

# Senate Study Bill 1096

SENATE/HOUSE FILE \_\_\_\_\_  
BY (PROPOSED ATTORNEY  
GENERAL BILL)

Passed Senate, Date \_\_\_\_\_ Passed House, 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:  
4 TLSB 1053DP 80  
5 jm/pj/5

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1 1 Section 1. NEW SECTION. 714.26 INTELLECTUAL PROPERTY  
1 2 COUNTERFEITING.  
1 3 1. DEFINITIONS. As used in this section unless the  
1 4 context otherwise requires:  
1 5 a. "Counterfeit mark" means any unauthorized reproduction  
1 6 or copy of intellectual property, or intellectual property  
1 7 affixed to any item knowingly sold, offered for sale,  
1 8 manufactured, or distributed, or identifying services offered  
1 9 or rendered, without authority of the owner of the  
1 10 intellectual property.  
1 11 b. "Intellectual property" means any trademark, service  
1 12 mark, trade name, label, term, device, design, or word adopted  
1 13 or used by a person to identify the items or services of the  
1 14 person.  
1 15 c. "Retail value" means the counterfeiter's regular  
1 16 selling price for the item bearing or identified by a  
1 17 counterfeit mark. If an item bearing a counterfeit mark is a  
1 18 component of a finished product, the retail value shall be the  
1 19 counterfeiter's regular selling price of the finished product  
1 20 on or which the component would be utilized. The retail value  
1 21 shall be the aggregate quantity of all items seized which are  
1 22 bearing or identified by a counterfeit mark.  
1 23 2. CRIMINAL OFFENSE. A person who willfully manufactures,  
1 24 produces, uses, displays, advertises, distributes, offers for  
1 25 sale, sells, possesses with intent to sell or distributes any  
1 26 item or willfully provides service bearing or identified by a  
1 27 counterfeit mark commits intellectual property counterfeiting.  
1 28 a. A person commits intellectual property counterfeiting  
1 29 in the first degree if any of the following apply:  
1 30 (1) The person is manufacturing or producing an item  
1 31 bearing or identified by a counterfeit mark.  
1 32 (2) The offense involves more than one thousand items  
1 33 bearing or identified by a counterfeit mark and the total  
1 34 retail value of such items is equal to or greater than ten  
1 35 thousand dollars.  
2 1 (3) The offense is a third or subsequent violation of this  
2 2 section.  
2 3 Intellectual property counterfeiting in the first degree is  
2 4 a class "C" felony.  
2 5 b. A person commits intellectual property counterfeiting  
2 6 in the second degree if any of the following apply:  
2 7 (1) The offense involves more than one hundred items but  
2 8 does not involve more than one thousand items bearing or  
2 9 identified by a counterfeit mark and the total retail value of  
2 10 such items is equal to or greater than one thousand dollars  
2 11 but less than ten thousand dollars.  
2 12 (2) The offense is a second violation of this section.  
2 13 Intellectual property counterfeiting in the second degree  
2 14 is a class "D" felony.  
2 15 c. All intellectual property counterfeiting which is not  
2 16 intellectual property counterfeiting in the first degree or  
2 17 second degree is intellectual property counterfeiting in the  
2 18 third degree. Intellectual property counterfeiting in the  
2 19 third degree is an aggravated misdemeanor.  
2 20 3. EVIDENCE. Any state or federal certificate of  
2 21 registration of any intellectual property shall be prima facie  
2 22 evidence of ownership of the intellectual property in dispute.  
2 23 4. SEIZURE AND DISPOSITION. Any items bearing or

2 24 identified by a counterfeit mark, and all personal property,  
2 25 including but not limited to any items, objects, tools,  
2 26 machines, equipment, instrumentalities, or vehicles used in  
2 27 connection with a violation of this section, shall be seized  
2 28 by any law enforcement agency.

2 29 (1) All seized personal property shall be disposed of in  
2 30 accordance with section 809.5 or as provided in subparagraph  
2 31 (2).

2 32 (2) Upon request of the intellectual property owner, all  
2 33 seized items bearing or identified by a counterfeit mark shall  
2 34 be released by the seizing agency to the intellectual property  
2 35 owner for destruction or disposition. If the intellectual  
3 1 property owner does not request release of the seized items,  
3 2 the items shall be destroyed unless the intellectual property  
3 3 owner consents to another disposition.

#### 3 4 EXPLANATION

3 5 This bill creates the criminal offense of intellectual  
3 6 property counterfeiting and provides a penalty.

3 7 The bill provides that any person who willfully  
3 8 manufactures, produces, uses, displays, advertises, sells,  
3 9 distributes, or possesses with intent to sell or distribute  
3 10 any item or provides services, bearing or identified by a  
3 11 counterfeit mark commits intellectual property counterfeiting.  
3 12 "Counterfeit mark" is defined under the bill to mean any  
3 13 unauthorized reproduction or copy of intellectual property.  
3 14 "Intellectual property" means any trademark, service mark,  
3 15 trade name, label, term, device, design, or word adopted or  
3 16 used by a person to identify the goods or services of the  
3 17 person.

3 18 The bill provides that a person commits intellectual  
3 19 property counterfeiting in the first degree if the person  
3 20 manufactures or produces the counterfeit items, or the offense  
3 21 involves 1,000 or more counterfeited items under a retail  
3 22 value equal to or greater than \$10,000, or the person has at  
3 23 least two prior violations of this bill. Intellectual  
3 24 property counterfeiting in the first degree is a class "C"  
3 25 felony.

3 26 The bill provides that a person commits intellectual  
3 27 property counterfeiting in the second degree if the offense  
3 28 involves more than 100 but does not involve more than 1,000  
3 29 counterfeited items and the total retail value of such items  
3 30 is equal to or greater than \$1,000 but less than \$10,000, or  
3 31 the person has a prior intellectual property counterfeiting  
3 32 violation. Intellectual property counterfeiting in the second  
3 33 degree is a class "D" felony.

3 34 All intellectual property counterfeiting which is not  
3 35 intellectual property counterfeiting in the first degree or  
4 1 second degree is intellectual property counterfeiting in the  
4 2 third degree. Intellectual property counterfeiting in the  
4 3 third degree is an aggravated misdemeanor.

4 4 If counterfeited items are seized for a violation of this  
4 5 bill, the intellectual property owner may request that all  
4 6 seized items bearing or identified by a counterfeit mark be  
4 7 released by the seizing agency to the intellectual property  
4 8 owner for destruction or disposition. If the intellectual  
4 9 property owner does not request release of the seized items,  
4 10 the items shall be destroyed unless the intellectual property  
4 11 owner consents to another disposition. The bill also provides  
4 12 that any personal property seized in addition to the  
4 13 counterfeited items seized be disposed of pursuant to Code  
4 14 chapter 809.

4 15 A class "C" felony is punishable by confinement for no more  
4 16 than 10 years and a fine of at least \$1,000 but not more than  
4 17 \$10,000. A class "D" felony is punishable by confinement for  
4 18 no more than five years and a fine of at least \$750 but not  
4 19 more than \$7,500. An aggravated misdemeanor is punishable by  
4 20 confinement for no more than two years and a fine of at least  
4 21 \$500 but not more than \$5,000.

4 22 LSB 1053DP 80

4 23 jm/pj/5.1