



HOUSE COMMITTEE ON APPROPRIATIONS
2009-10 Legislative Session

FISCAL NOTE

HOUSE BILL: 727 PRINTER'S NO: 3144 PRIME SPONSOR: Youngblood

FISCAL IMPACT SUMMARY	FY 2010/11	FY 2011/12
Expenditure Increase/(Decrease):		
General Fund	*See Analysis	*See Analysis

OVERVIEW:

House Bill 727 amends the Crimes Code (Title 18) to strengthen current anti-counterfeiting laws by specifying the criteria for trademark counterfeiting in terms of gradation of penalties based on previous trademark counterfeiting convictions, and number and value of trademark counterfeited property.

House Bill 727 removes language which provides that a person possessing 25 items that bear a trademark counterfeit mark may be presumed to possess the times with the intent to sell or distribute.

This bill also provides for mandatory seizure of trademark counterfeited property, as well as any property obtained from proceeds gained in violation of this statute. Adoption of this bill would also require seized property to be destroyed or disposed of in a manner agreed to in writing by the trademark owner and district attorney.

Upon conviction, restitution to the trademark owner and any other victim of the offense is required. In determining the value of property loss to the trademark owner under House Bill 727, the court shall grant restitution for all amounts, including expenses incurred by the trademark owner related to investigation and prosecution as well as any profits realized by the counterfeiter.

This act takes effect in 60 days.

ANALYSIS:

House Bill 727 further provides for penalties if an individual is involved in manufacturing or producing trademark counterfeit items (second degree felony).

According to the Pennsylvania Commission of Sentencing, in 2008, 72 individuals were convicted of trademark counterfeiting: 27 were sentenced for first degree misdemeanors, 26 were sentenced for third degree felonies, and 19 were sentenced for second degree felonies. Individuals convicted of trademark counterfeiting in 2008, regardless of penalty gradings, were sentenced to state prisons, county jails, county intermediate punishment, probation, or other restorative sanctions.

Under House Bill 727, trademark counterfeiters whose crimes result in bodily injury or serious bodily injury are also subject to third and second degree felonies that may result in longer sentences as a result of physical harm to victims. Longer sentences may result in an increase in inmates and lengthier sentences at state correctional institutions (SCI). An increase in the number of inmates at SCIs in conjunction with lengthier sentences can result in a fiscal impact on the Department of Corrections.

The average cost in 2010 for incarcerating an offender in a state correctional institution is almost \$35,000 per year (including health care). According to the Board of Probation and Parole, in 2010 the average cost for state parole supervision is \$3,000 per year. The average cost in 2010 for incarceration in a county jail is approximately \$50 per day or \$18,250 per year. The average cost for supervising a county adult offender in 2007 is \$800 per year.

It is not possible to determine how many individuals may be sentenced under this legislation; nor is it possible to predict what type of sentencing individuals may receive as a result of conviction. However, it is assumed that there may be a fiscal impact on both Commonwealth funds and local funds as a result of the enactment of this legislation.

While this legislation is expected to have minimal fiscal impact, if considered in conjunction with other legislation that increases the grading of penalties or creates new penalties, the impact to state and/or local governments may be substantial.

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