



THOMAS J. VILSACK  
GOVERNOR

**OFFICE OF THE GOVERNOR**

SALLY J. PEDERSON  
LT. GOVERNOR

April 27, 2004

The Honorable Chester Culver  
Secretary of State  
State Capitol Building  
L O C A L

Dear Mr. Secretary:

I hereby transmit:

**House File 2395**, an Act creating the criminal offense of intellectual property counterfeiting, and providing a penalty.

The above House File is hereby approved this date.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Vilsack", written over the printed name.

Thomas J. Vilsack  
Governor

TJV:jmc

cc: Secretary of the Senate  
Chief Clerk of the House





HOUSE FILE 2395

AN ACT

CREATING THE CRIMINAL OFFENSE OF INTELLECTUAL PROPERTY  
COUNTERFEITING, AND PROVIDING A PENALTY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. 714.26 INTELLECTUAL PROPERTY  
COUNTERFEITING.

1. DEFINITIONS. As used in this section unless the  
context otherwise requires:

a. "Counterfeit mark" means any unauthorized reproduction  
or copy of intellectual property, or intellectual property  
affixed to any item knowingly sold, offered for sale,  
manufactured, or distributed, or identifying services offered  
or rendered, without authority of the owner of the  
intellectual property.

b. "Intellectual property" means any trademark, service  
mark, trade name, label, term, device, design, or word adopted  
or used by a person to identify the items or services of the  
person.

c. "Retail value" means the highest value of an item  
determined by any reasonable standard at the time the item  
bearing or identified by a counterfeit mark is seized. If a  
seized item bearing or identified by a counterfeit mark is a  
component of a finished product, "retail value" also means the  
highest value, determined by any reasonable standard, of the  
finished product on which the component would have been  
utilized. The retail value shall be the retail value of the  
aggregate quantity of all items seized which bear or are  
identified by a counterfeit mark. For purposes of this  
paragraph, reasonable standard includes but is not limited the  
to market value within the community, actual value,  
replacement value, or the counterfeiter's regular selling

price for the item bearing or identified by a counterfeit mark, or the intellectual property owner's regular selling price for an item similar to the item bearing or identified by a counterfeit mark.

2. CRIMINAL OFFENSE. A person who knowingly manufactures, produces, displays, advertises, distributes, offers for sale, sells, possesses with intent to sell or distributes any item or knowingly provides service bearing or identified by a counterfeit mark commits intellectual property counterfeiting.

a. A person commits intellectual property counterfeiting in the first degree if any of the following apply:

(1) The person is manufacturing or producing an item bearing or identified by a counterfeit mark.

(2) The offense involves more than one thousand items bearing or identified by a counterfeit mark or the total retail value of such items is equal to or greater than ten thousand dollars.

(3) The offense is a third or subsequent violation of this section.

Intellectual property counterfeiting in the first degree is a class "C" felony.

b. A person commits intellectual property counterfeiting in the second degree if any of the following apply:

(1) The offense involves more than one hundred items but does not involve more than one thousand items bearing or identified by a counterfeit mark or the total retail value of such items is equal to or greater than one thousand dollars but less than ten thousand dollars.

(2) The offense is a second violation of this section.

Intellectual property counterfeiting in the second degree is a class "D" felony.

c. All intellectual property counterfeiting which is not intellectual property counterfeiting in the first degree or second degree is intellectual property counterfeiting in the third degree. Intellectual property counterfeiting in the third degree is an aggravated misdemeanor.

3. EVIDENCE. Any state or federal certificate of registration of any intellectual property shall be prima facie evidence of ownership of the intellectual property in dispute.

4. SEIZURE AND DISPOSITION. Any items bearing or identified by a counterfeit mark, and all personal property,

including but not limited to any items, objects, tools, machines, equipment, instrumentalities, or vehicles used in connection with a violation of this section, shall be seized by any law enforcement agency.

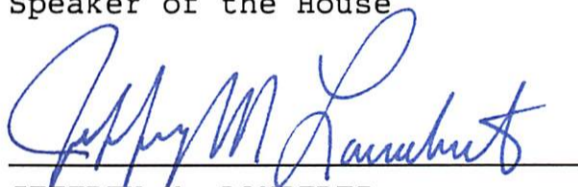
a. All seized personal property shall be disposed of in accordance with section 809.5 or as provided in paragraph "b".

b. Upon request of the intellectual property owner, all seized items bearing or identified by a counterfeit mark shall be released by the seizing agency to the intellectual property owner for destruction or disposition. If the intellectual property owner does not request release of the seized items, the items shall be destroyed unless the intellectual property owner consents to another disposition.



CHRISTOPHER C. RANTS

Speaker of the House



JEFFREY M. LAMBERTI

President of the Senate

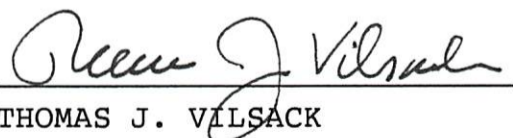
I hereby certify that this bill originated in the House and is known as House File 2395, Eightieth General Assembly.



MARGARET THOMSON

Chief Clerk of the House

Approved April 27, 2004



THOMAS J. VILSACK

Governor