
Senate Fiscal Agency
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SFA**BILL ANALYSIS**

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House Bills 4728 and 4729 (as passed by the House)
Sponsor: Representative Kirk Profit
House Committee: Commerce
Senate Committee: Financial Services

Date Completed: 9-30-97

CONTENT

House Bills 4728 and 4729 would amend the Michigan Penal Code and the Revised Judicature Act (RJA), respectively, to revise the Penal Code's trademark counterfeiting violations and provide for the seizure of items bearing a counterfeit mark.

The bills are tie-barred and include an effective date of September 1, 1997.

House Bill 4728

Counterfeit Mark Offenses

Under the Michigan Penal Code, it is a misdemeanor, punishable by up to one year's imprisonment and/or a maximum fine of \$500, knowingly and willfully to "forge or counterfeit, or cause or procure to be forged or counterfeited, any representation, likeness, similitude, copy or imitation of the private stamp, brand, wrapper or label" of certain enterprises "with intent to deceive or defraud the purchaser or manufacturer" of certain products. Under the bill, that penalty would apply, instead, to a person who willfully counterfeited an identifying mark with intent to deceive or defraud another person or to represent an item of property or service as bearing or identified by an authorized identifying mark.

It would also be a misdemeanor willfully to deliver, offer to deliver, use, display, advertise, or possess with intent to deliver any item of property or service bearing, or identified by, 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 any of the following applied:

- The person had a prior conviction for any of the Code's or the bill's counterfeit trademark or false label violations, or a Federal law or law of another state that substantially corresponded to any of those Michigan violations.
- The violation involved more than 100 items of property.
- The aggregate value of the violation was more than \$1,000.

It 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, willfully to manufacture or produce an item of property bearing or identified by a counterfeit mark.

Willful possession of more than 25 items of property bearing or identified by a counterfeit mark would give rise to a rebuttable presumption that a person possessed those items with intent to deliver them in violation of the bill.

In addition, under the Code, it is a misdemeanor, punishable by up to one year's imprisonment and/or a maximum fine of \$500, to possess "any die, plate, engraving, or printed label, brand, stamp, wrapper, or any representative likeness, similitude, copy or imitation of the private stamp, wrapper or label" used in certain enterprises with intent to use or sell the device for the purpose of aiding or assisting in vending any merchandise, imitating or intending to resemble and be sold as the legitimate merchandise usually associated with that stamp, wrapper, or label. Under the bill, that penalty would apply, instead, to a person who possessed any of the following:

- 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.
- An identifying mark, without authorization of the mark's owner and with intent to create a counterfeit mark.

Seizure

Any item of property bearing a counterfeit mark would have to be seized under warrant or incident to a lawful arrest. Upon final disposition of the case and the court's determination that an item of property bore a counterfeit mark, one of the following would apply to that item:

- Upon request of the owner of the identifying mark, the item would have to be returned to that owner for destruction or other disposition or use approved by the court.
- In the absence of a request by the owner of the identifying mark, the seizing law enforcement agency would have to destroy the item as contraband or the court could order an alternative disposition with the owner's consent.

Definitions

"Aggregate value of the violation" would mean the total value of all items or services bearing or identified by a counterfeit mark and involved in the violation, determined using the defendant's regular or intended selling price for each item or service or, if an item were intended as a component of a finished product, the defendant's regular or intended selling price of the finished product in which the component would be used.

"Counterfeit mark" would mean either of the following:

- A copy or imitation of an identifying mark without authorization by the identifying mark's owner.
- An identifying mark affixed to an item of property or identifying services without authorization by the mark's owner.

“Identifying mark” would mean a trademark, service mark, trade name, name, label, device, design, symbol, or word, in any combination, lawfully adopted or used by a person to identify items of property manufactured, sold, or licensed by the person or services performed by the person.

Repealer

The bill would repeal a section of the Penal Code that makes it a misdemeanor, punishable by up to one year’s imprisonment and/or a maximum fine of \$500, to vend any merchandise featuring a forged or counterfeit stamp, label, or brand (MCL 750.265).

House Bill 4729

Chapter 47 of the RJA provides for the seizure and forfeiture of personal property that is the proceeds, substituted proceeds, or instrumentality of certain specified crimes and real property that is the proceeds or substituted proceeds of those crimes. (Real property that is the primary residence of the spouse or a dependent child of the owner, is not subject to seizure and forfeiture unless the spouse or dependent child had prior knowledge, and consented to the commission, of the crime.)

The bill would add the offenses in House Bill 4728 to the RJA’s definition of “crime” subject to seizure and forfeiture.

MCL 750.263 & 750.264 (H.B. 4728)
600.4701 (H.B. 4729)

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bills 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.

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.