

# CALIFORNIA Apparel News

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## NEWS

# Fashion Copyright Bill Reintroduced—With Changes

By Deborah Belgum *Senior Editor*

The design piracy law is back, with a new name, new supporters and a few new changes to the proposed legislation.

The proposed law—now called the Innovative Design Protection and Piracy Prevention Act—extends copyright protection to fashion designs. Senate Bill 3728 was introduced by Sen. Charles Schumer (D–N.Y.), along with Sens. Orrin Hatch (R–Utah), Lindsey Graham (R–S.C.), Sheldon Whitehouse (D–R.I.), Kirsten Gillibrand (D–N.Y.), Dianne Feinstein (D–Calif.), Barbara Boxer (D–Calif.), Olympia J. Snowe (R–Maine), Benjamin L. Cardin (D–Md.), Kay Bailey Hutchison (R–Texas) and Herb Kohl (D–Wisc.).

The new legislation bears some resemblance to the Design Piracy Protection Act, which was first introduced in 2006 but was never enacted.

Some aspects of the new bill are the same. The copyright-protection period lasts three years (to allow time for the originator to “knock off” the design in a diffusion line).

But the proposed bill has some new features, including the elimination of the requirement to register a design with the copyright office of the Library of Congress. The new law also includes a home-sewing (or single copy) exemption.

The new proposed law also includes a provision for “independent creation” but defines a knockoff as something that is “substantially identical.”

The text of the proposed law says, “In the case of fashion design, a design shall not be deemed to have been copied from a protected design if that design is not substantially identical in overall visual appearance to and as to the original elements of a protected design; or is the result of an independent creation.”

In addition, “the presence or absence” of specific colors or “graphic work” are not enough to exempt a style from being deemed a direct copy.

The original Design Piracy Protection Act had the support of the New York-based **Council of Fashion Designers of America**, which is supporting the new bill, as well.

The Los Angeles-based **California Fashion Association** and its members were vocal opponents of the original bill. CFA members spoke against the Design Piracy Protection Act before Congress in 2008.

The **American Apparel and Footwear Association** was an opponent of the original Design Piracy Protection Act, but the Washington, D.C.–based organization, which represents large manufacturers, has come out in support of the new Innovative Design Protection and Piracy Prevention Act.

“The earlier bill in the House was considered by most in the fashion industry as too broad,” said attorney Crystal A. Zarpas of **Mann & Zarpas LLP** in Los Angeles’ Sherman Oaks neighborhood. “Many feared that the over-

ly broad protection under the earlier bill would encourage frivolous lawsuits from individuals claiming they had the idea first. The new bill is narrower and appears to be much more acceptable to the various sides of the fashion industry. However, the jury is still out on the practical ramifications of the new bill (if passed) since protection only will extend to ‘unique, distinguishable, non-trivial and non-utilitarian fashion designs.’ I am not certain what such a ‘unique and distinguishable fashion design’ looks like, and it will be exciting to see which designs actually qualify for protection under the new bill (if passed).”

### Questions of cost and confusion

Opponents of the new proposed bill—which is being referred to by the cumbersome acronym I.D.P.P.P.A.—are concerned about the wide-ranging impact on manufacturers and consumers. “If I.D.P.P.P.A. passes, it will undoubtedly impact California’s fashion companies,” said attorney Staci Riordan, an associate in the Los Angeles office of Fox Rothschild LLP and the chair of the firm’s fashion law practice group. “I.D.P.P.P.A. has the potential to put California’s manufacturers and retailers that have either private-label or direct-to-retail programs out of business. Not only will the costs of goods be higher, as no one will have any certainty on who owns what, but I predict lending practices via both banks and factors will be impacted. What does this mean for the consumer? Higher prices and less choice.”

Lonnie Kane, president of Vernon, Calif.–based **Karen Kane Inc.** and chairman of the CFA, said the new proposed bill has “major flaws.”

“We find the wording of the bill to be difficult; it’s very open to interpretation.”

“We think a major issue is going to be financing the industry. Because with this hanging over manufacturers, the factors are going to have a problem lending money on invoices that are vulnerable to litigation.”

Kane said he thinks the proposed bill, if passed, will limit creativity—particularly among small companies and start-ups. “As much as they say this is protection of designers, I think the threat of litigation will lessen the creative ability and affect trade. These young start-up companies don’t have money to defend themselves; they can hardly pay the rent, much less hire lawyers.”

And, he said, the proposed bill threatens the domestic manufacturing base in the United States by forcing U.S. manufacturers to face a constant threat of litigation.

“It’s a job killer,” he said.

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Douglas Lipstone, an attorney with Los Angeles-based **Buchalter Nemer**, said the proposed bill, if passed, would have a “tremendous negative impact on the California apparel industry.”

Despite the changes to the new proposed bill, Lipstone said his main concern about the bill’s effect on the industry remains the same as for the original bill.

“The concern I’ve always had is what’s this going to do to the factoring community,” he said. “Because of

the additional threat, it’s just going to drive up the cost of money in an industry that’s already got a razor-thin margin.”

Plus, the proposed bill’s wording raises additional uncertainty about how it would be enforced, Lipstone said.

“It will generate a significant amount of litigation just trying to understand it,” he said.

“The way the legislation is drafted, it casts a very wide net as to what could be an infringement—and that is going to increase the cost of doing business.”