

SECOND REGULAR SESSION

SENATE BILL NO. 904

89TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR JACOB.

Read 1st time February 11, 1998, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

S3729.011

AN ACT

To amend chapter 570, RSMo, by adding thereto two new sections relating to property theft, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 570, RSMo, is amended by adding thereto two new sections, to be known as sections 570.103 and 570.105, to read as follows:

570.103. 1. As used in sections 570.103 and 570.105, the following words mean:

(1) "Counterfeit mark", any unauthorized reproduction or copy of intellectual property or intellectual property affixed to any item knowingly sold, offered for sale, manufactured, or distributed, or identifying services offered or rendered, without the authority of the owner of the intellectual property;

(2) "Intellectual property", any trademark, service mark, trade name, label, term, device, design, or word adopted or used by a person to identify such person's goods or services;

(3) "Retail value", the counterfeiter's regular selling price for the item or service bearing or identified by the counterfeit mark. In the case of items bearing a counterfeit mark which are components of a finished product, the retail value shall be the counterfeiter's regular selling price of the finished product on or in which the component would be utilized.

2. Any person who willfully manufactures, uses, displays, advertises, distributes, offers for sale, sells, or possesses with intent to sell or distribute any item, or services, bearing or identified by a counterfeit mark, shall be guilty of the crime of counterfeiting. A person having possession, custody or control of more than twenty-five items bearing a counterfeit mark shall be presumed to possess said items with intent to sell or distribute.

3. Counterfeiting shall be a class A misdemeanor, except as provided in subsections 4 and 5 of this section.

4. Counterfeiting shall be a class D felony if:

- (1) The defendant has previously been convicted under this section; or**
- (2) The violation involves more than one hundred but fewer than one thousand items bearing a counterfeit mark or the total retail value of all items bearing, or services identified by, a counterfeit mark is more than one thousand dollars, but less than ten thousand dollars.**

5. Counterfeiting shall be a class C felony if:

- (1) The defendant has been previously convicted of two or more offenses under this section;**
- (2) The violation involves the manufacture or production of items bearing counterfeit marks; or**
- (3) The violation involves one thousand or more items bearing a counterfeit mark or the total retail value of all items bearing, or services identified by, a counterfeit mark is more than ten thousand dollars.**

6. For purposes of this section, the quantity or retail value of items or services shall include the aggregate quantity or retail value of all items bearing, or services identified by, every counterfeit mark the defendant manufactures, uses, displays, advertises, distributes, offers for sale, sells or possesses.

7. Any person convicted of counterfeiting shall be fined an amount up to three times the retail value of the items bearing, or services identified by, a counterfeit mark, unless extenuating circumstances are shown by the defendant.

8. The remedies provided for herein shall be cumulative to the other civil remedies provided by law.

9. Any state or federal certificate of registration of any intellectual property shall be prima facie evidence of the facts stated therein.

570.105. 1. Any items bearing a counterfeit mark, and all personal property, including but not limited to, any items, objects, tools, machines, equipment, instrumentalities or vehicles of any kind, employed or used in connection with a violation of section 570.103 or this section shall be seized by any law enforcement officer. All seized personal property shall be forfeited in accordance with section 513.600, et seq.

2. Upon the request of the intellectual property owner, all seized items bearing a counterfeit mark shall be released to the intellectual property owner for destruction or disposition. If the intellectual property owner does not request release of seized items bearing a counterfeit mark, such items shall be destroyed unless the intellectual property owner consents to another disposition.

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