

Department of Legislative Services  
Maryland General Assembly  
2011 Session

FISCAL AND POLICY NOTE

Senate Bill 48 (Senator Kelley)  
Finance and Judicial Proceedings

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**Motor Vehicle Air Bags - Consumer Protection and Reporting Requirements**

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This bill establishes the Air Bag Safety Act which, among other things (1) prohibits a person from installing a salvaged air bag or any object in lieu of a motor vehicle air bag, including a light-manipulating system; and (2) requires a person who installs a new replacement air bag to maintain specified records. The bill further requires a police officer's motor vehicle accident report to indicate whether a vehicle's air bag or seat belt pretensioner deployed during the accident.

A violation is both an unfair or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA's civil and criminal penalty provisions, and a felony in the event a violation contributes to the serious bodily injury or death of another.

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**Fiscal Summary**

**State Effect:** Minimal increase in general fund revenues and expenditures due to the bill's penalty provisions. If the Consumer Protection Division of the Office of the Attorney General receives fewer than 50 complaints per year stemming from the bill, the additional workload can be handled with existing resources.

**Local Effect:** Minimal increase in revenues and expenditures due to the bill's penalty provisions.

**Small Business Effect:** Potential meaningful.

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## Analysis

**Bill Summary:** The bill defines “air bag” as an inflatable occupant restraint system or any component designed to comply with applicable federal standards for use in a motor vehicle and includes any sensors, controllers, and wiring that are part of an air bag restraint system. Under the bill, a “light-manipulating system” means any object or device that modifies (by causing an inaccurate indication) the status or condition of an air bag. “Salvaged air bag” is defined as an original equipment manufacturer nondeployed air bag that has been removed from a motor vehicle for use in another motor vehicle.

The bill prohibits a person from selling, or offering for sale, any device intended to replace an air bag in a motor vehicle if the person knows the device does not conform to applicable federal safety requirements. A person is also precluded from selling any light-manipulating systems that give the false impression that a viable air bag is installed in the vehicle. A person may not otherwise intentionally misrepresent the presence of an air bag in a motor vehicle.

If a person installs a new replacement air bag, the person must maintain written or electronic records for five years that include:

- the vehicle identification number (VIN) of the motor vehicle;
- the name, address, and driver’s license number of the owner of the motor vehicle;
- the name and tax identification number of the air bag supplier;
- the identification number of the installed air bag; and
- the identification number of the previously deployed air bag.

The records must be available for inspection by a Maryland law enforcement officer during normal business hours, and relevant information must be provided to a vehicle’s owner or the vehicle owner’s insurer if requested.

The person must submit an affidavit to the vehicle owner or the owner’s representative that the replacement air bag has been properly installed. A person may not sell or trade a motor vehicle if the person knows that the air bag is inoperable unless the person gives prior written notice to the purchaser.

In the event of a motor vehicle accident, a police officer must indicate on the accident report whether the air bag or seat belt pretensioner of each vehicle deployed. The Motor Vehicle Administration must provide, upon request by a law enforcement agency, accident report forms with sufficient space provided for the disclosure of this detail.

Violation is subject to the enforcement and civil and criminal penalty provisions of MCPA. If a violation contributes to the serious bodily injury or death of another, the person is guilty of a felony (rather than a misdemeanor as under MCPA), and upon conviction, is subject to imprisonment of up to five years, a fine of up to \$5,000, or both in addition to any other penalty provided by law.

**Current Law:** An automotive repair facility, including a body shop, must keep certain records including (1) vehicle owner or customer contact information for each vehicle stored or repaired at the facility; (2) the date a vehicle was left at the facility; (3) the year, model, and when repairs involved a used major component part, the vehicle's VIN; and (4) for a used major component part, proof of ownership or the rights of possession, including the VIN of the component part if available. An air bag is considered to be a major component part.

An unfair or deceptive trade practice under MCPA includes any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer service; the extension of consumer credit; and the collection of consumer debt.

The Consumer Protection Division is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, hold a public hearing, seek an injunction, or bring an action for damages. A merchant who violates MCPA is subject to a fine of up to \$1,000 for the first violation and up to \$5,000 for each subsequent violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

**Background:** The legislation is based on the National Conference of Insurance Legislators (NCOIL) Model Act Regarding Auto Airbag Fraud, adopted by NCOIL's Executive Committee on November 22, 2009.

Air bag systems are considered supplemental restraint systems meant to be used in conjunction with seat belts. According to CARFAX Inc., air bag deployment system fraud is on the rise, with previously damaged vehicles being offered for sale with:

- nonfunctioning, outdated, or inappropriate air bags for the make, model, and year of the vehicle;
- no air bags at all with replacement air bag system covers used to cosmetically repair the air bag compartments;

- inappropriate materials used instead of air bags, ranging from packing peanuts to paper towels; and
- air bags taken from salvaged or junked cars that have not been thoroughly tested to ensure function and safety.

The National Insurance Crime Bureau (NICB) notes that approximately 50,000 air bags are stolen each year, resulting in an annual loss of more than \$50 million to vehicle owners and their insurers. According to NICB, a new air bag retails for approximately \$1,000 and can be purchased on the black market for roughly \$50 to \$200. **Exhibit 1** shows regional automobile theft statistics for 2009.

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**Exhibit 1**  
**National Insurance Crime Bureau**  
**2009 Area Motor Vehicle Theft Statistics**

<u>Rank</u>	<u>Metropolitan Statistical Area</u>	<u>Thefts</u>	<u>Theft Rate</u>
68	Baltimore – Towson (MD)	8,517	316.51
70	Washington-Arlington-Alexandria (DC-VA-MD-WV)	17,171	313.55
137	Philadelphia-Camden-Wilmington (PA-NJ-DE-MD)	13,118	219.80
216	Salisbury (MD)	195	162.26
266	Hagerstown-Martinsburg (MD-WV)	339	127.37
354	Cumberland (MD-WV)	55	55.15

Note: Theft rate is the number of vehicle theft offenses per 100,000 inhabitants using the 2009 U.S. Census Population Estimates

Source: National Insurance Crime Bureau, *2009 Hot Spots Report*

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**State Revenues:** General fund revenues increase minimally as a result of the bill's monetary penalty provision from cases heard in the District Court.

**State Expenditures:** General fund expenditures increase minimally as a result of the bill's incarceration penalty due to more people being committed to Division of Correction (DOC) facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime is expected to be minimal. Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$2,920 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including variable medical care and variable operating costs) is about \$390 per month. Excluding all medical care, the average variable costs total \$170 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of DOC but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

**Local Revenues:** Revenues increase minimally as a result of the bill's monetary penalty provision from cases heard in the circuit courts.

**Local Expenditures:** Expenditures increase minimally as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of DOC but are confined in a local facility. Per diem operating costs of local detention facilities have ranged from \$57 to \$157 per inmate in recent years.

**Small Business Effect:** The change in record retention policies and the requirement to provide vehicle owners with affidavits will result in a minimal increase in expenditures. The prohibition of the installation of salvaged air bags could have a meaningful effect on small businesses. The number of auto repair shops using air bags from salvaged vehicles

is unknown; however, for those shops that do so, the rise in cost caused by using new air bags as replacements could have a meaningful impact on their business. Any higher cost may be passed on to consumers and insurance companies.

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### **Additional Information**

**Prior Introductions:** A similar bill, SB 48 of 2010, received a hearing from the Senate Budget and Taxation Committee but no further action was taken.

**Cross File:** None.

**Information Source(s):** Baltimore, Carroll, Harford, Montgomery, Queen Anne's, and St. Mary's counties; Office of the Attorney General (Consumer Protection Division); Department of General Services; Maryland Insurance Administration; Judiciary (Administrative Office of the Courts); Department of State Police; Maryland Department of Transportation; National Insurance Crime Bureau; Department of Legislative Services

**Fiscal Note History:** First Reader - February 7, 2011  
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