

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2007**

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**SENATE DRS35032-MC-8 (12/19)**

Short Title:   Modify Counterfeit Sales Prosecutions. (Public)

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Sponsors:    Senator Kinnaird.

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Referred to:

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1                                   A BILL TO BE ENTITLED  
2 AN ACT TO MODIFY PROSECUTIONS OF COUNTERFEIT SALES.

3 The General Assembly of North Carolina enacts:

4                   **SECTION 1.** G.S. 80-11.1 reads as rewritten:

5 "**§ 80-11.1. Criminal use of counterfeit trademark.**

6       (a) For purposes of this section:

7           (1) "Counterfeit mark" means a mark that is used in connection with the  
8               sale or offering for sale of goods or services that are identical to or  
9               substantially indistinguishable from the goods or services with which  
10              the mark is used or registered, and the use of which is likely to cause  
11              confusion, mistake, or deception, with the use occurring without  
12              authorization of the:

13           a.    Owner of the registered mark, and is identical to or substantially  
14               indistinguishable from a mark that is registered on the principal  
15               register of the United States Patent and Trademark Office or  
16               with the Trademark Division of the Department of the Secretary  
17               of State; or

18           b.    Owner of the unregistered mark and is identical to or  
19               substantially indistinguishable from symbols, signs, emblems,  
20               insignias, trademarks, trade names, or words protected by  
21               section 110 of the Amateur Sports Act of 1978 (Title 36, U.S.C.  
22               § 380).

23       (2) "Retail sales value" means the value computed by multiplying the  
24       number of items having a counterfeit mark used thereon or in  
25       connection therewith, by the retail price at which a similar item having  
26       ~~a mark used thereon or in connection therewith, the use of which is~~

1                   ~~authorized by the owner,~~ the item having a counterfeit mark is offered  
2                   for sale to the public.

3           (b) Any person who knowingly and willfully (i) uses or causes to be used a  
4 counterfeit mark on or in connection with goods or services intended for sale or (ii) has  
5 possession, custody, or control of goods having a counterfeit mark used thereon or in  
6 connection therewith, that are intended for sale, shall be punished as follows:

7           (1) If the goods or services having a counterfeit mark used thereon or in  
8 connection therewith, or on or in connection with which the person  
9 intends to use a counterfeit mark, have a retail sales value not  
10 exceeding three thousand dollars (\$3,000), the person is guilty of a  
11 Class 2 misdemeanor;

12           (2) If the goods or services having a counterfeit mark used thereon or in  
13 connection therewith, or on or in connection with which the person  
14 intends to use a counterfeit mark, have a retail sales value exceeding  
15 three thousand dollars (\$3,000) but not exceeding ten thousand dollars  
16 (\$10,000), the person is guilty of a Class I felony; and

17           (3) If the goods or services having a counterfeit mark used thereon or in  
18 connection therewith, or on or in connection with which the person  
19 intends to use a counterfeit mark, have a retail sales value exceeding  
20 ten thousand dollars (\$10,000), the person is guilty of a Class H  
21 felony.

22 The possession, custody, or control of more than 25 items having a counterfeit mark  
23 used thereon or in connection therewith creates a presumption that the person having  
24 possession, custody, or control of the items intended to sell those items.

25           (c) Any person who knowingly (i) uses any object, tool, machine, or other device  
26 to produce or reproduce a counterfeit mark or (ii) has possession, custody, or control of  
27 any object, tool, machine, or device with intent to produce or reproduce a counterfeit  
28 mark, is guilty of a Class H felony.

29           (d) Any personal property, including any item, object, tool, machine, device, or  
30 vehicle of any kind, employed as an instrumentality in the commission of, or in aiding  
31 or abetting in the commission of a violation of subsection (b) or (c) of this section, is  
32 subject to seizure and forfeiture and shall be disposed of in accordance with the  
33 provisions of Article 2 of Chapter 15 of the General Statutes.

34           (d1) A criminal proceeding for a violation of this section may be commenced only  
35 after the proper district attorney has issued a cease and desist letter that has been  
36 actually received by the party to be charged with the violation, and the party has failed  
37 to cease and desist. In a criminal proceeding for a violation of this section, the court  
38 shall take judicial notice of the cease and desist letter and shall not require the district  
39 attorney to prove its authenticity.

40           (e) For purposes of enforcing this section, the Department of the Secretary of  
41 State's law enforcement agents have statewide jurisdiction. These law enforcement  
42 agents may assist local law enforcement agencies in their investigations and may initiate  
43 and carry out, in coordination with local law enforcement agencies, investigations of  
44 violations of this section. These law enforcement agents have all of the powers and

1 authority of law enforcement officers when executing arrest warrants. These agents  
2 shall be authorized to have fictitious licenses, license tags, and registrations, pursuant to  
3 G.S. 20-39(h) or G.S. 14-250, for the purpose of conducting criminal investigations.

4 (f) The Secretary of State may refer any available evidence concerning violations  
5 of this section to the proper district attorney, who may, with or without such a reference,  
6 institute the appropriate criminal proceedings.

7 The attorneys employed by the Secretary of State shall be available to prosecute or  
8 assist in the prosecution of criminal cases when requested to do so by a district attorney  
9 and the Secretary of State approves.

10 (g) Pursuant to an agreement between the departments, the Secretary of State  
11 may refer any available evidence concerning violations of this section to the Secretary  
12 of Revenue for purposes of determining the obligations of the violators of this section to  
13 the State under the provisions of Chapter 105 of the General Statutes."

14 **SECTION 2.** This act becomes effective December 1, 2007, and applies to  
15 offenses committed on or after that date. Prosecutions for offenses committed before the  
16 effective date of this act are not abated or affected by this act, and the statutes that  
17 would be applicable but for this act remain applicable to those prosecutions.