

1 A bill to be entitled
2 An act relating to counterfeit goods; amending s. 831.03,
3 F.S.; creating and revising definitions; creating s.
4 831.031, F.S.; providing that possession of more than a
5 specified number of counterfeit items, unless
6 satisfactorily explained, allows an inference that such
7 property is possessed with intent to offer it for sale or
8 distribution in certain circumstances; providing that a
9 state or federal certificate of registration of trademark
10 shall be prima facie evidence of the facts stated therein;
11 creating s. 831.032, F.S.; prohibiting specified offenses
12 concerning involving forging or counterfeiting private
13 labels; providing penalties; providing for
14 reclassification of specified offenses; providing for
15 fines based on the retail value of goods in certain
16 circumstances; providing for restitution; providing
17 applicability of certain defenses and limitations on
18 remedies to prosecutions under the section; creating s.
19 831.033, F.S.; providing for destruction or forfeiture of
20 goods to which the forged or counterfeit trademarks or
21 service marks were attached; providing for forfeiture of
22 property constituting or derived from any proceeds of a
23 counterfeiting offense; permitting alternative disposal
24 of forfeited items bearing or consisting of a counterfeit
25 trademark with the written consent of the trademark
26 owners; providing for the costs of such alternative
27 disposition; creating s. 831.034, F.S.; providing that
28 prosecution under specified provisions does not preclude

29 the applicability of any other provision of the law that
 30 applies or may in the future apply to any transaction
 31 which violates specified provisions, unless such provision
 32 is inconsistent with the terms of those provisions;
 33 repealing s. 831.05, F.S., relating to vending goods or
 34 services with counterfeit trademarks or service marks;
 35 providing an effective date.

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37 Be It Enacted by the Legislature of the State of Florida:

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39 Section 1. Section 831.03, Florida Statutes, is amended,
 40 to read:

41 (Substantial rewording of section. See
 42 s. 831.03, F.S., for present text.)

43 831.03 Forging or counterfeiting private labels;
 44 definitions.--As used in ss. 831.03-831.034, the term:

45 (1) "Bodily injury" means:

46 (a) A cut, abrasion, bruise, burn, or disfigurement;

47 (b) Physical pain;

48 (c) Illness;

49 (d) Impairment of the function of a bodily member, organ,
 50 or mental faculty; or

51 (e) Any other injury to the body, no matter how temporary.

52 (2) "Culpable negligence" means reckless disregard of
 53 human life or safety and consciously doing an act or following a
 54 course of conduct that the actor knew, or reasonably should have
 55 known, was likely to cause bodily injury.

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56 (3) "Forged or counterfeit trademark or service mark"
57 refers to a mark:

58 (a) That is applied to or used in connection with any
59 goods, services, labels, patches, stickers, wrappers, badges,
60 emblems, medallions, charms, boxes, containers, cans, cases,
61 hangtags, documentation, or packaging or any other components of
62 any type or nature that are designed, marketed, or otherwise
63 intended to be used on or in connection with any goods or
64 services;

65 (b) That is identical with or an imitation of a mark
66 registered for those goods or services on the principal register
67 in the United States Patent and Trademark Office or the
68 trademark register for the State of Florida or any other state,
69 or protected by the Amateur Sports Act of 1978, 36 U.S.C. s.
70 380, whether or not the offender knew such mark was so
71 registered or protected;

72 (c) The use of which is unauthorized by the owner of the
73 registered mark; and

74 (d) The application or use of which is either likely to
75 cause confusion, to cause mistake, or to deceive or is otherwise
76 intended to be used on or in connection with the goods or
77 services for which the mark is registered.

78
79 An otherwise legitimate mark is deemed counterfeit for purposes
80 of this definition if, by altering the nature of any item to
81 which it is affixed, the altered item bearing the otherwise
82 legitimate mark is likely, in the course of commerce, to cause
83 confusion, to cause mistake, or to deceive.

84 (4) "Retail value" means:

85 (a) The counterfeiter's regular selling price for the
 86 goods or services, unless the goods or services bearing a
 87 counterfeit mark would appear to a reasonably prudent person to
 88 be authentic, then the retail value shall be the price of the
 89 authentic counterpart; or, if no authentic reasonably similar
 90 counterpart exists, then the retail value shall remain the
 91 counterfeiter's regular selling price.

92 (b) In the case of labels, patches, stickers, wrappers,
 93 badges, emblems, medallions, charms, boxes, containers, cans,
 94 cases, hangtags, documentation, or packaging or any other
 95 components of any type or nature that are designed, marketed, or
 96 otherwise intended to be used on or in connection with any goods
 97 or services, the retail value shall be treated as if each
 98 component was a finished good and valued as described in
 99 paragraph (a).

100 (5) "Serious bodily injury" means bodily injury that
 101 involves:

- 102 (a) A substantial risk of death;
- 103 (b) Extreme physical pain;
- 104 (c) Protracted and obvious disfigurement; or
- 105 (d) Protracted loss or impairment of the function of a
 106 bodily member, organ, or mental faculty.

107 Section 2. Section 831.031, Florida Statutes, is created
 108 to read:

109 831.031 Evidence.--In any proceeding under or related to
 110 ss. 831.03-831.034:

111 (1) Proof that a person is in possession of more than 25
 112 goods, labels, patches, stickers, wrappers, badges, emblems,
 113 medallions, charms, boxes, containers, cans, cases, hangtags,
 114 documentation, or packaging or any other components of any type
 115 or nature bearing a counterfeit mark, unless satisfactorily
 116 explained, gives rise to an inference that such property is
 117 being possessed with intent to offer it for sale or
 118 distribution.

119 (2) A state or federal certificate of registration of
 120 trademark shall be prima facie evidence of the facts stated
 121 therein.

122 Section 3. Section 831.032, Florida Statutes, is created
 123 to read:

124 831.032 Offenses involving forging or counterfeiting
 125 private labels.--

126 (1) Whoever, knowingly and willfully, forges or
 127 counterfeits, or causes or procures to be forged or
 128 counterfeited, manufactures, distributes or transports, or
 129 possesses with intent to distribute or transport, upon or in
 130 connection with any goods or services, the trademark or service
 131 mark of any person, entity, or association, which goods or
 132 services are intended for resale, or knowingly possesses tools
 133 or other reproduction materials for reproduction of specific
 134 forged or counterfeit trademarks or service marks commits the
 135 crime of counterfeiting.

136 (2) Whoever knowingly sells or offers for sale, or
 137 knowingly purchases and keeps or has in his or her possession,
 138 with intent that the same shall be sold or disposed, or vends

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139 any goods having thereon a forged or counterfeit trademark, or
140 who knowingly sells or offers for sale any service which is sold
141 in conjunction with a forged or counterfeit service mark, of any
142 person, entity, or association, knowing the same to be forged or
143 counterfeited, commits the crime of selling or offering for sale
144 counterfeit goods or services.

145 (3) (a) Violation of subsection (1) or subsection (2) is
146 a misdemeanor of the first degree, punishable as provided in s.
147 775.082 or s. 775.083, except that:

148 1. Any person engaging in an offense involving goods
149 bearing a counterfeit mark, if the offense involves 100 or more
150 but less than 1,000 items bearing one or more counterfeit marks,
151 or if the goods involved in the offense have a total retail
152 value of more than \$ 2,500, but less than \$20,000, commits a
153 felony of the third degree, punishable as provided in s.
154 775.082, s. 775.083, or s. 775.084.

155 2. Any person engaging in an offense involving goods
156 bearing a counterfeit mark, if the offense involves 1,000 or
157 more items bearing one or more counterfeit marks or if the goods
158 involved in the offense have a total retail value of \$20,000 or
159 more commits a felony of the second degree, punishable as
160 provided in s. 775.082, s. 775.083, or s. 775.084.

161 3. Any person who engages in an offense involving any
162 amount of goods bearing a counterfeit mark and, during the
163 commission or as a result of the commission of the offense,
164 knowingly or by culpable negligence causes or allows to be
165 caused bodily injury to another commits a felony of the third

166 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 167 775.084.

168 4. Any person who engages in an offense involving any
 169 amount of goods bearing a counterfeit mark and, during the
 170 commission or as a result of the commission of the offense,
 171 knowingly or by culpable negligence causes or allows to be
 172 caused serious bodily injury to another commits a felony of the
 173 second degree, punishable as provided in s. 775.082, s. 775.083,
 174 or s. 775.084.

175 5. Any person who engages in an offense involving any
 176 amount of goods bearing a counterfeit mark and, during the
 177 commission or as a result of the commission of the offense,
 178 knowingly or by culpable negligence causes or allows to be
 179 caused death to another commits a felony of the first degree,
 180 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

181 (b) For any person who, having previously been convicted
 182 for an offense under this section, is subsequently convicted for
 183 another offense involving goods bearing counterfeit marks, such
 184 subsequent offense shall be reclassified as follows:

185 1. In the case of a felony of the second degree, to a
 186 felony of the first degree.

187 2. In the case of a felony of the third degree, to a
 188 felony of the second degree.

189 3. In the case of a misdemeanor of the first degree, to a
 190 felony of the third degree. For purposes of sentencing under
 191 chapter 921 and determining incentive gain-time eligibility
 192 under chapter 944, such offense is ranked in level 4 of the
 193 offense severity ranking chart.

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194
195 For purposes of sentencing under chapter 921 and determining
196 incentive gain-time eligibility under chapter 944, a felony
197 offense that is reclassified under this paragraph is ranked one
198 level above the ranking under s. 921.0022 or s. 921.0023 of the
199 felony offense committed.

200 (c) In lieu of a fine otherwise authorized by law, when
201 any person has been convicted of an offense involving goods
202 bearing counterfeit marks, the court may fine the person up to
203 three times the retail value of the goods seized, manufactured,
204 or sold, whichever is greater, and may enter orders awarding
205 court costs and the costs of investigation and prosecution,
206 reasonably incurred. The court shall hold a hearing to determine
207 the amount of the fine authorized by this paragraph.

208 (d) When a person is convicted of an offense under this
209 section, the court, pursuant to s. 775.089, shall order the
210 person to pay restitution to the trademark owner and any other
211 victim of the offense. In determining the value of the property
212 loss involving an offense against the trademark owner, the court
213 shall for purposes of determining restitution grant restitution
214 for any and all amounts, including, but not limited to, expenses
215 incurred by the trademark owner in the investigation or
216 prosecution of the offense as well as the disgorgement of any
217 profits realized by a person convicted of such offense.

218 (4) All defenses, affirmative defenses, and limitations on
219 remedies that would be applicable in an action under the Lanham
220 Act, 15 U.S.C. ss. 1051 et seq., or to an action under s.
221 495.131 shall be applicable in a prosecution under this section.

222 Section 4. Section 831.033, Florida Statutes, is created
 223 to read:

224 831.033 Forging or counterfeiting private labels;
 225 destruction; forfeiture.--

226 (1) (a) Any goods to which forged or counterfeit trademarks
 227 or service marks are attached or affixed or any tools or other
 228 materials for the reproduction of any specific forged or
 229 counterfeit trademark or service mark which are produced or
 230 possessed in violation of this section may be seized by any law
 231 enforcement officer.

232 (b) Any personal property, including, but not limited to,
 233 any item, object, tool, machine, or vehicle of any kind,
 234 employed as an instrumentality in the commission of, or in
 235 aiding or abetting in the commission of, the crime of
 236 counterfeiting, as proscribed by ss. 831.03-831.034, and not
 237 otherwise included in paragraph (a), may be seized and is
 238 subject to forfeiture pursuant to ss. 932.701-932.704.

239 (2) The court, in imposing sentence on a person convicted
 240 of an offense under this section, shall order, in addition to
 241 any other sentence imposed, that the person forfeit to the state
 242 the following:

243 (a) Any property constituting or derived from any proceeds
 244 the person obtained, directly or indirectly, as the result of
 245 the offense.

246 (b) Any of the person's property used, or intended to be
 247 used, in any manner or part, to commit, facilitate, aid, or abet
 248 the commission of the offense.

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249 (c) Any item that bears or consists of a counterfeit mark
 250 used in committing the offense.

251 (3) At the conclusion of all forfeiture proceedings, the
 252 court shall order that any forfeited item bearing or consisting
 253 of a counterfeit mark be destroyed or alternatively disposed of
 254 in another manner with the written consent of the trademark
 255 owners. The owners of the registered or protected mark shall be
 256 responsible for the costs incurred in the disposition of the
 257 forged or counterfeit items.

258 Section 5. Section 831.034, Florida Statutes, is created
 259 to read:

260 831.034 Prosecutions.--Notwithstanding any other provision
 261 of the law, prosecution may be had for any and all violations of
 262 ss. 831.03-831.033 and for any other criminal violations that
 263 may apply. Prosecution for violation of any of the offenses
 264 described in ss. 831.03-831.033 shall not be construed to
 265 preclude the applicability of any other provision of the law
 266 which presently applies or may in the future apply to any
 267 transaction that violates ss. 831.03-831.033, unless such
 268 provision is inconsistent with the terms of ss. 831.03-831.033.

269 Section 6. Section 831.05, Florida Statutes, is repealed.

270 Section 7. This act shall take effect October 1, 2008.