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2001



SENATE BILL 01-099

BY SENATOR(S) Dyer (Arapahoe), Andrews, Arnold, Cairns, Dyer (Durango), Evans, Hagedorn, Hernandez, May, Musgrave, Nichol, Owen, and Teck;
also REPRESENTATIVE(S) Hefley, Fairbank, Lawrence, Romanoff, and Weddig.

CONCERNING PROHIBITIONS ON TRADEMARK COUNTERFEITING.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly finds, determines, and declares that the rapidly increasing incidence of fraudulent or counterfeit products in the stream of commerce poses a significant and growing risk to the health, safety, and economic well-being of the people of this state. The general assembly further finds and declares that, due to the sophisticated technology now employed by those who produce forged or counterfeit versions of legitimate trademarks, logos, and other distinguishing characteristics of products that come from legitimate manufacturers, it has become virtually impossible for good-faith consumers of such products to determine whether they are genuine.

(2) The general assembly finds, determines, and declares that counterfeit products have been shown to pose particular health and safety

Capital letters indicate new material added to existing statute; dashes through the words indicate deletions from existing statutes and such material not part of act.

hazards in a number of common types of products, including without limitation the following:

(a) Pharmaceutical products and medical devices such as counterfeit ulcer medicines that resulted in internal bleeding and infections; counterfeit antibiotics that resulted in severe ear infections in some children; counterfeit intra-aortic pumps that prompted a special warning and recall by the federal food and drug administration; and counterfeit birth control pills that resulted in unwanted pregnancies and bleeding;

(b) Baby formula and children's toys and apparel, including counterfeit infant formula that caused babies to become ill; counterfeit toys, manufactured outside the United States and not complying with U.S. safety standards, that caused injury and created choking hazards to small children; and counterfeit children's clothing, also not complying with U.S. safety standards, that can easily burst into flame;

(c) Automotive and aviation parts such as counterfeit brake components that resulted in the death of a mother and child; counterfeit bolts that caused an airliner to break apart and crash; and counterfeit helicopter parts later found to have been installed on more than six hundred helicopters in both civilian and military fleets.

(3) The general assembly further finds, determines, and declares that the low risk of detection and serious prosecution enjoyed by product counterfeiters has resulted in a rapid encroachment of organized crime syndicates into this field, leading to documented cases in which violent gangs and terrorist organizations have financed their illicit operations through profits gained by producing and selling counterfeit goods, or have used transactions in counterfeit goods as a means of laundering drug money and other proceeds of illegal activity.

(4) Therefore, the general assembly finds, determines, and declares that:

(a) Current Colorado law, which punishes trademark counterfeiting as a class 2 misdemeanor, fails to sufficiently deter such activity or to provide law enforcement authorities and prosecutors with adequate resources to combat the rising influence of trademark counterfeiting; and

(b) Stronger measures, including enhanced penalties and

classification of the crime at a level sufficient to trigger federal involvement in serious cases, are necessary to protect the public from this threat.

SECTION 2. Part 1 of article 5 of title 18, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

18-5-110.5. Trademark counterfeiting. (1) A PERSON COMMITS TRADEMARK COUNTERFEITING IF SUCH PERSON INTENTIONALLY MANUFACTURES, DISPLAYS, ADVERTISES, DISTRIBUTES, OFFERS FOR SALE, SELLS, OR POSSESSES WITH INTENT TO SELL OR DISTRIBUTE MARKS, GOODS, OR SERVICES THAT THE PERSON KNOWS ARE, BEAR, OR ARE IDENTIFIED BY ONE OR MORE COUNTERFEIT MARKS AND HAS POSSESSION, CUSTODY, OR CONTROL OF MORE THAN TWENTY-FIVE ITEMS BEARING A COUNTERFEIT MARK.

(2) (a) TRADEMARK COUNTERFEITING IS:

(I) A CLASS 2 MISDEMEANOR IF A PERSON HAS NOT PREVIOUSLY BEEN CONVICTED UNDER THIS SECTION AND THE VIOLATION INVOLVES FEWER THAN ONE HUNDRED ITEMS THAT ARE, BEAR, OR ARE IDENTIFIED BY A COUNTERFEIT MARK OR THE TOTAL RETAIL VALUE OF ALL GOODS OR SERVICES THAT ARE, BEAR, OR ARE IDENTIFIED BY A COUNTERFEIT MARK IS LESS THAN ONE THOUSAND DOLLARS;

(II) A CLASS 1 MISDEMEANOR IF:

(A) A PERSON HAS ONE OR MORE PREVIOUS CONVICTIONS UNDER THIS SECTION; OR

(B) THE VIOLATION INVOLVES ONE HUNDRED OR MORE ITEMS THAT ARE, BEAR, OR ARE IDENTIFIED BY A COUNTERFEIT MARK OR THE TOTAL RETAIL VALUE OF ALL GOODS OR SERVICES THAT ARE, BEAR, OR ARE IDENTIFIED BY A COUNTERFEIT MARK IS ONE THOUSAND DOLLARS OR MORE.

(b) IN ADDITION TO THE PENALTIES SPECIFIED IN PARAGRAPH (a) OF THIS SUBSECTION (2), ANY PERSON CONVICTED UNDER THIS SECTION SHALL BE LIABLE FOR A FINE IN AN AMOUNT EQUAL TO THREE TIMES THE TOTAL RETAIL VALUE OF ALL GOODS OR SERVICES THAT BEAR OR ARE IDENTIFIED BY A COUNTERFEIT MARK UNLESS EXTENUATING CIRCUMSTANCES ARE SHOWN BY SUCH PERSON.

(c) THE REMEDIES PROVIDED IN THIS SECTION ARE IN ADDITION TO, AND NOT IN LIEU OF, ANY OTHER CIVIL OR CRIMINAL PENALTIES OR REMEDIES PROVIDED BY LAW.

(3) FOR PURPOSES OF THIS SECTION:

(a) "COUNTERFEIT MARK" MEANS A MARK IDENTICAL TO OR SUBSTANTIALLY INDISTINGUISHABLE FROM A TRADEMARK THAT, WITHOUT THE PERMISSION OF THE OWNER OF THE TRADEMARK, IS:

(I) AFFIXED OR DESIGNED TO BE AFFIXED TO, OR DISPLAYED OR OTHERWISE ASSOCIATED WITH, GOODS; OR

(II) DISPLAYED IN ADVERTISING FOR, OR OTHERWISE ASSOCIATED WITH, SERVICES.

(b) (I) "RETAIL VALUE" MEANS THE COUNTERFEITER'S REGULAR SELLING PRICE FOR THE GOODS OR SERVICES THAT BEAR OR ARE IDENTIFIED BY A COUNTERFEIT MARK.

(II) IN THE CASE OF ITEMS BEARING A COUNTERFEIT MARK THAT ARE COMPONENTS OF A FINISHED PRODUCT, "RETAIL VALUE" MEANS THE COUNTERFEITER'S REGULAR SELLING PRICE FOR THE FINISHED PRODUCT.

(III) FOR PURPOSES OF SUBSECTION (2) OF THIS SECTION, THE QUANTITY OR RETAIL VALUE OF GOODS OR SERVICES SHALL INCLUDE THE AGGREGATE QUANTITY OR RETAIL VALUE OF ALL MARKS, GOODS, AND SERVICES THAT ARE, BEAR, OR ARE IDENTIFIED BY COUNTERFEIT MARKS.

(c) "TRADEMARK" MEANS ANY TRADEMARK REGISTERED UNDER THE LAWS OF THIS STATE OR OF THE UNITED STATES.

(4) IN A TRIAL UNDER THIS SECTION, ANY STATE OR FEDERAL CERTIFICATE OF REGISTRATION OF A TRADEMARK SHALL BE PRIMA FACIE EVIDENCE OF THE FACTS STATED THEREIN.

SECTION 3. 18-5-109, Colorado Revised Statutes, is amended to read:

18-5-109. Criminal possession of forgery devices. (1) A person commits criminal possession of forgery devices when:

(a) ~~He~~ SUCH PERSON makes or possesses with knowledge of its character any plate, die, or other device, apparatus, equipment, or article specifically designed for use in counterfeiting, unlawfully simulating, or otherwise forging written instruments OR COUNTERFEIT MARKS; or

(b) ~~He~~ SUCH PERSON makes or possesses any device, apparatus, equipment, or article capable of or adaptable to a use specified in paragraph (a) of this subsection (1), with intent to use it, ~~himself~~, or to aid or permit another to use it, for purposes of forgery OR THE PRODUCTION OF COUNTERFEIT MARKS; or

(c) ~~He~~ SUCH PERSON illegally possesses a genuine plate, die, or other device used in the production of written instruments OR COUNTERFEIT MARKS, with intent to fraudulently use the same; OR

(d) Such person unlawfully makes, produces, possesses, or utters a document-making implement knowing that such document-making implement may be used or is used in the production of a false identification document OR COUNTERFEIT MARK or another ~~document-making~~ implement FOR THE PRODUCTION OF FALSE IDENTIFICATION DOCUMENTS OR COUNTERFEIT MARKS.

(2) Criminal possession of forgery devices is a class 6 felony.

(3) AS USED IN THIS SECTION, "COUNTERFEIT MARK" HAS THE MEANING SET FORTH IN SECTION 18-5-110.5 (3) (a).

SECTION 4. 18-17-103 (5) (b) (IV), Colorado Revised Statutes, is amended to read:

18-17-103. Definitions. As used in this article, unless the context otherwise requires:

(5) "Racketeering activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(b) Any violation of the following provisions of the Colorado statutes or any criminal act committed in any jurisdiction of the United States which, if committed in this state, would be a crime under the following provisions of the Colorado statutes:

(IV) Offenses involving fraud, as defined in sections 18-5-102 (forgery), 18-5-104 (second degree forgery), 18-5-105 (criminal possession of forged instrument), 18-5-109 (criminal possession of forgery devices), 18-5-110.5 (TRADEMARK COUNTERFEITING), 6-16-111, C.R.S., (felony charitable fraud), 18-5-206 (defrauding a secured creditor or debtor), 18-5-403 (bribery in sports), 18-5-113 (criminal impersonation), and 18-5-114 (offering a false document for recording);

SECTION 5. Effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) This act shall apply to acts committed on or after the effective date of this act.

Stan Matsunaka
PRESIDENT OF
THE SENATE

Doug Dean
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

Judith Rodrigue
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

Bill Owens
GOVERNOR OF THE STATE OF COLORADO