

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-2450
LAA.Legal@akleg.gov
120 4th Street, Room 3


State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 4, 2025

SUBJECT: Questions (HB 74; Work Order No. 34-LS0455\A)

TO: Representative Andrew Gray
Attn: Nate Graham

FROM: Claire Radford 
Legislative Counsel

You requested a legal opinion relating to a number of questions you have regarding HB 74 (Work Order No. 34-LS0455\A).

1. **Is sec. 28.35.248(b)(2) necessary since the *mens rea* for the offense is "knowingly?"** The *mens rea* in sec. 28.35.248(a) for the crime of airbag fraud is either "knowingly" for conduct under sec. 28.35.248(a)(1) and (2) or "intentionally" for conduct under sec. 28.35.248(a)(3). The language in sec. 28.35.248(b)(2) states the section does not apply to "an owner or employee of a motor vehicle dealership or the owner of a vehicle who, before the sale of the vehicle, does not have knowledge that the vehicle's airbag is counterfeit or nonfunctioning[.]" Section 28.35.248(a)(3) only imposes criminal liability if the person "intentionally sells, leases, or trades or offers for sale, lease, or trade, a vehicle that the person knows has" either a replacement airbag that does not comply with federal safety regulations, or a counterfeit or nonfunctioning airbag. Because of this *mens rea* requirement, sec. 28.35.248(a)(3) only imposes criminal liability for the sale of a vehicle with a counterfeit or nonfunctioning airbag if a person *knows* the airbag is counterfeit or nonfunctioning. It is therefore unclear what circumstances sec. 28.35.248(b)(2) carves out from sec. 28.35.248(a)(3).

2. **Would the language in sec. 28.35.248(b)(4) exclude insurance companies from liability under the law, regardless of whether the vehicle they are selling is a wrecked vehicle or a company-owned vehicle?** Section 28.35.248(b)(4) states the crime of airbag fraud does not apply to "an insurance company that sells or otherwise disposes of a vehicle as authorized by law or regulation." This non-applicability would mean that an insurance company would not be criminally liable under sec. 28.35.248 for any sales or dispositions of vehicles that are authorized by law or regulation; the provision does not distinguish between wrecked vehicles or company-owned vehicles.

The non-applicability provision of sec. 28.35.248(b)(4) does not prevent an insurance company from being found liable in a civil suit brought against it relating to the sale or disposition of a wrecked or company-owned vehicle. The ability of a person to recover

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civil damages from an insurance company would be fact-specific.

3. Does the definition of "nonfunctioning" in sec. 28.35.248(d)(3) only apply to replacement airbags? Would it be a crime to sell a car with nonfunctioning airbags if they were original to the vehicle? Under sec. 28.35.248(d)(3), "nonfunctioning" means a replacement airbag and does not cover original airbags that may not work as intended.

I interpret your second question to ask whether it would be a crime to sell a car with airbags that do not work, since under the definition in the bill, "nonfunctioning" would only apply to replacement airbags and therefore would not cover airbags that are original to the vehicle. It would not be a crime to sell a car with airbags that do not work if those airbags were original to the vehicle.

CER:mis

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