

Act No. 155
Public Acts of 1997
Approved by the Governor
December 22, 1997
Filed with the Secretary of State
December 22, 1997
EFFECTIVE DATE: March 1, 1998

STATE OF MICHIGAN
89TH LEGISLATURE
REGULAR SESSION OF 1997

**Introduced by Reps. Profit, Alley, Schroer, Brater, Griffin, Dalman, Richner, Middaugh, Rhead, Mans, Gernaat, Walberg, Schermesser and Thomas
Reps. Anthony, Bodem, Callahan, Cherry, Dobronski, Gagliardi, Gustafson, Hale, Hammerstrom, Hood, Kukuk, Law, Owen, Prusi and Vaughn named co-sponsors**

ENROLLED HOUSE BILL No. 4728

AN ACT to amend 1931 PA 328, entitled "An act to revise, consolidate, codify and add to the statutes relating to crimes; to define crimes and prescribe the penalties therefor; to provide for restitution under certain circumstances; to provide for the competency of evidence at the trial of persons accused of crime; to provide immunity from prosecution for certain witnesses appearing at such trials; and to repeal certain acts and parts of acts inconsistent with or contravening any of the provisions of this act," 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:

Sec. 263. (1) A person who willfully counterfeits 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 is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$500.00, or both.

(2) Except as provided in subsection (3), a person who willfully delivers, offers to deliver, uses, displays, advertises, or possesses with intent to deliver any item of property or services bearing, or identified by a counterfeit mark, is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$500.00 or 3 times the aggregate value of the violation, whichever is greater, or both imprisonment and a fine.

(3) A person who violates subsection (2) is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$50,000.00 or 3 times the aggregate value of the violation, whichever is greater, or both imprisonment and a fine, if any of the following apply:

(a) The person has a prior conviction under this section, section 264 or 265a, or former section 265 or a law of the United States or another state substantially corresponding to this section, section 264 or 265a, or former section 265.

(b) The violation involved more than 100 items of property.

(c) The aggregate value of the violation is more than \$1,000.00.

(4) A person who willfully manufactures or produces an item of property bearing or identified by a counterfeit mark is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$50,000.00 or 3 times the aggregate value of the violation, whichever is greater, or both imprisonment and a fine.

(5) Willful possession of more than 25 items of property bearing or identified by a counterfeit mark gives rise to a rebuttable presumption that the person possessed those items with intent to deliver them in violation of subsection (2).

(6) Any item of property bearing a counterfeit mark shall be seized under warrant or incident to a lawful arrest. An item of property that bears a counterfeit mark is subject to forfeiture in the same manner as provided in sections 4701

to 4709 of the revised judicature act of 1961, 1961 PA 236, MCL 600.4701 to 600.4709. Upon determination that an item of property bears a counterfeit mark, the court shall order the item forfeited and shall do 1 of the following:

(a) If the owner of the identifying mark requests, return the item to that owner for destruction or another disposition or use approved by the court.

(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.

(7) As used in this section and section 264:

(a) "Aggregate value of the violation" means the total value of all items of property 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 of property is 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.

(b) "Counterfeit mark" means either of the following:

(i) A copy or imitation of an identifying mark without authorization by the identifying mark's owner.

(ii) An identifying mark affixed to an item of property or identifying services without authorization by the identifying mark's owner.

(c) "Deliver" means to actually or constructively transfer or attempt to transfer an item of property from 1 person to another, regardless of whether there is an agency relationship.

(d) "Identifying mark" means 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.

(e) "Person" means an individual, partnership, corporation, limited liability company, association, union, or other legal entity. For purposes of ownership of an identifying mark, person includes a governmental entity.

Sec. 264. A person who possesses a counterfeit mark with intent to use or deliver it, who possesses a die, plate, engraving, template, pattern, or material with intent to create a counterfeit mark, or who possesses an identifying mark without authorization of the identifying mark's owner and with intent to create a counterfeit mark is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$500.00, or both.

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

Enacting section 2. This amendatory act takes effect March 1, 1998.

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

This act is ordered to take immediate effect.



Clerk of the House of Representatives.



Secretary of the Senate.

Approved _____

Governor.