
Senate Fiscal Agency
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SFA**BILL ANALYSIS**

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House Bill 4728 (as reported by the Committee of the Whole)

Sponsor: Representative Kirk Profit

House Committee: Commerce

Senate Committee: Financial Services

CONTENT

The bill would amend the Michigan Penal Code to revise trademark counterfeiting violations and provide for the seizure of items bearing a counterfeit mark. The bill is tie-barred to House Bill 4729 and would take effect on November 1, 1997.

In addition to current penalties for forging or counterfeiting, it would be a misdemeanor to deliver, offer to deliver, use, display, advertise, or possess with intent to deliver any item of property or service with a counterfeit mark. That offense would be punishable by up to one year's imprisonment and/or a maximum fine of \$500 or three times the aggregate value of the violation, whichever was greater. The violation would be a felony, punishable by up to five years' imprisonment and/or a maximum fine of \$50,000 or three times the aggregate value of the violation, whichever was greater, if the person had a prior conviction for counterfeit trademark or false label violations; the violation involved more than 100 items of property; or the aggregate value of the violation were more than \$1,000. That felony penalty also would apply to a person who manufactured or produced an item with a counterfeit mark.

Under the Code, it is a misdemeanor, punishable by up to one year's imprisonment and/or a maximum fine of \$500, to possess a die, plate, engraving, or printed label, brand, stamp, wrapper, or a representative likeness or imitation of a private stamp, wrapper or label with intent to use or sell the device for vending any merchandise imitating or intending to resemble and be sold as legitimate merchandise. Under the bill, that penalty would apply, instead, to a person who possessed a counterfeit mark, with intent to use or deliver it; a die, plate, engraving, template, pattern, or material, with intent to create a counterfeit mark; or an identifying mark, without authorization of the mark's owner and with intent to create a counterfeit mark. Possession of more than 25 items with a counterfeit mark would give rise to a rebuttable presumption that a person possessed those items with intent to deliver them.

MCL 750.263 & 750.264

Legislative Analyst: P. Affholter

FISCAL IMPACT

House Bills 4728 and 4729 would have an indeterminate fiscal impact on State and local government. There are insufficient data at this time to predict how many annual violations could occur and what type of sanction would be imposed for each violation. The maximum penalty established in House Bill 4728 is five years in State prison or a fine of \$50,000. The longest minimum sentence that could be imposed would be two-thirds of five years, or about 3.3 years. The average annual cost for incarcerating an offender for a typical property crime in a low security facility is about \$15,000.

Date Completed: 10-28-97

Fiscal Analyst: K. Firestone

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.