



797092

CHAMBER ACTION

<u>Senate</u>	.	<u>House</u>
Comm: RCS	.	
4/8/2008	.	
	.	
	.	

1 The Committee on Commerce (Diaz de la Portilla) recommended the
 2 following **amendment**:

Senate Amendment (with title amendment)

5 Delete everything after the enacting clause
6 and insert:

7 Section 1. Section 831.03, Florida Statutes, is amended to
8 read:

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

11 831.03 Forging or counterfeiting private labels;
12 definitions.--As used in ss. 831.03-831.034, the term:

13 (1) "Bodily injury" means:

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

15 (b) Physical pain;

16 (c) Illness;



797092

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

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

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

24 (3) "Forged or counterfeit trademark or service mark"
25 refers to a mark:

26 (a) That is applied to or used in connection with any
27 goods, services, labels, patches, stickers, wrappers, badges,
28 emblems, medallions, charms, boxes, containers, cans, cases,
29 hangtags, documentation, packaging, or any other components of
30 any type or nature that are designed, marketed, or otherwise
31 intended to be used on or in connection with any goods or
32 services;

33 (b) That is identical to or an imitation of a mark
34 registered for those goods or services on the principal register
35 in the United States Patent and Trademark Office or the trademark
36 register for the State of Florida or any other state, or
37 protected by the Amateur Sports Act of 1978, 36 U.S.C. s. 380,
38 whether or not the offender knew such mark was so registered or
39 protected;

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

42 (d) The application or use of which is likely to cause
43 confusion, to cause mistake, or to deceive or is otherwise
44 intended to be used on or in connection with the goods or
45 services for which the mark is registered.
46

Bill No. SB 2374



797092

47 An otherwise legitimate mark is deemed counterfeit for purposes
48 of this definition if, by altering the nature of any item to
49 which it is affixed, the altered item bearing the otherwise
50 legitimate mark is likely, in the course of commerce, to cause
51 confusion, to cause mistake, or to deceive.

52 (4) "Retail value" means:

53 (a) The counterfeiter's regular selling price for the goods
54 or services, unless, if the goods or services bearing a
55 counterfeit mark would appear to a reasonably prudent person to
56 be authentic, the retail value is the price of the authentic
57 counterpart; or, if no authentic reasonably similar counterpart
58 exists, the retail value remains the counterfeiter's regular
59 selling price.

60 (b) In the case of labels, patches, stickers, wrappers,
61 badges, emblems, medallions, charms, boxes, containers, cans,
62 cases, hangtags, documentation, or packaging or any other
63 components of any type or nature which are designed, marketed, or
64 otherwise intended to be used on or in connection with any goods
65 or services, the retail value shall be treated as if each
66 component was a finished good and valued as described in
67 paragraph (a).

68 (5) "Serious bodily injury" means bodily injury that
69 involves:

70 (a) A substantial risk of death;

71 (b) Extreme physical pain;

72 (c) Protracted and obvious disfigurement; or

73 (d) Protracted loss or impairment of the function of a
74 bodily member, organ, or mental faculty.

75 Section 2. Section 831.031, Florida Statutes, is created to
76 read:

Bill No. SB 2374



797092

77 831.031 Evidence.--In any proceeding under or related to
78 ss. 831.03-831.034:

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

86 (2) A state or federal certificate of registration of
87 trademark is prima facie evidence of the facts stated therein.

88 Section 3. Section 831.032, Florida Statutes, is created to
89 read:

90 831.032 Offenses involving forging or counterfeiting
91 private labels.--

92 (1) Any person who knowingly and willfully forges or
93 counterfeits, or causes or procures to be forged or
94 counterfeited, manufactures, distributes, or transports, or
95 possesses with intent to distribute or transport, upon or in
96 connection with any goods or services, the trademark or service
97 mark of any person, entity, or association, which goods or
98 services are intended for resale, or who knowingly possesses
99 tools or other reproduction materials for the reproduction of
100 specific forged or counterfeit trademarks or service marks
101 commits the crime of counterfeiting.

102 (2) Any person who knowingly sells or offers for sale, or
103 knowingly purchases and keeps or has in his or her possession,
104 with intent that the same shall be sold or disposed; who vends
105 any goods having thereon a forged or counterfeit trademark; or
106 who knowingly sells or offers for sale any service that is sold



797092

107 in conjunction with a forged or counterfeit service mark of any
108 person, entity, or association, knowing the same to be forged or
109 counterfeited, commits the crime of selling or offering for sale
110 counterfeit goods or services.

111 (3) (a) Violation of subsection (1) or subsection (2) is a
112 misdemeanor of the first degree, punishable as provided in s.
113 775.082 or s. 775.083, except that:

114 1. A violation of subsection (1) or subsection (2) is a
115 felony of the third degree, punishable as provided in s. 775.082,
116 s. 775.083, or s. 775.084, if the offense involves 100 or more
117 but fewer than 1,000 items bearing one or more counterfeit marks,
118 or if the goods involved in the offense have a total retail value
119 of more than \$ 2,500 but less than \$20,000.

120 2. A violation of subsection (1) or subsection (2) is a
121 felony of the second degree, punishable as provided in s.
122 775.082, s. 775.083, or s. 775.084, if the offense involves 1,000
123 or more items bearing one or more counterfeit marks or if the
124 goods involved in the offense have a total retail value of
125 \$20,000 or more.

126 3. A violation of subsection (1) or subsection (2) is a
127 felony of the third degree, punishable as provided in s. 775.082,
128 s. 775.083, or s. 775.084 if, during the commission or as a
129 result of the commission of the offense, the person engaging in
130 the offense knowingly or by culpable negligence causes or allows
131 to be caused bodily injury to another.

132 4. A violation of subsection (1) or subsection (2) is a
133 felony of the second degree, punishable as provided in s.
134 775.082, s. 775.083, or s. 775.084 if, during the commission or
135 as a result of the commission of the offense, the person engaging



797092

136 in the offense knowingly or by culpable negligence causes or
137 allows to be caused serious bodily injury to another.

138 5. A violation of subsection (1) or subsection (2) is a
139 felony of the first degree, punishable as provided in s. 775.082,
140 s. 775.083, or s. 775.084 if, during the commission or as a
141 result of the commission of the offense, the person engaging in
142 the offense knowingly or by culpable negligence causes or allows
143 to be caused death to another commits a felony of the first
144 degree, punishable as provided in s. 775.082, s. 775.083, or s.
145 775.084.

146 (b) For any person who, having previously been convicted
147 for an offense under this section, is subsequently convicted for
148 another offense under this section, such subsequent offense shall
149 be reclassified as follows:

150 1. In the case of a felony of the second degree, to a
151 felony of the first degree.

152 2. In the case of a felony of the third degree, to a felony
153 of the second degree.

154 3. In the case of a misdemeanor of the first degree, to a
155 felony of the third degree. For purposes of sentencing under
156 chapter 921, such offense is ranked in level 4 of the offense
157 severity ranking chart.

158
159 For purposes of sentencing under chapter 921, a felony offense
160 that is reclassified under this paragraph is ranked one level
161 above the ranking under s. 921.0022 or s. 921.0023 of the felony
162 offense committed.

163 (c) In lieu of a fine otherwise authorized by law, if any
164 person is convicted of an offense under this section, the court
165 may fine the person up to three times the retail value of the

Bill No. SB 2374



797092

166 goods seized, manufactured, or sold, whichever is greater, and
167 may enter orders awarding court costs and the costs of
168 investigation and prosecution, reasonably incurred. The court
169 shall hold a hearing to determine the amount of the fine
170 authorized by this paragraph.

171 (d) If a person is convicted of an offense under this
172 section, the court, pursuant to s. 775.089, shall order the
173 person to pay restitution to the trademark owner and any other
174 victim of the offense. In determining the value of the property
175 loss to the trademark owner, the court shall include expenses
176 incurred by the trademark owner in the investigation or
177 prosecution of the offense as well as the disgorgement of any
178 profits realized by a person convicted of the offense.

179 (4) All defenses, affirmative defenses, and limitations on
180 remedies which would apply in an action under the Lanham Act, 15
181 U.S.C. ss. 1051 et seq., or to an action under s. 495.131, apply
182 in a prosecution under this section.

183 Section 4. Section 831.033, Florida Statutes, is created to
184 read:

185 831.033 Forging or counterfeiting private labels;
186 destruction; forfeiture.--

187 (1) (a) Any goods to which forged or counterfeit trademarks
188 or service marks are attached or affixed or any tools or other
189 materials for the reproduction of any specific forged or
190 counterfeit trademark or service mark which are produced or
191 possessed in violation of this section may be seized by any law
192 enforcement officer.

193 (b) Any personal property, including, but not limited to,
194 any item, object, tool, machine, or vehicle of any kind, employed
195 as an instrumentality in the commission of, or in aiding or



797092

196 abetting in the commission of, the crime of counterfeiting, as
197 proscribed by ss. 831.03-831.034, and not otherwise included in
198 paragraph (a), may be seized and is subject to forfeiture
199 pursuant to ss. 932.701-932.704.

200 (2) The court, in imposing sentence on a person convicted
201 of an offense under this section, shall order, in addition to any
202 other sentence imposed, that the person forfeit to the state:

203 (a) Any property constituting or derived from any proceeds
204 the person obtained, directly or indirectly, as the result of the
205 offense.

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

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

211 (3) At the conclusion of all forfeiture proceedings, the
212 court shall order that any forfeited item bearing or consisting
213 of a counterfeit mark be destroyed or alternatively disposed of
214 in another manner with the written consent of the trademark
215 owners. The owners of the registered or protected mark shall be
216 responsible for the costs incurred in the disposition of the
217 forged or counterfeit items.

218 Section 5. Section 831.034, Florida Statutes, is created to
219 read:

220 831.034 Prosecutions.--Notwithstanding any other provision
221 of the law, prosecution may be had for any violations of ss.
222 831.03-831.033 and for any other criminal violations that may
223 apply. Prosecution for violation of any of the offenses described
224 in ss. 831.03-831.033 does not preclude the applicability of any
225 other provision of the law which presently applies or may in the



797092

226 future apply to any transaction that violates ss. 831.03-831.033,
 227 unless such provision is inconsistent with the terms of ss.
 228 831.03-831.033.

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

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

231

232 ===== T I T L E A M E N D M E N T =====

233 And the title is amended as follows:

234 Delete everything before the enacting clause

235 and insert:

236 A bill to be entitled

237 An act relating to counterfeit goods; amending s. 831.03,

238 F.S.; creating and revising definitions; creating s.

239 831.031, F.S.; providing that possession of more than a

240 specified number of counterfeit items, unless

241 satisfactorily explained, allows an inference that such

242 property is possessed with intent to offer it for sale or

243 distribution in certain circumstances; providing that a

244 state or federal certificate of registration of trademark

245 is prima facie evidence of the facts stated therein;

246 creating s. 831.032, F.S.; prohibiting specified offenses

247 involving forging or counterfeiting private labels;

248 providing penalties; providing for reclassification of

249 specified offenses; providing for fines based on the

250 retail value of goods in certain circumstances; providing

251 for restitution; providing applicability of certain

252 defenses and limitations on remedies to prosecutions

253 involving counterfeiting; creating s. 831.033, F.S.;

254 providing for destruction or forfeiture of goods to which

255 the forged or counterfeit trademarks or service marks were

Bill No. SB 2374



797092

256 attached; providing for forfeiture of property
257 constituting or derived from any proceeds of a
258 counterfeiting offense; permitting alternative disposure
259 of forfeited items bearing or consisting of a counterfeit
260 trademark with the written consent of the trademark
261 owners; providing for the costs of such alternative
262 disposition; creating s. 831.034, F.S.; providing that
263 prosecution under specified provisions does not preclude
264 the applicability of any other provision of the law which
265 applies or may in the future apply to any transaction that
266 violates specified provisions, unless such provision is
267 inconsistent with the terms of those provisions; repealing
268 s. 831.05, F.S., relating to vending goods or services
269 having counterfeit trademarks or service marks; providing
270 an effective date.