

MAINE STATE LEGISLATURE

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CRIMINAL JUSTICE

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**STATE OF MAINE
SENATE
119TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to S.P. 775, L.D. 2174, Bill, "An Act to Protect the Citizens of Maine from the Dangers of Counterfeit Consumer Goods"

Amend the bill by striking out everything after the title and before the summary and inserting in its place the following:

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, law enforcement agencies and retail merchants in this State have seen increasing evidence that counterfeit goods are being brought into this State to be sold to unsuspecting consumers; and

Whereas, the sale of these counterfeit goods reduces the opportunity of legitimate merchants to compete in the marketplace; and

Whereas, the sale of these counterfeit goods is often undertaken by unlicensed individuals and results in revenue lost to the State; and

Whereas, the use of counterfeit Universal Price Code, "UPC," labels is also increasing in this State and results in revenue lost to the State and to its merchants; and

Whereas, the public health and well-being of the citizens of this State may be threatened by the unauthorized sale of certain consumer goods, such as infant formulas, cosmetics, personal care

COMMITTEE AMENDMENT

2 products, nonprescription drugs and medical devices, at unused
property sales or flea markets; and

4 **Whereas**, no formal study has been done to evaluate the
extent of these practices that threaten the public health and
6 safety and the need for governmental response or oversight; and

8 **Whereas**, in the judgment of the Legislature, these facts
create an emergency within the meaning of the Constitution of
10 Maine and require the following legislation as immediately
necessary for the preservation of the public peace, health and
12 safety; now, therefore,

14 **Be it enacted by the People of the State of Maine as follows:**

16 **Sec. 1. 17-A MRSA §901, sub-§3, ¶B**, as enacted by PL 1975, c.
499, §1, is amended to read:

18 B. "Mislabeled" means having a label or trademark varying
20 from the standard of truth and disclosure in labeling
prescribed by statute or lawfully promulgated administrative
22 regulation, or if none, as set by established commercial
usage. "Mislabeled" includes but is not limited to
24 counterfeiting or the unauthorized reproducing of a
trademark.

26 **Sec. 2. 17-A MRSA §901, sub-§3-A** is enacted to read:

28 **3-A.** A commodity or item bearing marks in violation of this
30 section or personal property, including, but not limited to,
tools, machines, equipment, instrumentalities or vehicles of any
32 kind, employed or used in connection with the violation is
contraband and may be seized by a law enforcement officer. A
34 person convicted of a violation of this section forfeits to the
State all rights, privileges, interests and claims to property
36 seized under this subsection.

38 **Sec. 3. Commission established.** The Commission to Study
Counterfeiting and the Unauthorized Sale of Consumer Goods and
40 Labels, referred to in this section as the "commission," is
established.

42 **1. Commission membership.** The commission consists of 9
44 members as follows:

46 A. Two Senators, one of whom is a member of the minority
party, appointed by the President of the Senate;

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2 B. Two members of the House of Representatives, one of whom
is a member of the minority party, appointed by the Speaker
of the House;

4
6 C. One member representing a labor organization, appointed
by the President of the Senate;

8 D. One member representing state law enforcement, appointed
by the President of the Senate;

10
12 E. One member representing the district attorneys of the
State, appointed by the Speaker of the House;

14 F. One member representing municipal law enforcement,
appointed by the Speaker of the House; and

16
18 G. One member representing retail merchants, appointed by
the Speaker of the House.

20 **2. Chairs.** The first Senate member named is the Senate
chair and the first House member named is the House chair.

22
24 **3. Appointments.** Appointments to the commission must be
made within 30 days of the effective date of this Act.
Appointing authorities shall notify the Executive Director of the
26 Legislative Council once the selections have been made. The
chairs of the commission shall call and convene the first meeting
28 of the commission no later than July 1, 2000.

30 **4. Duties.** The commission shall invite the participation
of experts and interested parties, gather information and request
32 necessary data from public and private entities in order to:

34 A. Examine the effect of counterfeit goods in the State,
including the effect of counterfeit Universal Price Code
36 labels on state revenue, losses to merchants and
manufacturers of legitimate goods and the impact on
38 consumers;

40 B. Examine the sale of consumer products at unused property
sales and flea markets, including whether these sales are
42 authorized and the potentially harmful consequences of the
sale of these products; and

44
46 C. Examine whether current state law acts as an appropriate
deterrent or imposes sufficient sanctions for such conduct.

48 **5. Staff assistance.** Upon approval of the Legislative
Council, the Office of Policy and Legal Analysis shall provide
50 necessary staffing services to the commission.

2 Goods and Labels and to print
the required report.

4 **Emergency clause.** In view of the emergency cited in the
preamble, this Act takes effect when approved.'

6
8 Further amend the bill by inserting at the end before the
summary the following:

10 **FISCAL NOTE**

12 **2000-01**

14 **APPROPRIATIONS/ALLOCATIONS**

16 General Fund \$3,600

18
20 This bill includes a General Fund appropriation of \$3,600 in
fiscal year 2000-01 for the Legislature for the per diem and
22 expenses of legislative members and other eligible members of the
Commission to Study Counterfeiting and the Unauthorized Sale of
24 Consumer Goods and Labels and to print the required report.

26 The additional costs associated with providing staffing
assistance to the commission during the interim between
28 legislative sessions can be absorbed by the Legislature utilizing
existing budgeted resources. If an extension of the reporting
30 deadline is granted and the commission requires staffing
assistance during the legislative session, the Legislature may
32 require an additional General Fund appropriation to contract for
staff services.

34 The additional costs associated with participating as a
36 member of the commission can be absorbed by the Department of
Public Safety and the Department of the Attorney General
utilizing existing budgeted resources.

38
40 This bill may increase prosecutions for Class D crimes. If
a jail sentence is imposed, the additional costs to the counties
42 are estimated to be \$83.36 per day per prisoner. The number of
prosecutions that may result in a jail sentence and the resulting
44 costs to the county jail system are expected to be insignificant.

46 The additional workload and administrative costs associated
with the minimal number of new cases filed in the court system
48 can be absorbed within the budgeted resources of the Judicial
Department. The collection of additional fines may increase
50 General Fund revenue by minor amounts.'

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SUMMARY

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This amendment replaces the bill. The amendment amends provisions dealing with deceptive business practices under the fraud provisions of the Maine Criminal Code. The amendment specifies that "mislabeled" for the purposes of the deceptive business practices law includes counterfeiting or unauthorized reproducing of a trademark.

10

This amendment adds to the deceptive business practices law a seizure provision that specifies that any item that bears marks in violation of that law or any property that was used in or can be connected to the violation is contraband and may be seized by a law enforcement officer.

16

The amendment establishes the Commission to Study Counterfeiting and the Unauthorized Sale of Consumer Goods and Labels. The commission's duties include examining the effect of counterfeit goods in this State, including the effect of counterfeit Universal Price Code labels on state revenue, losses to merchants and manufacturers of legitimate goods and the impact on consumers; examining the sale of consumer products at unused property sales and flea markets, including whether these sales are authorized and the potentially harmful consequences of the sale of these products; and examining whether current state law acts as an appropriate deterrent or imposes sufficient sanctions for such conduct. The commission shall report its findings and any recommended legislation to the First Regular Session of the 120th Legislature by December 1, 2000.

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This amendment also adds an appropriation and a fiscal note.