
SENATE BILL No. 495

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-43-5-14.

Synopsis: Trademark piracy. Provides that a person who manufactures or produces with intent to sell, sells, offers for sale, or possesses with intent to sell an item bearing a counterfeit mark or a service identified by a counterfeit mark, commits trademark counterfeiting, a Class A misdemeanor. Provides for felony penalty enhancements that apply to trademark counterfeiting if the offense involves a certain retail value or a certain quantity of items. Provides that a court may order that: (1) the items bearing a counterfeit mark be released to the owner of the trademark that was counterfeited, or destroyed; or (2) the equipment used to manufacture the items bearing a counterfeit mark be destroyed or disposed of in a manner that the court considers appropriate.

Effective: July 1, 2000.

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January 10, 2000, read first time and referred to Committee on Judiciary.

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Second Regular Session 111th General Assembly (2000)

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 1999 General Assembly.

SENATE BILL No. 495



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 35-43-5-14 IS ADDED TO THE INDIANA CODE
- 2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 3 1, 2000]: **Sec. 14. (a) As used in this section:**
- 4 (1) "Trademark" has the meaning set forth in IC 24-2-1-2.
- 5 (2) "Counterfeit mark" means:
- 6 (A) a trademark affixed to an item of property or used to
- 7 identify services without the authorization of the
- 8 trademark's owner; or
- 9 (B) a copy or imitation of a trademark made without the
- 10 authorization of the trademark's owner.
- 11 (3) "Retail value" means the counterfeiter's regular selling
- 12 price for the item or service bearing or identified by the
- 13 counterfeit mark. In the case of items bearing a counterfeit
- 14 mark that are components of a finished product, the retail
- 15 value is the counterfeiter's regular selling price of the finished
- 16 product on or in which the component is used.
- 17 (4) For purposes of this section, the quantity or retail value of

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1 items or services includes the aggregate quantity or retail
 2 value of all items bearing or services identified by every
 3 counterfeit mark the defendant manufactures or produces
 4 with intent to sell, sells, offers for sale, or possesses with intent
 5 to sell.

6 (b) A person who:

- 7 (1) manufactures or produces with intent to sell;
 8 (2) sells;
 9 (3) offers for sale; or
 10 (4) possesses with intent to sell;

11 an item bearing a counterfeit mark or a service identified by a
 12 counterfeit mark, commits trademark counterfeiting, a Class A
 13 misdemeanor, except as provided in subsection (c).

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

- 15 (1) a Class D felony if the violation involves at least one
 16 hundred (100) but less than one thousand (1,000) items
 17 bearing a counterfeit mark or the total retail value of all items
 18 bearing or services identified by a counterfeit mark is at least
 19 one thousand dollars (\$1,000) but less than ten thousand
 20 dollars (\$10,000); and
 21 (2) a Class C felony if the violation involves at least one
 22 thousand (1,000) items bearing a counterfeit mark or the total
 23 retail value of all items bearing or services identified by a
 24 counterfeit mark is at least ten thousand dollars (\$10,000).

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

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

34 (f) If a person is convicted of violating this section, the court
 35 may order that:

- 36 (1) the items bearing a counterfeit mark be released to the
 37 owner of the trademark that was counterfeited, or destroyed;
 38 or
 39 (2) the equipment used to manufacture the items bearing a
 40 counterfeit mark be destroyed or disposed of in a manner that
 41 the court considers appropriate.

42 (g) In a trial for a violation of this section, a state or federal

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1 **certificate of registration of intellectual property constitutes prima**
2 **facie evidence of the facts stated in the certificate of registration.**

3 **(h) The remedies provided in this section do not preclude other**
4 **civil or criminal remedies provided by law.**

5 **SECTION 2. [EFFECTIVE JULY 1, 2000] IC 35-43-5-14, as**
6 **added by this act, applies only to crimes committed after June 30,**
7 **2000.**

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