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## FISCAL IMPACT REPORT

SPONSOR Stewart ORIGINAL DATE 03/01/11  
LAST UPDATED \_\_\_\_\_ HB 524  
SHORT TITLE Prohibit Counterfeit Goods SB \_\_\_\_\_  
ANALYST Daly

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

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>	NFI	\$39.3	\$78.6	\$117.9	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts with HB 501.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
Attorney General's Office (AGO)  
Regulation & Licensing Department (RLD)  
New Mexico Corrections Department (NMCD)

### SUMMARY

#### Synopsis of Bill

House Bill 524 adds a section to the Criminal Code which creates a new crime of knowingly manufacturing, possessing or selling counterfeit labels, marks or goods. Intent to sell is presumed upon possession of more than 75 counterfeit labels, marks or goods. The penalties range from a misdemeanor for possession of up to one hundred goods or goods valued at \$2500 or less up to a second degree felony when the violation involves reckless disregard for another that results in great bodily harm or death, and include enhanced penalties for a third or subsequent offense.

Counterfeit labels, marks or goods are subject to forfeiture under the provisions of the Forfeiture Act.

### FISCAL IMPLICATIONS

The AOC notes that any fiscal impact on the judiciary would be proportional to enforcement of

this law and commenced prosecutions for these new crimes. The NMCD predicts it is not likely that many offenders will be convicted of this new crime, and thus there would be only minimal fiscal impact on the Department. As a result, the cost estimates set out in the table above are based on the assumption that only one offender is convicted of a felony and sentenced to imprisonment each year. Those estimates were derived from data provided by the AOC and the NMCD, and include costs incurred for prosecution, defense and judicial time assuming the case goes to trial, plus an average of \$7,500 for jury costs, as well as the costs of incarceration (but not probation or parole supervision costs).

As NMCD cautions, it is always difficult to predict or estimate the ultimate effect of any new crime bill with any certainty. NMCD has no control over who is prosecuted or convicted of this crime, and it is always possible that a larger number of offenders will be convicted of this new crime in any given year. There is no appropriation in the bill to the MNCD to cover any of the Department's increased incarceration and probation/parole costs associated with the creation of this new crime.

## **SIGNIFICANT ISSUES**

The AGO points out one ambiguous and conflicting provision in HB 524:

Section 1(C) (3) does not clarify the meaning of “third or subsequent conviction”. It is not clear whether the 2 prior convictions must be felonies or misdemeanors or either. It is not clear if third or subsequent convictions should be sentenced pursuant to the habitual offender enhancements in NMSA 1978, § 31-18-17. Further, a third conviction is a fourth degree felony, which carries the same penalty as an initial fourth degree felony conviction if the value of the counterfeit goods is between \$2500 and \$10,000 (see Section 1(C) (2)).

The RLD calls attention to several existing statutes which may impose criminal penalties different from those set in HB 524 for the same or similar conduct:

1. Relabeling of watches constitutes a petty misdemeanor under Failure to Label Second-hand watches (NMSA 1978, § 30-16-14), but would be at least a misdemeanor under the bill;
2. Mislabeling imitation as Indian-made articles may constitute a second degree felony under False Dealing in Indian-made articles (§§ 30-33-1 through 14), but would be no more than a third degree felony under the bill;
3. Sale of illegal devices is a misdemeanor (but a subsequent conviction is a fourth degree felony) under the Telecommunication Service Theft Act (§§ 30-33A-1 through 5), but could be a third degree felony under the bill;
4. More than seven violations at one time of labeling requirements in the sale of recordings constitutes a fourth degree felony under the Unauthorized Recording Act (§§ 30-16B-1 through 9, specifically 30-16B-4), but would be a misdemeanor under the bill;
5. Possession of an imitation controlled substance is a fourth degree felony under the Imitation Controlled Substances Act (§§ 30-31A-1 through 15, specifically § 30-31A-4), but could be a misdemeanor under the bill;
6. Mislabeling of tobacco products is a misdemeanor under the Tobacco Products Act (§§ 30-49-1 through 12), but could be a fourth degree felony under the bill; and
7. Misrepresentation of alcoholic beverages may be a misdemeanor or a fourth degree felony

under the Liquor Control Act (§ 60-7A-14), but may only be a misdemeanor under this bill.

Finally, the NMCD reports that if numerous new crime bills such as this one are passed, NMCD will eventually reach its rated capacity for its prison population. At that point, NMCD and/or the State will have three options: house inmates out of state, consider early release of inmates in accordance with the Corrections Population Control Act or other applicable state laws, or build more prisons or add space to existing prisons. All of these options have negative consequences. Early release of inmates jeopardizes public safety, and housing inmates out of state or building new prisons is expensive.

### **PERFORMANCE IMPLICATIONS**

The courts are participating in performance based budgeting. This bill may have an impact on the measures of the district courts in the following areas: cases disposed of as a percentage of cases filed; and percentage change in case filings by type.

The NMCD states that this bill would negatively impact its ability to perform prison-related and probation/parole supervision services (with current levels of staffing) if there were more than just a few additional convictions.

### **ADMINISTRATIVE IMPLICATIONS**

The NMCD comments that if the bill were to substantially increase the inmate population or probation/parole caseloads, it would increase the workloads of current prison and probation/parole staff.

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

The RLD notes that HB 524 conflicts with HB 501 Prohibiting the Alteration of Airbags and Sale, Installation or Misrepresentation of Counterfeit Airbags, which imposes different criminal penalties than HB 524 does for the same or similar conduct.

### **AMENDMENTS**

Based on agency responses, Subsection(C)(3) of Section 1 might be amended to clarify its intent and to address its conflict with Subsection (C)(2). Additionally, the bill might be amended to address the relationship between HB 524 and existing statutes imposing criminal penalties for certain specific acts that are also within the scope of the bill as described in the Significant Issues section above.

MD/mew