

By the Committee on Commerce; and Senator Diaz de la Portilla

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1 A bill to be entitled

2 An act relating to counterfeit goods; amending s. 831.03,  
3 F.S.; providing 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 is prima facie evidence of the facts stated therein;  
11 creating s. 831.032, F.S.; prohibiting specified offenses  
12 involving forging or counterfeiting private labels;  
13 providing penalties; providing for reclassification of  
14 specified offenses; providing for fines based on the  
15 retail value of goods in certain circumstances; providing  
16 for restitution; providing applicability of certain  
17 defenses and limitations on remedies to prosecutions  
18 involving counterfeiting; creating s. 831.033, F.S.;  
19 providing for destruction or forfeiture of goods to which  
20 the forged or counterfeit trademarks or service marks were  
21 attached; providing for forfeiture of property  
22 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 which

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

36  
37 Be It Enacted by the Legislature of the State of Florida:

38  
39 Section 1. Section 831.03, Florida Statutes, is amended to  
40 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 human  
53 life or safety and consciously doing an act or following a course  
54 of conduct that the actor knew, or reasonably should have known,  
55 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

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59 goods, services, labels, patches, stickers, wrappers, badges,  
60 emblems, medallions, charms, boxes, containers, cans, cases,  
61 hangtags, documentation, 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 to 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 trademark  
68 register for the State of Florida or any other state, or  
69 protected by the Amateur Sports Act of 1978, 36 U.S.C. s. 380,  
70 whether or not the offender knew such mark was so registered or  
71 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 likely to cause  
75 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 goods  
86 or services, unless, if the goods or services bearing a  
87 counterfeit mark would appear to a reasonably prudent person to

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88 be authentic, the retail value is the price of the authentic  
89 counterpart; or, if no authentic reasonably similar counterpart  
90 exists, the retail value remains the counterfeiter's regular  
91 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 which 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 to  
108 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 being

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117 possessed with intent to offer it for sale or distribution.

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

120 Section 3. Section 831.032, Florida Statutes, is created to  
121 read:

122 831.032 Offenses involving forging or counterfeiting  
123 private labels.--

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

134 (2) Any person who knowingly sells or offers for sale, or  
135 knowingly purchases and keeps or has in his or her possession,  
136 with intent that the same shall be sold or disposed; who vends  
137 any goods having thereon a forged or counterfeit trademark; or  
138 who knowingly sells or offers for sale any service that is sold  
139 in conjunction with a forged or counterfeit service mark of any  
140 person, entity, or association, knowing the same to be forged or  
141 counterfeited, commits the crime of selling or offering for sale  
142 counterfeit goods or services.

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

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

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

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

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

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

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175 to be caused death to another commits a felony of the first  
176 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
177 775.084.

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 shall  
181 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 felony  
185 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, such offense is ranked in level 4 of the offense  
189 severity ranking chart.

190  
191 For purposes of sentencing under chapter 921, a felony offense  
192 that is reclassified under this paragraph is ranked one level  
193 above the ranking under s. 921.0022 or s. 921.0023 of the felony  
194 offense committed.

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

203 (d) If a person is convicted of an offense under this

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

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

215 Section 4. Section 831.033, Florida Statutes, is created to  
216 read:

217 831.033 Forging or counterfeiting private labels;  
218 destruction; forfeiture.--

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

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

232 (2) The court, in imposing sentence on a person convicted



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233 of an offense under this section, shall order, in addition to any  
234 other sentence imposed, that the person forfeit to the state:

235 (a) Any property constituting or derived from any proceeds  
236 the person obtained, directly or indirectly, as the result of the  
237 offense.

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

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

243 (3) At the conclusion of all forfeiture proceedings, the  
244 court shall order that any forfeited item bearing or consisting  
245 of a counterfeit mark be destroyed or alternatively disposed of  
246 in another manner with the written consent of the trademark  
247 owners. The owners of the registered or protected mark shall be  
248 responsible for the costs incurred in the disposition of the  
249 forged or counterfeit items.

250 Section 5. Section 831.034, Florida Statutes, is created to  
251 read:

252 831.034 Prosecutions.--Notwithstanding any other provision  
253 of the law, prosecution may be had for any violations of ss.  
254 831.03-831.033 and for any other criminal violations that may  
255 apply. Prosecution for violation of any of the offenses described  
256 in ss. 831.03-831.033 does not preclude the applicability of any  
257 other provision of the law which presently applies or may in the  
258 future apply to any transaction that violates ss. 831.03-831.033,  
259 unless such provision is inconsistent with the terms of ss.  
260 831.03-831.033.

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

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