

## **PENALTIES FOR TRADEMARK COUNTERFEITING VIOLATIONS**

**House Bills 4728 as enrolled  
Public Act 155 of 1997**

**House Bill 4729 as enrolled  
Public Act 156 of 1997**

**Second Analysis (1-8-98)**

**Sponsor: Rep. Kirk Profit  
House Committee: Commerce  
Senate Committee: Financial Services**

### ***THE APPARENT PROBLEM***

Although current Michigan law prohibits and penalizes the forging and counterfeiting of trademarks, according to testimony before the House Commerce Committee, prosecuting attorneys reportedly are not prosecuting violations of the current law. Legislation has been introduced that would both revise penalties for counterfeiting trademarks and allow the forfeiture of merchandise containing such trademarks.

### ***THE CONTENT OF THE BILLS:***

House Bill 4728 would amend the Michigan Penal Code (MCL 750.263 et al.) to rewrite the provisions dealing with the forging, counterfeiting, and illegal possession of trademarks and to add forfeiture and felony penalties for certain counterfeit trademark violations. House Bill 4729 would add trademark counterfeiting crimes to the list of crimes involving property subject to seizure and forfeiture under the Revised Judicature Act (MCL 600.4701). The bills are tie-barred to each other, and would take effect March 1, 1998.

More specifically, House Bill 4728 would do the following:

Misdemeanor counterfeiting. Currently, any person who "knowingly and willfully" forges or counterfeits "any representation, likeness, similitude, copy or imitation" of "the private stamp, brand, wrapper or label" -- or causes or procures such representations, likenesses, similitudes, copies, or imitations -- usually affixed to, and used by, "any mechanic, druggist, apothecary, or manufacturer" on or in the sale of any goods, wares or merchandise with the intent to deceive or defraud the purchaser or manufacturer of such goods, wares, or merchandise is guilty, upon conviction, of a

misdemeanor punishable by imprisonment ("in the county jail") for not more than one year or by a fine of not more than \$500.

The bill would rewrite this provision to say that a person who willfully counterfeited an identifying mark with the intent to deceive and defraud or to represent an item of property or service as bearing or identified by an authorized identifying mark would be guilty of a misdemeanor, punishable by imprisonment for not more than one year or a fine of not more than \$500, or both.

In addition, the bill would add new provisions saying that a person who willfully delivered, offered to deliver, used, displayed, advertised, or possessed with intent to deliver any item of property or services bearing or identified by a counterfeit mark also would be guilty of a misdemeanor punishable by imprisonment for up to one year and/or a fine of not more than \$500 or three times the aggregate value of the violation, whichever was greater.

Finally, the bill would rewrite the act's provisions governing the misdemeanor possession of trademark dies, plates, labels, etc. Currently, a person who has "any die, plate, engraving, or printed label, brand, stamp, wrapper" (or any likeness of such items) used by "any mechanic or manufacturer, druggist or apothecary" on or in the sale of any goods, wares or merchandise with the intent to use or sell these items in order to help in the sale of imitations of actual such goods, wares, or merchandise also is guilty, upon conviction, of a misdemeanor punishable by imprisonment ("in the county jail") for up to a year or by a fine of up to \$500. The bill would rewrite this section of the penal code to say that a person (a) who possessed a counterfeit mark with intent to use it or deliver it, (b) who possessed a

die, plate, engraving, template, pattern, or material with intent to create a

counterfeit mark, or (c) who possessed an identifying mark without authorization of the mark's owner with the intent to create a counterfeit mark would be guilty of a misdemeanor punishable by imprisonment for not more than one year or by a fine of not more than \$500, or both.

Felony counterfeiting. The bill would make trademark counterfeiting a felony -- punishable by imprisonment for not more than five years and/or a fine of up to \$50,000 or three times the aggregate value of the violation, whichever was greater -- under any of the following circumstances:

-- the person had a prior conviction of state counterfeiting laws here and in other states or of a federal counterfeiting law;

-- the violation involved more than 100 items of property;

-- the aggregate value of the violation was more than \$1,000; or

-- the person wilfully manufactured or produced an item of property bearing or identified by a counterfeit mark.

Rebuttable presumption of intent to deliver counterfeit items. Willful possession of more than 25 items of property bearing or identified by a counterfeit mark would give rise to a rebuttable presumption that the person possessing such items intended to deliver them.

Seizure of property. Any item of property bearing a counterfeit mark would be seized under warrant or incident to a lawful arrest and would be subject to forfeiture under the forfeiture provisions of the Revised Judicature Act. When a court determined that an item of property bore a counterfeit mark, it would have to order the item forfeited and either (1) return the item to the owner for destruction or another disposition or court-approved use, if the owner so requested; or (2) in the absence of such a request by the owner, order the seizing law enforcement agency to destroy the item as contraband, or, with the consent of the owner of the identifying mark, order an alternative disposition or use.

Repealer. The bill would repeal the current provision (Section 265) in the penal code regarding selling goods bearing forged labels, which is a misdemeanor.

### ***FISCAL IMPLICATIONS:***

According to the House Fiscal Agency, the bills would have an indeterminate fiscal impact on state and local units of government, depending on the effect of House

Bill 4728's effect on prosecutions and sentencing for counterfeiting of trademarks. To the extent that jail or

prison terms were increased, House Bill 4728 would increase local or state costs of incarceration; to the extent that it increased collections of fines for violations of the state penal code, it would increase revenues for local libraries. (11-4-97)

### **ARGUMENTS:**

#### ***For:***

The bills would enhance the protection of trademark and logo items in Michigan by increasing the penalties for counterfeiting trademarks and enhancing the likelihood that prosecution will proceed when violations occur. Trademarks and logos are valuable rights held by a number of entities in the state, including state universities and professional sports franchises, and infringement of these rights through the counterfeiting and sale of articles with these trademarks and logos can cause serious economic harm to their rightful owners. Further, whereas legitimate manufacturers pay taxes, counterfeiters do not, so the bills would enhance tax revenues. Finally, counterfeit items may be of inferior quality, or even unsafe, and so the bills would promote the safety and welfare of the general public, who have the right to expect that when they buy a trademarked product that it will meet certain standards.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.