
ENGROSSED HOUSE BILL 1007

State of Washington

56th Legislature

1999 Regular Session

By Representatives Ballasiotes, O'Brien, Radcliff, Benson, Quall, Mitchell, Cairnes and Morris

Read first time 01/11/1999. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to counterfeiting; amending RCW 9.16.030 and
2 9.16.040; adding new sections to chapter 9.16 RCW; and prescribing
3 penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 9.16 RCW
6 to read as follows:

7 The definitions in this section apply throughout this chapter
8 unless the context clearly requires otherwise.

9 (1) "Counterfeit mark" means:

10 (a) Any unauthorized reproduction or copy of intellectual property;
11 or

12 (b) Intellectual property affixed to any item knowingly sold,
13 offered for sale, manufactured, or distributed, or identifying services
14 offered or rendered, without the authority of the owner of the
15 intellectual property.

16 (2) "Intellectual property" means any trademark, service mark,
17 trade name, label, term, device, design, or work adopted or used by a
18 person to identify such person's goods or services. Intellectual

1 property does not have exclusive use rights to trade names registered
2 under chapter 19.80 RCW.

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

9 **Sec. 2.** RCW 9.16.030 and 1909 c 249 s 344 are each amended to read
10 as follows:

11 Every person who ~~((shall))~~ manufactures, advertises, distributes,
12 uses, or displays, or ~~((have))~~ has in his or her possession with intent
13 to use ~~((or))~~ display, or sell, the genuine label, trademark, term,
14 design, device, or form of advertisement of any person, corporation,
15 association, or union, lawfully filed for record in the office of the
16 secretary of state, or the exclusive right to use which is guaranteed
17 to any person, corporation, association, or union, by the laws of the
18 United States, without the written authority of such person,
19 corporation, association, or union, or who ~~((shall))~~ willfully forges
20 ~~((or))~~ counterfeits ~~((or))~~ uses, or displays, or ~~((have))~~ has in his
21 or her possession with intent to use or display, any representation,
22 likeness, similitude, copy, or imitation of any genuine label,
23 trademark, term, design, device, or form of advertisement, so filed or
24 protected, or any die, plate, stamp, or other device for manufacturing
25 the same, ~~((shall be))~~ is guilty of ~~((a gross misdemeanor))~~
26 counterfeiting.

27 Any state or federal certificate of registration of any
28 intellectual property is prima facie evidence of the facts stated
29 therein.

30 **Sec. 3.** RCW 9.16.040 and 1909 c 249 s 345 are each amended to read
31 as follows:

32 Every person who ~~((shall))~~ knowingly sells, displays, or
33 advertises, or ~~((have))~~ has in his or her possession with intent to
34 sell, any goods, wares, merchandise, mixture, preparation, or compound
35 having affixed thereto any label, trademark, term, design, device, or
36 form of advertisement lawfully filed for record in the office of the
37 secretary of state by any person, corporation, association, or union,

1 or the exclusive right to the use of which is guaranteed to such
2 person, corporation, association, or union under the laws of the United
3 States, which label, trademark, term, design, device, or form of
4 advertisement (~~shall have been~~) is used or affixed thereto without
5 the written authority of such person, corporation, association, or
6 union, or having affixed thereto any forged or counterfeit
7 representation, likeness, similitude, copy, or imitation thereof,
8 (~~shall be~~) is guilty of (~~a misdemeanor~~) counterfeiting.

9 Any state or federal certificate of registration of any
10 intellectual property is prima facie evidence of the facts stated
11 therein.

12 NEW SECTION. Sec. 4. A new section is added to chapter 9.16 RCW
13 to read as follows:

14 (1) Counterfeiting is a misdemeanor, except as provided in
15 subsections (2) and (3) of this section.

16 (2) Counterfeiting is a gross misdemeanor if:

17 (a) The defendant has previously been convicted under this section;
18 or

19 (b) The violation involves more than one hundred but fewer than one
20 thousand items bearing a counterfeit mark or the total retail value of
21 all items bearing a counterfeit mark or the total retail value of all
22 items bearing, or services identified by, a counterfeit mark is more
23 than one thousand dollars but less than ten thousand dollars.

24 (3) Counterfeiting is a class C felony if:

25 (a) The defendant has been previously convicted of two or more
26 offenses under this section;

27 (b) The violation involves the manufacture or production of items
28 bearing counterfeit marks; or

29 (c) The violation involves one thousand or more items bearing a
30 counterfeit mark or the total retail value of all items bearing, or
31 services identified by, a counterfeit mark is ten thousand dollars or
32 more.

33 (4) For purposes of this section, the quantity or retail value of
34 items or services shall include the aggregate quantity or retail value
35 of all items bearing, or services identified by, every counterfeit mark
36 the defendant manufactures, uses, displays, advertises, distributes,
37 possesses, or possesses with intent to sell.

1 (5) A person guilty of counterfeiting shall be fined an amount up
2 to three times the retail value of the items bearing, or services
3 identified by, a counterfeit mark, unless extenuating circumstances are
4 shown by the defendant.

5 (6) The penalties provided for in this section are cumulative and
6 do not affect any other civil and criminal penalties provided by law.

7 NEW SECTION. **Sec. 5.** A new section is added to chapter 9.16 RCW
8 to read as follows:

9 (1) Any items bearing a counterfeit mark, and all personal property
10 employed or used in connection with counterfeiting, including but not
11 limited to, any items, objects, tools, machines, equipment,
12 instruments, or vehicles of any kind, shall be seized by any law
13 enforcement officer.

14 All seized personal property referenced in this subsection shall be
15 forfeited in accordance with RCW 10.105.010.

16 (2) Upon request of the intellectual property owner, all seized
17 items bearing a counterfeit mark shall be released to the intellectual
18 property owner for destruction or disposition.

19 (3) If the intellectual property owner does not request release of
20 seized items bearing a counterfeit mark, such items shall be destroyed
21 unless the intellectual property owner consents to another disposition.

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