

SENATE BILL REPORT

EHB 1007

As Reported By Senate Committee On:
Judiciary, April 1, 1999

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: Judiciary: 3/24/99, 4/1/99 [DPA].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended.

Signed by Senators Heavey, Chair; Kline, Vice Chair; Goings, Hargrove, Haugen, Johnson, McCaslin, Roach, Thibaudeau and Zarelli.

Staff: Harry Steinmetz (786-7421)

Background: The crime of counterfeit intellectual property entails the unauthorized use of any label, trademark, or other form of identification ("identifier") that associates the product being sold with a person, corporation, association, or union. The identifier must be either filed with the Secretary of State's office or the person, corporation, association, or union must have an exclusive right to use it under the laws of the United States.

Currently, a person who uses, displays, or possesses a genuine identifier without authority, or willfully forges the identifier with intent to use or display, is guilty of a gross misdemeanor. Additionally, a person who knowingly sells, displays, advertises, or possesses with intent to sell items marked with an unauthorized identifier is guilty of a misdemeanor.

Summary of Amended Bill: A new class C felony is created for anyone who manufacturers, produces or distributes counterfeit items that, by their intended use, endangers the health or safety of others. Counterfeit items are defined in the currently existing code sections. The crime is ranked at level IV on the seriousness scale and is amended into the definition of a crime against persons.

Amended Bill Compared to Original Bill: The original bill had created a graduated sentencing scheme that would have increased the punishment for counterfeiters based on the number of prior convictions, the number of counterfeit items or the retail value of the counterfeit items. The sentencing scheme is removed from the bill and the class C felony for endangering the health and safety of others is created. The definitions section, amendments to the counterfeiting statutes and forfeiture of the counterfeit items are removed from the original bill.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: Counterfeiting is a multi-billion dollar business and, in many cases, is operated by organized crime to launder drug money. Counterfeiters are selling everything from t-shirts to brake shoes. They sell the items at stores and swap meets or wholesale the counterfeit items to unsuspecting retailers. Microsoft estimates that the state of Washington loses over \$719 million in combined lost wages (3700 jobs totaling \$200 million in wages), tax revenues (\$41 million) and retail sales from software piracy alone. As other states have passed tougher anti-counterfeiting measures, the counterfeiters and the sellers of counterfeit goods have moved into states with weak anti-counterfeiting laws. Government agencies are particularly vulnerable to counterfeit software because the lowest bid always wins the contract. The agency is left with software it cannot use, but cannot recoup its loss. There have been persons who have made defective products and labeled them as brand names putting the public at risk.

Testimony Against: None.

Testified: PRO: Jerry Howe, Pacific Rim Investigations; Tim Cranton, Microsoft.