

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 311

SHORT TITLE: Counterfeit Trademarks

SPONSOR(S): Representative Brawley

FISCAL IMPACT: Expenditures: Increase () Decrease ()
)
 Revenues: Increase () Decrease ()
)
 No Impact (X)
 No Estimate Available ()

FUNDS AFFECTED: General Fund () Highway Fund ()
 Local Fund () Other Fund ()

BILL SUMMARY: "TO MAKE USE OF COUNTERFEIT TRADEMARK A CRIME IN NORTH CAROLINA." Enacts new G.S. 80-11.1 to make unauthorized use of a registered mark a crime. If the goods or services on which the mark is used have a retail value not exceeding \$3000, the offense is a Class 2 misdemeanor; \$3,000 to \$10,000, a Class F felony; and in excess of \$10,000, a Class D felony. Makes possession of more than 15 identical items bearing a counterfeit mark a presumption that possessor intended to sell items. Makes knowing possession of tools for producing a counterfeit mark a Class D felony. Gives law enforcement agents of Department of Secretary of State statewide jurisdiction for purposes of enforcing law. Amends G.S. 80-12 to provide that the owner of a mark may bring a civil action against a person making unauthorized use of the mark for either treble the profits derived from the unauthorized use of statutory damages of not less than \$500 or more than \$100,000, with costs and attorney's fees.

EFFECTIVE DATE: December 1, 1995

PRINCIPAL DEPARTMENT(S)/PROGRAM(S) AFFECTED: Judicial Branch; Department of Correction

FISCAL IMPACT

<u>FY</u> 95-96	<u>FY</u> 96-97	<u>FY</u> 97-98	<u>FY</u> 98-99
<u>FY</u> 99-00			

EXPENDITURES

RECURRING

NON-RECURRING

REVENUES/RECEIPTS

NO FISCAL IMPACT

RECURRING

NON-RECURRING

POSITIONS:

ASSUMPTIONS AND METHODOLOGY: Judicial Branch

The proposed legislation makes the unauthorized use of a registered mark a crime in North Carolina. Under the proposed legislation, "any person who knowingly and wilfully uses or causes to be used a counterfeit mark on or in connection with goods or services intended for sale or resale shall be punished as follows:"

<u>Retail Value of Goods/Services</u>	<u>Offense Level</u>
\$3000 or less	Class 2 misdemeanor
\$3000 to \$10,000	Class F felony
\$10,000 or more	Class D felony

The Implementation of Similar Legislation: South Carolina enacted similar legislation which resulted in a relocation of the counterfeit merchandisers to North Carolina. The Secretary of State's Office believes that the counterfeiters currently selling their goods in North Carolina will quickly relocate upon receiving word that the law has changed, and a few arrests have been made.

Investigation: Under the proposed legislation, the Secretary of State's Office, on their own or in conjunction with local law enforcement agencies, would gather evidence, regarding counterfeit merchandisers, and refer the evidence to the proper district attorneys. The Secretary of State's Office would enforce the law with their current personnel as they would not expect a substantial increase in criminal cases.

Trials: Based on information provided by several district attorneys, it is estimated that few of those charged with selling counterfeit merchandise would request a jury trial; and of those that would request jury trials, few would be eligible for state-paid defense counsel. Based on the small number of cases predicted to result from the proposed legislation, the Administrative Office of the Courts believes that the Judicial Branch could absorb the costs associated with the proposed legislation.

ASSUMPTIONS AND METHODOLOGY: Department of Correction

The North Carolina Sentencing and Policy Advisory Commission, based on the information provided by the Administrative Office of the Courts and the Secretary of State's Office, projects a small increase in the prison population as a result of the proposed legislation. The anticipated small increase in the number of state prison inmates could be handled within current Department of Correction resources.

SOURCES OF DATA: Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION
733-4910

PREPARED BY: Whitney A. Obrig
Jim Mills

APPROVED BY: Tom Covington **TomC**

DATE: March 20, 1995

[FRD#003]

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UPDATED VERSION - JUNE 29, 1995

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 311 (Committee Substitute 6/26/95)

SHORT TITLE: Counterfeit Trademarks

SPONSOR(S): Representative Brawley

FISCAL IMPACT:	Expenditures:	Increase ()	Decrease ()
)			
	Revenues:	Increase ()	Decrease ()
)			
	No Impact (X)		

BILL SUMMARY: "TO MAKE USE OF COUNTERFEIT TRADEMARK A CRIME IN NORTH CAROLINA." Enacts new G.S. 80-11.1 to make unauthorized use of a registered mark a crime. If the goods or services on which the mark is used have a retail value not exceeding \$3000, the offense is a Class 2 misdemeanor; \$3,000 to \$10,000, a Class F felony; and in excess of \$10,000, a Class D felony. Makes possession of more than 15 identical items bearing a counterfeit mark a presumption that possessor intended to sell items. Makes knowing possession of tools for producing a counterfeit mark a Class D felony. Gives law enforcement agents of Department of Secretary of State statewide jurisdiction for purposes of enforcing law. Amends G.S. 80-12 to provide that the owner of a mark may bring a civil action against a person making unauthorized use of the mark for either treble the profits derived from the unauthorized use of statutory damages of not less than \$500 or more than \$100,000, with costs and attorney's fees.

AMENDMENTS/COMMITTEE SUBSTITUTES-APRIL 5, 1995-DAILY BULLETIN #41

House committee substitute replaces 1st edition. Revises definition of "retail sales value" as the "value computed by multiplying the number of items having a counterfeit mark used thereon or in connection therewith, by the retail price at which a similar item having a mark used thereon or in connection therewith, the use of which is authorized by the owner, is offered for sale to the public." Sets out definition of retail sales value if there is no similar item. Adds to criminal offenses the possession of goods having a counterfeit mark used on them. Changes presumption of intent to sell from possession of 15 to 25 items having counterfeit mark. Changes from Class D to Class G felony the knowing use of device to produce such a mark. Provides that attorneys employed by Secretary of State are available to prosecute criminal cases when requested by a district attorney and the Secretary approves. Rewrites G.S. 80-12 so it provides that a violation of G.S. 75-1.1 (unfair or deceptive trade practice). Changes effective date from December 1, 1995 to October 1, 1995.

AMENDMENTS/COMMITTEE SUBSTITUTES-JUNE 26, 1995-DAILY BULLETIN #87

Senate committee substitute replaces 2nd edition. Increases penalty for violations with respect to goods or services with a retail value of \$3000 to \$10,000 from Class I to a Class H felony. Increases from Class H to Class G felony the penalty for violations with respect to goods or services with a retail value of more than \$10,000, and the penalty for use of or possession with intent to make use of devices used to produce counterfeit trademarks. Adds provision permitting those charged with enforcing bill to have fictitious licenses, license tags and registrations for purpose of conducting criminal investigations. Makes criminal provisions effective December 1, 1995.

EFFECTIVE DATE: Section 1 of this act becomes effective December 1, 1995, applies to offenses committed on or after that date. Section 2 of this act becomes effective October 1, 1995, and applies to causes of action arising on or after that date.

PRINCIPAL DEPARTMENT(S)/PROGRAM(S) AFFECTED: Judicial Branch; Department of Correction

FISCAL IMPACT

	<u>FY</u> 95-96	<u>FY</u> 96-97	<u>FY</u> 97-98	<u>FY</u> 98-99	
EXPENDITURES					RECURRING
NON-RECURRING					NO FISCAL IMPACT

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TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION

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PREPARED BY: Whitney A. Obrig
Jim Mills

APPROVED BY: Tom Covington **TomC**

DATE: June 29, 1995

[FRD#003]



Signed Copy Located in the NCGA Principal Clerk's Offices