

HOUSE BILL NO. 4728

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending sections 263 and 264 (MCL 750.263 and 750.264); and
to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 263. (1) ~~Forging and counterfeiting trade marks,~~
2 ~~labels, stamps, etc.--Any person who shall knowingly and will-~~
3 ~~fully forge or counterfeit, or cause or procure to be forged or~~
4 ~~counterfeited, any representation, likeness, similitude, copy or~~
5 ~~imitation of the private stamp, brand, wrapper or label, usually~~
6 ~~affixed by any mechanic, druggist, apothecary, or manufacturer~~
7 ~~to, and used by such mechanic, druggist, apothecary or manufac-~~
8 ~~turer on, or in the sale of any goods, wares or merchandise and~~
9 A PERSON WHO WILLFULLY COUNTERFEITS AN IDENTIFYING MARK with
10 intent to deceive or defraud ~~the purchaser or manufacturer of~~

1 ~~any goods, wares or merchandise whatsoever, upon conviction~~
2 ~~thereof, shall be~~ ANOTHER PERSON OR TO REPRESENT AN ITEM OF
3 PROPERTY OR SERVICE AS BEARING OR IDENTIFIED BY AN AUTHORIZED
4 IDENTIFYING MARK IS guilty of a misdemeanor ~~,~~ punishable by
5 imprisonment ~~in the county jail~~ for ~~a term of~~ not more than 1
6 year ~~,~~ or ~~by~~ a fine of not more than ~~500 dollars~~ \$500.00,
7 OR BOTH.

8 (2) EXCEPT AS PROVIDED IN SUBSECTION (3), A PERSON WHO WILL-
9 FULLY DELIVERS, OFFERS TO DELIVER, USES, DISPLAYS, ADVERTISES, OR
10 POSSESSES WITH INTENT TO DELIVER ANY ITEM OF PROPERTY OR SERVICES
11 BEARING, OR IDENTIFIED BY A COUNTERFEIT MARK, IS GUILTY OF A MIS-
12 DEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 1 YEAR OR A
13 FINE OF NOT MORE THAN \$500.00 OR 3 TIMES THE AGGREGATE VALUE OF
14 THE VIOLATION, WHICHEVER IS GREATER, OR BOTH IMPRISONMENT AND A
15 FINE.

16 (3) A PERSON WHO VIOLATES SUBSECTION (2) IS GUILTY OF A
17 FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 5 YEARS OR A
18 FINE OF NOT MORE THAN \$50,000.00 OR 3 TIMES THE AGGREGATE VALUE
19 OF THE VIOLATION, WHICHEVER IS GREATER, OR BOTH IMPRISONMENT AND
20 A FINE, IF ANY OF THE FOLLOWING APPLY:

21 (A) THE PERSON HAS A PRIOR CONVICTION UNDER THIS SECTION,
22 SECTION 264 OR 265A, OR FORMER SECTION 265 OR A LAW OF THE UNITED
23 STATES OR ANOTHER STATE SUBSTANTIALLY CORRESPONDING TO THIS SEC-
24 TION, SECTION 264 OR 265A, OR FORMER SECTION 265.

25 (B) THE VIOLATION INVOLVED MORE THAN 100 ITEMS OF PROPERTY.

26 (C) THE AGGREGATE VALUE OF THE VIOLATION IS MORE THAN
27 \$1,000.00.

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1 (4) A PERSON WHO WILLFULLY MANUFACTURES OR PRODUCES AN ITEM
2 OF PROPERTY BEARING OR IDENTIFIED BY A COUNTERFEIT MARK IS GUILTY
3 OF A FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 5 YEARS
4 OR A FINE OF NOT MORE THAN \$50,000.00 OR 3 TIMES THE AGGREGATE
5 VALUE OF THE VIOLATION, WHICHEVER IS GREATER, OR BOTH IMPRISON-
6 MENT AND A FINE.

7 (5) WILLFUL POSSESSION OF MORE THAN 25 ITEMS OF PROPERTY
8 BEARING OR IDENTIFIED BY A COUNTERFEIT MARK GIVES RISE TO A
9 REBUTTABLE PRESUMPTION THAT THE PERSON POSSESSED THOSE ITEMS WITH
10 INTENT TO DELIVER THEM IN VIOLATION OF SUBSECTION (2).

11 (6) ANY ITEM OF PROPERTY BEARING A COUNTERFEIT MARK SHALL BE
12 SEIZED UNDER WARRANT OR INCIDENT TO A LAWFUL ARREST. AN ITEM OF
13 PROPERTY THAT BEARS A COUNTERFEIT MARK IS SUBJECT TO FORFEITURE IN
14 THE SAME MANNER AS PROVIDED IN SECTIONS 4701 TO 4709 OF THE REVISED
15 JUDICATURE ACT OF 1961, 1961 PA 236, MCL 600.4701 TO 600.4709. UPON
16 DETERMINATION THAT AN ITEM OF PROPERTY BEARS A COUNTERFEIT MARK, THE
17 COURT SHALL ORDER THE ITEM FORFEITED AND SHALL DO 1 OF THE
18 FOLLOWING:

19 (A) IF THE OWNER OF THE IDENTIFYING MARK REQUESTS, RETURN THE
20 ITEM TO THAT OWNER FOR DESTRUCTION OR ANOTHER DISPOSITION OR USE
21 APPROVED BY THE COURT.

22 (B) IN THE ABSENCE OF A REQUEST UNDER SUBDIVISION (A), ORDER
THE SEIZING LAW ENFORCEMENT AGENCY TO DESTROY THE ITEM AS CONTRABAND
OR ORDER AN ALTERNATIVE DISPOSITION OR USE WITH THE CONSENT OF THE
OWNER OF THE IDENTIFYING MARK.

23 (7) AS USED IN THIS SECTION AND SECTION 264:

24 (A) "AGGREGATE VALUE OF THE VIOLATION" MEANS THE TOTAL VALUE
25 OF ALL ITEMS OF PROPERTY OR SERVICES BEARING OR IDENTIFIED BY A
26 COUNTERFEIT MARK AND INVOLVED IN THE VIOLATION, DETERMINED USING
27 THE DEFENDANT'S REGULAR OR INTENDED SELLING PRICE FOR EACH ITEM

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1 OR SERVICE OR, IF AN ITEM OF PROPERTY IS INTENDED AS A COMPONENT
2 OF A FINISHED PRODUCT, THE DEFENDANT'S REGULAR OR INTENDED SELL-
3 ING PRICE OF THE FINISHED PRODUCT IN WHICH THE COMPONENT WOULD BE
4 USED.

5 (B) "COUNTERFEIT MARK" MEANS EITHER OF THE FOLLOWING:

6 (i) A COPY OR IMITATION OF AN IDENTIFYING MARK WITHOUT
7 AUTHORIZATION BY THE IDENTIFYING MARK'S OWNER.

8 (ii) AN IDENTIFYING MARK AFFIXED TO AN ITEM OF PROPERTY OR
9 IDENTIFYING SERVICES WITHOUT AUTHORIZATION BY THE IDENTIFYING
10 MARK'S OWNER.

11 (C) "DELIVER" MEANS TO ACTUALLY OR CONSTRUCTIVELY TRANSFER
12 OR ATTEMPT TO TRANSFER AN ITEM OF PROPERTY FROM 1 PERSON TO
13 ANOTHER, REGARDLESS OF WHETHER THERE IS AN AGENCY RELATIONSHIP.

14 (D) "IDENTIFYING MARK" MEANS A TRADEMARK, SERVICE MARK,
15 TRADE NAME, NAME, LABEL, DEVICE, DESIGN, SYMBOL, OR WORD, IN ANY
16 COMBINATION, LAWFULLY ADOPTED OR USED BY A PERSON TO IDENTIFY
17 ITEMS OF PROPERTY MANUFACTURED, SOLD, OR LICENSED BY THE PERSON
18 OR SERVICES PERFORMED BY THE PERSON.

19 (E) "PERSON" MEANS AN INDIVIDUAL, PARTNERSHIP, CORPORATION,
20 LIMITED LIABILITY COMPANY, ASSOCIATION, UNION, OR OTHER LEGAL
21 ENTITY. FOR PURPOSES OF OWNERSHIP OF AN IDENTIFYING MARK, PERSON
22 INCLUDES A GOVERNMENTAL ENTITY.

23 Sec. 264. ~~Possession of dies, plates, labels, etc., used~~
24 ~~by manufacturer, etc., in sale of goods--Any person who shall~~
25 ~~have in his possession any~~ A PERSON WHO POSSESSES A COUNTERFEIT
26 MARK WITH INTENT TO USE OR DELIVER IT, WHO POSSESSES A die,
27 plate, engraving, ~~or printed label, brand, stamp, wrapper, or~~

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1 ~~any representation, likeness, similitude, copy or imitation of~~
2 ~~the private stamp, wrapper or label, usually affixed by any~~
3 ~~mechanic or manufacturer, druggist or apothecary to, and used by~~
4 ~~such mechanic, druggist, apothecary or manufacturer on, or in the~~
5 ~~sale of any goods, wares or merchandise, — TEMPLATE, PATTERN, OR~~
6 MATERIAL with intent to ~~use or sell the said die, plate, engrav-~~
7 ~~ing or printed stamp, label or wrapper, for the purpose of aiding~~
8 ~~or assisting in any way whatever, in vending any goods, wares or~~
9 ~~merchandise, in imitation of, or intended to resemble and be sold~~
10 ~~for the goods, wares and merchandise of such mechanic, druggist,~~
11 ~~apothecary or manufacturer, contrary to the provisions of the~~
12 ~~next preceding section shall, upon conviction thereof, be — CREATE~~
13 A COUNTERFEIT MARK, OR WHO POSSESSES AN IDENTIFYING MARK WITHOUT
14 AUTHORIZATION OF THE IDENTIFYING MARK'S OWNER AND WITH INTENT TO
15 CREATE A COUNTERFEIT MARK IS guilty of a misdemeanor —, punish-
16 able by imprisonment ~~in the county jail of —~~ FOR not more than 1
17 year —, or ~~by~~ A fine of not more than ~~500 dollars —~~ \$500.00,
18 OR BOTH.

19 Enacting section 1. Section 265 of the Michigan penal code,
20 1931 PA 328, MCL 750.265, is repealed.

[Enacting section 2. This amendatory act takes effect November
1, 1997.]

21 Enacting section [3]. This amendatory act does not take
22 effect unless House Bill No. 4729
23 of the 89th Legislature is enacted into
24 law.