

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.

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.

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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:

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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 a
146 misdemeanor of the first degree, punishable as provided in s.
147 775.082 or s. 775.083, except that:

148 1. A violation of subsection (1) or subsection (2) is a
149 felony of the third degree, punishable as provided in s.
150 775.082, s. 775.083, or s. 775.084, if the offense involves 100
151 or more but less than 1,000 items bearing one or more
152 counterfeit marks or if the goods involved in the offense have a
153 total retail value of more than \$ 2,500, but less than \$20,000.

154 2. A violation of subsection (1) or subsection (2) is a
155 felony of the second degree, punishable as provided in s.
156 775.082, s. 775.083, or s. 775.084, if the offense involves
157 1,000 or more items bearing one or more counterfeit marks or if
158 the goods involved in the offense have a total retail value of
159 \$20,000 or more.

160 3. A violation of subsection (1) or subsection (2) is a
161 felony of the third degree, punishable as provided in s.
162 775.082, s. 775.083, or s. 775.084 if, during the commission or
163 as a result of the commission of the offense, the person
164 engaging in the offense knowingly or by culpable negligence
165 causes or allows to be caused bodily injury to another.

166 4. A violation of subsection (1) or subsection (2) is a
 167 felony of the second degree, punishable as provided in s.
 168 775.082, s. 775.083, or s. 775.084 if, during the commission or
 169 as a result of the commission of the offense, the person
 170 engaging in the offense knowingly or by culpable negligence
 171 causes or allows to be caused serious bodily injury to another.

172 5. A violation of subsection (1) or subsection (2) is a
 173 felony of the first degree, punishable as provided in s.
 174 775.082, s. 775.083, or s. 775.084 if, during the commission or
 175 as a result of the commission of the offense, the person
 176 engaging in the offense knowingly or by culpable negligence
 177 causes or allows to be caused death to another.

178 (b) For any person who, having previously been convicted
 179 for an offense under this section, is subsequently convicted for
 180 another offense under this section, such subsequent offense
 181 shall be reclassified as follows:

182 1. In the case of a felony of the second degree, to a
 183 felony of the first degree.

184 2. In the case of a felony of the third degree, to a
 185 felony of the second degree.

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

191
 192 For purposes of sentencing under chapter 921 and determining
 193 incentive gain-time eligibility under chapter 944, a felony

194 offense that is reclassified under this paragraph is ranked one
 195 level above the ranking under s. 921.0022 or s. 921.0023 of the
 196 felony offense committed.

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

205 (d) When a person is convicted of an offense under this
 206 section, the court, pursuant to s. 775.089, shall order the
 207 person to pay restitution to the trademark owner and any other
 208 victim of the offense. In determining the value of the property
 209 loss to the trademark owner, the court shall include expenses
 210 incurred by the trademark owner in the investigation or
 211 prosecution of the offense as well as the disgorgement of any
 212 profits realized by a person convicted of the offense.

213 (4) All defenses, affirmative defenses, and limitations on
 214 remedies that would be applicable in an action under the Lanham
 215 Act, 15 U.S.C. ss. 1051 et seq., or to an action under s.
 216 495.131 shall be applicable in a prosecution under this section.

217 Section 4. Section 831.033, Florida Statutes, is created
 218 to read:

219 831.033 Forging or counterfeiting private labels;
 220 destruction; forfeiture.--

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

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

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

238 (a) Any property constituting or derived from any proceeds
239 the person obtained, directly or indirectly, as the result of
240 the offense.

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

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

246 (3) At the conclusion of all forfeiture proceedings, the
247 court shall order that any forfeited item bearing or consisting
248 of a counterfeit mark be destroyed or alternatively disposed of

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249 in another manner with the written consent of the trademark
250 owners. The owners of the registered or protected mark shall be
251 responsible for the costs incurred in the disposition of the
252 forged or counterfeit items.

253 Section 5. Section 831.034, Florida Statutes, is created
254 to read:

255 831.034 Prosecutions.--Notwithstanding any other provision
256 of the law, prosecution may be had for any and all violations of
257 ss. 831.03-831.033 and for any other criminal violations that
258 may apply. Prosecution for violation of any of the offenses
259 described in ss. 831.03-831.033 shall not be construed to
260 preclude the applicability of any other provision of the law
261 which presently applies or may in the future apply to any
262 transaction that violates ss. 831.03-831.033, unless such
263 provision is inconsistent with the terms of ss. 831.03-831.033.

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

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