

# HOUSE BILL REPORT

## EHB 1007

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### As Amended by the Senate

**Title:** An act relating to counterfeiting.

**Brief Description:** Changing provisions relating to counterfeited intellectual property.

**Sponsors:** Representatives Ballasiotes, O'Brien, Radcliff, Benson, Quall, Mitchell, Cairnes and Morris.

**Brief History:**

**Committee Activity:**

Criminal Justice & Corrections: 1/20/99, 1/27/99 [DPA].

**Floor Activity:**

Passed House: 2/10/99, 95-.

Senate Amended.

Passed Senate: 4/12/99, 46-0.

#### Brief Summary of Bill

- Selling counterfeited items is a misdemeanor if it is the offender's first counterfeiting offense.
- Selling counterfeited items is a gross misdemeanor if the offender has been previously convicted of a counterfeiting offense or the violation involves between 100-1,000 items or the total retail value of all the items is between \$1,000 and \$10,000.
- Selling counterfeited items is a class C felony if the offender has been previously convicted of two or more offenses and the violation involves more than 1,000 items or the total retail value of all items is \$10,000 or more.

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HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

**Majority Report:** Do pass as amended. Signed by 7 members: Representatives Ballasiotes, Republican Co-Chair; O'Brien, Democratic Co-Chair; Cairnes, Republican Vice Chair; Lovick, Democratic Vice Chair; B. Chandler; Constantine and Kagi.

**Staff:** Yvonne Walker (786-7841).

## **Background:**

Definitions. Counterfeiting is the use or forgery of a genuine label, trademark, term, design, device, or form of advertisement of any person who has lawfully filed for record in the Office of the Secretary of State, or who has the exclusive right to the item.

Criminal Offense. Any person who willfully uses or displays or has in his possession with intent to use or display any forged or counterfeited representation, likeness, similitude, copy or imitation of any genuine label, trademark, term, design, device, or form of advertisement, so filed or protected, or any die, plate, stamp or other device for manufacturing a forged item is guilty of a gross misdemeanor.

Any person who knowingly sells, displays or advertises, or has in his possession with intent to sell, any type of goods, mixtures, preparations or compounds having a false label, trademark, term, design, device, or form of advertisement is guilty of a misdemeanor.

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## **Summary of Bill:**

Definitions. Counterfeit mark is defined as any unauthorized reproduction or copy of (intellectual) property or any label affixed to any item knowingly sold, offered for sale, manufactured, or distributed, or identifying services offered or rendered, without the authority of the owner of the intellectual property. A state or federal certificate of registration of any intellectual property is evidence of true ownership.

Intellectual property means any trademark, service mark, trade name, label, term, device, design, or work adopted or used by a person to identify that person's goods or services. Persons who register their "trade name" with the Secretary of State have exclusive use rights to their particular trade name and it may not be used or counterfeited by any means. However, trade names which are registered with the Department of Licensing for the sole purpose of carrying on, conducting or transacting business may be used by other people or businesses and exempt from the counterfeit statute.

Retail value means the counterfeiter's regular selling price for the item or service bearing or identified by the counterfeit mark. In the case of items bearing a counterfeit mark which are components of a finished product, the retail value will be the counterfeiter's regular selling price of the finished product on or in which the component would be utilized.

Criminal Offense. Counterfeiting is a misdemeanor if it is the offender's first counterfeiting offense.

Counterfeiting is a gross misdemeanor if:

- The offender has been previously convicted of a counterfeiting offense; or
- The violation involves more than 100 but fewer than 1,000 items bearing a counterfeit mark or the total retail value of all items bearing a counterfeit mark or the total retail value of all items bearing, or services identified by, a counterfeit mark is more than \$1,000 but less than \$10,000.

Counterfeiting is a class C felony if:

- The offender has been previously convicted of two or more offenses and the violation involves the manufacture or production of items bearing counterfeit marks; or
- The offender has been previously convicted of two or more offenses and the violation involves 1,000 or more items bearing a counterfeit mark or the total retail value of all items bearing, or services identified by, a counterfeit mark is \$10,000 or more.

The quantity or retail value of items or services must include the aggregate quantity or retail value of all items bearing, or services identified by, every counterfeit mark the offender manufactures, uses, displays, advertises, distributes, possesses, or possesses with intent to sell.

Any person guilty of counterfeiting will be fined an amount up to three times the retail value of the items bearing, or services identified by, a counterfeit mark, unless extenuating circumstances are shown by the defendant. The penalties are cumulative and do not affect any other civil and criminal penalties provided by law.

All items bearing a counterfeit mark, and all personal property employed or used in connection with counterfeiting, including, but not limited to, any items, objects, tools, machines, equipment, instruments, or vehicles of any kind, shall be seized by any law enforcement officer. Upon the request of the intellectual property owner, all seized items bearing a counterfeit mark must be released to the intellectual property owner for destruction or disposition. If the property owner does not request release of seized items bearing a counterfeit mark, all items must be destroyed unless the intellectual property owner consents to another disposition.

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**EFFECT OF SENATE AMENDMENT(S):** A provision is included that requires a prosecutor to prosecute any case involving the manufacturing, production or distribution of a counterfeited item that "endangers the health and safety of others." An offender convicted of one of the underlying offenses is guilty of a seriousness level IV, class C felony.

The following provisions are eliminated:

Definitions. The entire definition section is eliminated that defined such items as "counterfeit mark," "intellectual property," "trade name," and "retail value."

Criminal Offense. The following provisions are eliminated that created and defined the criminal sentences and fines for counterfeiting:

- Misdemeanor if it is the offender's first counterfeiting offense.
- Gross misdemeanor if the offender had previously been convicted of a counterfeiting offense; or the violation involved 100 - 1,000 items bearing a counterfeit mark or the total retail value is between \$1,000- \$10,000.
- Class C felony if the offender has been previously convicted of 2 or more offenses; or the violation involves 1,000 or more items bearing a counterfeit mark or the total retail value is \$10,000 or more.
- All Violators were also fined in an amount up to 3 times the retail value of the items bearing a counterfeit mark in addition to the criminal sentence.

Seized Property. The provision is eliminated that required that all seized counterfeited items to be released to the intellectual property owner for destruction or disposition.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** The manufacture and sale of counterfeit goods in the United States is a serious and growing problem and one that will increasingly have a negative impact on Washington if it is not addressed with the passage of this bill. Currently, companies such as Microsoft have lost approximately 130,000 jobs or about \$5.3 billion in lost wages due to such counterfeiting as "software pirating." This, in turn, has resulted in a loss of approximately \$1 billion in lost tax revenue to our state. Counterfeiting is a lucrative and growing business that offers high profits and low risks, however, it significantly impacts the income of Washington's private sector, local jobs, and precious local and state tax revenue.

Several examples of counterfeiting items, many found here in Washington, include:

- Counterfeit-label infant formula was found in Safeway and Park n' Save grocery stores. Some babies who drank this formula developed rashes and seizures.
- Counterfeit Head & Shoulders shampoo was found in legitimate retail stores. The shampoo contained bacteria, posing a risk of infection to users with weak immune systems.
- Counterfeit Tommy Hilfiger watches were sold on the open market. The problem was that the real Tommy Hilfiger designer never produced a designer watch. When the company found out about the counterfeit watches and how lucratively they were

selling to the naive public, the company decided to start designing and manufacturing legitimate watches.

- Counterfeit brake pads were being sold to many customers, including many police departments for their vehicles. The fake counterfeit brakes were made out of wood chips instead of the normal steel, and could not stop an automobile nor a small golf cart.

Five other states, in addition to Washington, will introduce legislation this year that seeks to significantly increase the penalties for counterfeiting of products. Recognizing the scope of the problem, 22 states have already adopted penalties to deter unscrupulous counterfeiters. If enacted this year, Washington will be the 23rd state to enact a felony counterfeit statute.

**Testimony Against:** None.

**Testified:** (In support) John Bliss, International Anti-counterfeiting Coalition; Anne Murphy, Microsoft Corporation, and Jerry Howe, Pacific Rim Investigations, Inc.