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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/18/09

SPONSOR Cote LAST UPDATED \_\_\_\_\_ HB 723

SHORT TITLE No Manufacture & Sale of Counterfeit Goods SB \_\_\_\_\_

ANALYST Ortiz

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
NFI	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB92 and HB93

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		Minimal	Minimal	Minimal	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)

Attorney General's Office (AGO)

Indian Affairs Department (IAD)

Corrections Department (NMCD)

### SUMMARY

#### Synopsis of Bill

House Bill 723 creates a new crime of knowingly manufacturing, possessing, or selling counterfeit goods. The bill provides that if a person possesses more than 75 counterfeit labels, marks, or goods, intent to sell is presumed. The penalties for violating this crime range from a misdemeanor for possession of 100 or fewer goods valued at \$2.5 thousand or less, up to a second degree felony when the violation involves reckless disregard for another that results in great bodily harm or death.

## **FISCAL IMPLICATIONS**

Both AOC, NMCD and AGO suggest some impacts to its budget but likely minimal impact.

## **SIGNIFICANT ISSUES**

Regarding one region of importance to the state of New Mexico, Mexico, as reported by the Institute for the Protection of Intellectual Property and Legal Commerce, a Mexican trade group, is considered to be the fourth-largest producer and consumer of counterfeited and pirated products, a fact that poses a significant challenge for companies and professionals that have to deal with the issue. In addition, counterfeiting causes huge economic losses not only for Intellectual Property (IP) owners but to all related legitimate businesses. Counterfeiting affects tax revenues of governments, discourages foreign investments, deceives consumers, dissuades the creation of employment, poses an incredible threat to health and safety of the general population, and deters innovation and growth in much-needed areas that would help not only the economy but several key areas of country development.

As explained by the Indian Affairs Department, Advocates agree that legal actions are one of the most effective ways to deal with the prevalence of counterfeiting. The Act is a first step for the state to counteract instances of counterfeiting. The state would also benefit from collaborating with other state and federal agencies in the same regard.

HB 723 would require the element of knowingly violating the intent provisions of the Act, including a *per se* violation for persons in possession, custody or control of more than seventy-five counterfeit goods that would satisfy the requisite intent provision of the Act.

The Act would create:

- a misdemeanor class for violations involving one hundred or fewer counterfeit goods, or having a total value of two thousand five hundred dollars (\$2,500) or less;
- fourth degree felony for violations involving more than one hundred and less than one thousand counterfeit goods, or having a total value of more than two thousand five hundred dollars (\$2,500) but less than ten thousand dollars (\$10,000); or a third or subsequent conviction;
- third degree felony for violations involving one thousand or more counterfeit goods, or having a total value of ten thousand dollars (\$10,000) or more; or the reckless disregard for the person of another that results in injury to another person; and
- a second degree felony for the reckless disregard for the person of another that results in great bodily harm to or the death of another person.

The Act would also subject counterfeit goods to forfeiture pursuant to the provisions of the Forfeiture Act of §§ 31-27-1 through 8 of NMSA 1978.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Relates to HB92, which amends the Indian Arts & Crafts Sales Act at Sec. 30-33-9 (NMSA 1978) to enhance the penalties associated with misrepresentation, false or fraudulent sales of Indian handmade or authentic Indian arts and crafts.

Relates to HB93, which appropriates \$100 thousand from the General Fund to Attorney General's Office for the purpose of investigation and prosecution of the New Mexico Indian Arts and Crafts Sales Act, including for staff, the costs and expenses of enforcement, and for consumer education.

**TECHNICAL ISSUES**

Clarification of the term "mark" is recommended by the AGO. "Mark" is obviously intended to reach trademarks, but it is uncertain if other kinds of marks, e.g., benchmarks on jewelry, are intended to be covered. Use of more specific terms like "trademark," "benchmark," "union label" or reference to the definition of "mark" found in NMSA 1978, Section 57-3B-3C(C) might add clarity.

**OTHER SUBSTANTIVE ISSUES**

The bill is designed to address the growing problem of counterfeit goods in the market place that are available at flea markets, street sales, and over the Internet. It is similar to the current prohibition against sale of mislabeled Indian goods, NMSA 1978, 30-33-7, and copyright infringement in the recording industry, NMSA 1978, 30-16B-4.

EO/svb