

FINAL BILL REPORT

EHB 1007

C 322 L 99

Synopsis as Enacted

Brief Description: Changing provisions relating to counterfeited intellectual property.

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

House Committee on Criminal Justice & Corrections
Senate Committee on Judiciary

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.

Summary: 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 are 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. Changes are made to the classification of the crime of counterfeiting. 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.

In addition, a prosecutor must 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.

Votes on Final Passage:

House 95 0
Senate 46 0 (Senate amended)
House (House refused to concur)
Senate (Senate receded)
Senate 45 0 (Senate amended)
House 96 0 (House concurred)

Effective: July 25, 1999