



February 3, 1999

HOUSE BILL No. 1591

DIGEST OF HB1591 (Updated January 28, 1999 3:11 pm - DI 76)

Citations Affected: IC 34-24; IC 35-43.

Synopsis: Trademark protection. Amends the provision on the types of property that may be seized in a criminal action to include items bearing a counterfeit mark and all property used in trademark counterfeiting. Makes it a Class A misdemeanor to commit trademark counterfeiting. Makes it a Class C felony to manufacture an item or services bearing or identified by a counterfeit mark. Establishes fines.

Effective: July 1, 1999.

Dvorak

January 21, 1999, read first time and referred to Committee on Courts and Criminal Code.
February 2, 1999, reported — Do Pass.

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HB 1591—LS 7737/DI 100+



February 3, 1999

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

HOUSE BILL No. 1591

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

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

- 1 SECTION 1. IC 34-24-1-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. (a) The following
3 may be seized:
4 (1) All vehicles (as defined by IC 35-41-1), if they are used or are
5 intended for use by the person or persons in possession of them to
6 transport or in any manner to facilitate the transportation of the
7 following:
8 (A) A controlled substance for the purpose of committing,
9 attempting to commit, or conspiring to commit any of the
10 following:
11 (i) Dealing in cocaine or narcotic drug (IC 35-48-4-1).
12 (ii) Dealing in a schedule I, II, or III controlled substance
13 (IC 35-48-4-2).
14 (iii) Dealing in a schedule IV controlled substance
15 (IC 35-48-4-3).
16 (iv) Dealing in a schedule V controlled substance
17 (IC 35-48-4-4).

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- 1 (v) Dealing in a counterfeit substance (IC 35-48-4-5).
 2 (vi) Possession of cocaine or narcotic drug (IC 35-48-4-6).
 3 (vii) Dealing in paraphernalia (IC 35-48-4-8.5).
 4 (viii) Dealing in marijuana, hash oil, or hashish
 5 (IC 35-48-4-10).
 6 (B) Any stolen (IC 35-43-4-2) or converted property
 7 (IC 35-43-4-3) if the retail or repurchase value of that property
 8 is one hundred dollars (\$100) or more.
 9 (C) Any hazardous waste in violation of IC 13-30-6-6.
 10 (2) All money, negotiable instruments, securities, weapons,
 11 communications devices, or any property commonly used as
 12 consideration for a violation of IC 35-48-4 (other than items
 13 subject to forfeiture under IC 16-42-20-5 or IC 16-6-8.5-5.1
 14 before its repeal):
 15 (A) furnished or intended to be furnished by any person in
 16 exchange for an act that is in violation of a criminal statute;
 17 (B) used to facilitate any violation of a criminal statute; or
 18 (C) traceable as proceeds of the violation of a criminal statute.
 19 (3) Any portion of real or personal property purchased with
 20 money that is traceable as a proceed of a violation of a criminal
 21 statute.
 22 (4) A vehicle that is used by a person to:
 23 (A) commit, attempt to commit, or conspire to commit;
 24 (B) facilitate the commission of; or
 25 (C) escape from the commission of;
 26 murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal
 27 confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting
 28 (IC 35-42-4-3), or child exploitation (IC 35-42-4-4).
 29 (5) Real property owned by a person who uses it to commit any of
 30 the following as a Class A felony, a Class B felony, or a Class C
 31 felony:
 32 (A) Dealing in cocaine or narcotic drug (IC 35-48-4-1).
 33 (B) Dealing in a schedule I, II, or III controlled substance
 34 (IC 35-48-4-2).
 35 (C) Dealing in a schedule IV controlled substance
 36 (IC 35-48-4-3).
 37 (D) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).
 38 (6) Equipment and recordings used by a person to commit fraud
 39 under IC 35-43-5-4(11).
 40 (7) Recordings sold, rented, transported, or possessed by a person
 41 in violation of IC 24-4-10.
 42 (8) Property (as defined by IC 35-41-1-23) or an enterprise (as

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1 defined by IC 35-45-6-1) that is the object of a corrupt business
2 influence violation (IC 35-45-6-2).

3 (9) Unlawful telecommunications devices (as defined in
4 IC 35-45-13-6) and plans, instructions, or publications used to
5 commit an offense under IC 35-45-13.

6 **(10) Items bearing a counterfeit mark and all property (as**
7 **defined by IC 35-41-1-23) used in connection with a violation**
8 **of IC 35-43-5-13.**

9 (b) A vehicle used by any person as a common or contract carrier in
10 the transaction of business as a common or contract carrier is not
11 subject to seizure under this section, unless it can be proven by a
12 preponderance of the evidence that the owner of the vehicle knowingly
13 permitted the vehicle to be used to engage in conduct that subjects it to
14 seizure under subsection (a).

15 (c) Money, negotiable instruments, securities, weapons,
16 communications devices, or any property commonly used as
17 consideration for a violation of IC 35-48-4 found near or on a person
18 who is committing, attempting to commit, or conspiring to commit any
19 of the following offenses shall be admitted into evidence in an action
20 under this chapter as prima facie evidence that the money, negotiable
21 instrument, security, or other thing of value is property that has been
22 used or was to have been used to facilitate the violation of a criminal
23 statute or is the proceeds of the violation of a criminal statute:

- 24 (1) IC 35-48-4-1 (dealing in cocaine or narcotic drug).
25 (2) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled
26 substance).
27 (3) IC 35-48-4-3 (dealing in a schedule IV controlled substance).
28 (4) IC 35-48-4-4 (dealing in a schedule V controlled substance)
29 as a Class B felony.
30 (5) IC 35-48-4-6 (possession of cocaine or narcotic drug) as a
31 Class A felony, Class B felony, or Class C felony.
32 (6) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as
33 a Class C felony.

34 SECTION 2. IC 34-24-1-4 IS AMENDED TO READ AS
35 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) At the hearing,
36 the prosecuting attorney must show by a preponderance of the evidence
37 that the property was within the definition of property subject to seizure
38 under section 1 of this chapter. If the property seized was a vehicle, the
39 prosecuting attorney must also show by a preponderance of the
40 evidence that a person who has an ownership interest of record in the
41 bureau of motor vehicles knew or had reason to know that the vehicle
42 was being used in the commission of the offense.

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1 (b) If the prosecuting attorney fails to meet the burden of proof, the
2 court shall order the property released to the owner.

3 (c) If the court enters judgment in favor of the state, or the state and
4 a unit (if appropriate), the court, subject to section 5 of this chapter,
5 shall order delivery to the law enforcement agency that seized the
6 property. The court's order may permit the agency to use the property
7 for a period not to exceed three (3) years. However, the order must
8 require that, after the period specified by the court, the law
9 enforcement agency shall deliver the property to the county sheriff for
10 public sale.

11 (d) If the court enters judgment in favor of the state, or the state and
12 a unit (if appropriate), the court shall, subject to section 5 of this
13 chapter:

14 (1) determine the amount of law enforcement costs; and

15 (2) order that:

16 (A) the property, if it is not money or real property, be sold
17 under section 6 of this chapter, by the sheriff of the county in
18 which the property was seized, and if the property is a vehicle,
19 this sale must occur after any period of use specified in
20 subsection (c);

21 (B) the property, if it is real property, be sold in the same
22 manner as real property is sold on execution under IC 34-55-6;

23 (C) the proceeds of the sale or the money be deposited in the
24 general fund of the state, or the unit that employed the law
25 enforcement officers that seized the property; and

26 (D) any excess in value of the proceeds or the money over the
27 law enforcement costs be forfeited and transferred to the
28 treasurer of state for deposit in the common school fund.

29 (e) If property that is seized under this chapter (or IC 34-4-30.1-4
30 before its repeal) is transferred:

31 (1) after its seizure, but before an action is filed under section 3
32 of this chapter (or IC 34-4-30.1-3 before its repeal); or

33 (2) when an action filed under section 3 of this chapter (or
34 IC 34-4-30.1-3 before its repeal) is pending;

35 the person to whom the property is transferred must establish an
36 ownership interest of record as a bona fide purchaser for value. A
37 person is a bona fide purchaser for value under this section if the
38 person, at the time of the transfer, did not have reasonable cause to
39 believe that the property was subject to forfeiture under this chapter.

40 (f) If the property seized was an unlawful telecommunications
41 device (as defined in IC 35-45-13-6) or plans, instructions, or
42 publications used to commit an offense under IC 35-45-13, the court

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1 may order the sheriff of the county in which the person was convicted
 2 of an offense under IC 35-45-13 to destroy as contraband or to
 3 otherwise lawfully dispose of the property.

4 **(g) If the item seized was property (as defined by IC 35-41-1-23)**
 5 **used in violation of IC 35-43-5-13, the property is subject to**
 6 **forfeiture under this chapter. However, property bearing a**
 7 **counterfeit mark must be:**

- 8 (1) released to the property owner; or
 9 (2) destroyed.

10 SECTION 3. IC 35-43-5-13 IS ADDED TO THE INDIANA CODE
 11 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 12 1, 1999]: Sec. 13. (a) As used in this section:

13 (1) "Counterfeit mark" means:

14 (A) an unauthorized reproduction or copy of intellectual
 15 property; or

16 (B) intellectual property affixed to an item knowingly sold,
 17 offered for sale, manufactured, or distributed or
 18 identifying services offered or rendered without the
 19 authorization of the owner of the intellectual property.

20 (2) "Intellectual property" means a trademark, service mark,
 21 trade name, label, term, device, design, or word adopted or
 22 used by a person to identify that person's goods or services.

23 (3) "Retail value" means the counterfeiter's regular selling
 24 price for the item or service bearing or identified by the
 25 counterfeit mark. In the case of items bearing a counterfeit
 26 mark that are components of a finished product, the retail
 27 value is the counterfeiter's regular selling price of the finished
 28 product on or in which the component is used.

29 (4) For purposes of this section, the quantity or retail value of
 30 items or services includes the aggregate quantity or retail
 31 value of all items bearing or services identified by every
 32 counterfeit mark the defendant manufactures, uses, displays,
 33 advertises, distributes, offers for sale, sells, or possesses.

34 (b) A person who knowingly or intentionally:

- 35 (1) uses;
 36 (2) displays;
 37 (3) advertises;
 38 (4) distributes;
 39 (5) offers for sale;
 40 (6) sells; or
 41 (7) possesses with intent to sell or distribute;

42 an item or services bearing or identified by a counterfeit mark

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1 commits trademark counterfeiting, a Class A misdemeanor, except
2 as provided in subsection (c).

3 (c) The offense described in subsection (b) is:

4 (1) a Class D felony if:

5 (A) the defendant has one (1) prior unrelated conviction
6 under this section; or

7 (B) the violation involves at least one hundred (100) but
8 less than one thousand (1,000) items bearing a counterfeit
9 mark or the total retail value of all items bearing or
10 services identified by a counterfeit mark is at least one
11 thousand dollars (\$1,000) but less than ten thousand
12 dollars (\$10,000); and

13 (2) a Class C felony if:

14 (A) the defendant has at least two (2) prior unrelated
15 convictions under this section; or

16 (B) the violation involves at least one thousand (1,000)
17 items bearing a counterfeit mark or the total retail value
18 of all items bearing or services identified by a counterfeit
19 mark is at least ten thousand dollars (\$10,000).

20 (d) A person who knowingly or intentionally manufactures an
21 item or services bearing or identified by a counterfeit mark
22 commits a Class C felony.

23 (e) Evidence that a person knowingly had possession, custody,
24 or control of more than twenty-five (25) items bearing a counterfeit
25 mark constitutes prima facie evidence of possession with intent to
26 sell or distribute.

27 (f) Notwithstanding the fine imposed under IC 35-50-3-2,
28 IC 35-50-2-7, or IC 35-50-2-6, a person who violates subsection (b),
29 (c), or (d) shall be fined an amount up to three (3) times the retail
30 value of the property bearing or services identified by a counterfeit
31 mark.

32 (g) In a trial for a violation of this section, a state or federal
33 certificate of registration of intellectual property constitutes prima
34 facie evidence of the facts stated in the certificate of registration.

35 (h) The remedies provided in this section do not preclude other
36 civil or criminal remedies provided by law.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1591, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

DVORAK, Chair

Committee Vote: yeas 11, nays 0.

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