

FEB 27 2004
Place On Calendar

HOUSE FILE 2395
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HF 2280)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to counterfeit labels and trademarks, and
2 providing penalties.

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

HF 2395

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1 Section 1. Section 714.8, subsection 8, Code 2003, is
2 amended to read as follows:

3 8. Manufactures or possesses any false or counterfeit
4 label or trademark, with the intent that it be placed on
5 merchandise to falsely identify its origin or quality, or who
6 sells any such false or counterfeit label or trademark with
7 the representation that it may be so used.

8 Sec. 2. Section 714.8, Code 2003, is amended by adding the
9 following new subsection:

10 NEW SUBSECTION. 8A. Sells or possesses with the intent to
11 sell any merchandise with a counterfeit label or trademark
12 without proper authorization from the owner of the label or
13 trademark.

14 **EXPLANATION**

15 This bill relates to the definition of the criminal offense
16 of a fraudulent practice by using a counterfeit label or
17 trademark.

18 The bill provides that a person who sells or possesses with
19 the intent to sell any merchandise with a counterfeit label or
20 trademark without proper authorization from the owner of the
21 label or trademark commits a fraudulent practice. The bill
22 also provides that a person who manufactures or possesses any
23 false or counterfeit trademark, with the intent that it be
24 placed on merchandise to falsely identify its origin or
25 quality, or who sells any such false or counterfeit trademark,
26 commits a fraudulent practice. Current law provides that a
27 person who manufactures or possesses any false or counterfeit
28 label, or who sells any such false or counterfeit label,
29 commits a fraudulent practice.

30 A fraudulent practice is punishable by a varying degree of
31 penalties. The penalty varies from a class "C" felony to a
32 simple misdemeanor depending on the value of the money or
33 property involved or on the number of prior fraudulent
34 practice convictions of the offender.

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HOUSE FILE 2395

H-8227

1 Amend House File 2395 as follows:

2 1. By striking everything after the enacting
3 clause and inserting the following:

4 "Section 1. NEW SECTION. 714.26 INTELLECTUAL
5 PROPERTY COUNTERFEITING.

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

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

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

18 c. "Retail value" means the highest value of an
19 item determined by any reasonable standard at the time
20 the item bearing or identified by a counterfeit mark
21 is seized. If a seized item bearing or identified by
22 a counterfeit mark is a component of a finished
23 product, "retail value" also means the highest value,
24 determined by any reasonable standard, of the finished
25 product on which the component would have been
26 utilized. The retail value shall be the retail value
27 of the aggregate quantity of all items seized which
28 bear or are identified by a counterfeit mark. For
29 purposes of this paragraph, reasonable standard
30 includes but is not limited the to market value within
31 the community, actual value, replacement value, or the
32 counterfeiter's regular selling price for the item
33 bearing or identified by a counterfeit mark, or the
34 intellectual property owner's regular selling price
35 for an item similar to the item bearing or identified
36 by a counterfeit mark.

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

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

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

49 (2) The offense involves more than one thousand
50 items bearing or identified by a counterfeit mark and

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1 the total retail value of such items is equal to or
2 greater than ten thousand dollars.

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

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

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

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

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

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

20 c. All intellectual property counterfeiting which
21 is not intellectual property counterfeiting in the
22 first degree or second degree is intellectual property
23 counterfeiting in the third degree. Intellectual
24 property counterfeiting in the third degree is an
25 aggravated misdemeanor.

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

30 4. SEIZURE AND DISPOSITION. Any items bearing or
31 identified by a counterfeit mark, and all personal
32 property, including but not limited to any items,
33 objects, tools, machines, equipment,
34 instrumentalities, or vehicles used in connection with
35 a violation of this section, shall be seized by any
36 law enforcement agency.

37 (1) All seized personal property shall be disposed
38 of in accordance with section 809.5 or as provided in
39 subparagraph (2).

40 (2) Upon request of the intellectual property
41 owner, all seized items bearing or identified by a
42 counterfeit mark shall be released by the seizing
43 agency to the intellectual property owner for
44 destruction or disposition. If the intellectual
45 property owner does not request release of the seized
46 items, the items shall be destroyed unless the
47 intellectual property owner consents to another
48 disposition."

49 2. Title page, by striking lines 1 and 2, and
50 inserting the following: "An Act creating the

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Page 3

- 1 criminal offense of intellectual property
- 2 counterfeiting, and providing a penalty."

By SCHICKEL of Cerro Gordo
HEATON of Henry

H-8227 FILED MARCH 11, 2004

HOUSE FILE 2395

H-8253

- 1 Amend the amendment, H-8227, to House File 2395 as
- 2 follows:

- 3 1. Page 1, line 50, by striking the word "and"
- 4 and inserting the following: "or".
- 5 2. Page 2, line 12, by striking the word "and"
- 6 and inserting the following: "or".

By EICHHORN of Hamilton

H-8253 FILED MARCH 16, 2004
ADOPTED

HOUSE FILE 2395
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HF 2280)

(As Amended and Passed by the House March 16, 2004)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act creating the criminal offense of intellectual property
2 counterfeiting, and providing a penalty.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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All New Language

1 Section 1. NEW SECTION. 714.26 INTELLECTUAL PROPERTY
2 COUNTERFEITING.

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

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

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

15 c. "Retail value" means the highest value of an item
16 determined by any reasonable standard at the time the item
17 bearing or identified by a counterfeit mark is seized. If a
18 seized item bearing or identified by a counterfeit mark is a
19 component of a finished product, "retail value" also means the
20 highest value, determined by any reasonable standard, of the
21 finished product on which the component would have been
22 utilized. The retail value shall be the retail value of the
23 aggregate quantity of all items seized which bear or are
24 identified by a counterfeit mark. For purposes of this
25 paragraph, reasonable standard includes but is not limited the
26 to market value within the community, actual value,
27 replacement value, or the counterfeiter's regular selling
28 price for the item bearing or identified by a counterfeit
29 mark, or the intellectual property owner's regular selling
30 price for an item similar to the item bearing or identified by
31 a counterfeit mark.

32 2. CRIMINAL OFFENSE. A person who knowingly manufactures,
33 produces, displays, advertises, distributes, offers for sale,
34 sells, possesses with intent to sell or distributes any item
35 or knowingly provides service bearing or identified by a

1 counterfeit mark commits intellectual property counterfeiting.

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

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

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

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

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

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

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

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

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

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

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

32 4. SEIZURE AND DISPOSITION. Any items bearing or
33 identified by a counterfeit mark, and all personal property,
34 including but not limited to any items, objects, tools,
35 machines, equipment, instrumentalities, or vehicles used in

1 connection with a violation of this section, shall be seized
2 by any law enforcement agency.

3 (1) All seized personal property shall be disposed of in
4 accordance with section 809.5 or as provided in subparagraph
5 (2).

6 (2) Upon request of the intellectual property owner, all
7 seized items bearing or identified by a counterfeit mark shall
8 be released by the seizing agency to the intellectual property
9 owner for destruction or disposition. If the intellectual
10 property owner does not request release of the seized items,
11 the items shall be destroyed unless the intellectual property
12 owner consents to another disposition.

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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 _____, 2004

THOMAS J. VILSACK
Governor