing or altered identification number, or an airbag taken from a stolen motor vehicle.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

As a general rule, the Fourth Amendment prohibits warrantless searches of persons or private property. One exception to this warrant requirement, known as the warrantless administrative search, permits officers or agents to conduct a warrantless search of business records, such as

airbag transaction records, if these records are maintained by a “closely regulated business,” and if the statute indicates how to comply with the statute, who may conduct the inspection, and that an inspection will be conducted during normal business hours. *New York v. Burger*, 482 US 691, 96 L Ed 2d 601, 107 S Ct 2636 (1987). For example, the Florida Supreme Court in *Moore v. State*, 442 So.2d 215 (Fla. 1983), upheld the constitutionality of the warrantless administrative search exception contained in s. 812.055, F.S., which provides for the inspection of establishments dealing with motor vehicle parts, because the statute indicated how to comply with the record keeping statutes, and indicated that a law enforcement officer could perform the inspection during normal business hours. *See also Reynolds v. State*, 383 So.2d 228 (Fla. 1980)(upholding s. 319.30, F.S., which requires junkyard owners to keep records of motor vehicles purchased and providing that officers or agents may inspect the records during normal business hours).

The warrantless search of airbag records provided for by the CS should fall within the administrative warrantless search exception. The CS limits the record keeping requirements to a “closely regulated business” (the salvaged airbag business), and specifies the exact information required in the records, how long the records must be maintained and who may search the records and when.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The CS requires salvaged airbag businesses to maintain records associated with the purchase, sale, or installation of airbags. Any costs associated with this requirement should be relatively minimal.

C. Government Sector Impact:

According to the Criminal Justice Estimating Conference, there should be no fiscal impact as a result of this CS.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The CS does not rank the third degree felony offense of knowingly possessing, selling, or installing a stolen airbag or an airbag with a missing or altered identification number in s. 921.0022, F.S., the offense severity ranking chart. Thus, this offense will be scored as a level one on the sentencing guideline scoresheet, and unless the defendant charged has a substantial prior record, level one scoring will not result in a recommended prison sentence.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
