

House Research Act Summary

CHAPTER: 142

SESSION: 1999 Regular Session

TOPIC: Counterfeiting intellectual property

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Overview

This act creates a new crime applicable to persons who manufacture, produce, distribute, offer for sale, sell, or possess with intent to sell, items or services bearing or identified by a counterfeit service mark, trademark, or trade name. The criminal penalties for this conduct vary, depending on the number and value of the counterfeited items. The act also authorizes forfeiture of the counterfeited items and makes it possible to prosecute an offender for racketeering if the counterfeiting activity is part of an organized pattern of criminal activity.

1 Forfeiture law; definitions. Makes the new crime of counterfeiting intellectual property a "designated offense" under Minnesota's general forfeiture law. This authorizes the seizure and, following conviction, the forfeiture of all property that was used to commit or facilitate commission of the offense or that constituted proceeds of the offense.

2 Counterfeited intellectual property; penalties.

Subd. 1. Definitions. Defines terms used in the proposed new crime of counterfeiting intellectual property.

"counterfeit mark" means any unauthorized reproduction or copy of intellectual property or intellectual property affixed to any item without the intellectual property owner's permission;

"counterfeited item or service" means an item or service identified by a counterfeit mark;

"intellectual property" means a trademark, service mark, or trade name;

"retail value" means the usual selling price of an article or service identified by a counterfeit mark or consisting of components identified by a counterfeit mark; and

"service mark," "trademark" and "trade name" mean marks, names, symbols or devices used to identify services, goods, or businesses and to distinguish them from other services, goods, or businesses. These definitions are identical to definitions used in Minn.

Stat. § 325D.43, Minnesota's deceptive trade practices act.

Subd. 2. Crime. Defines the new crime of counterfeiting intellectual property. This crime prohibits intentionally manufacturing, producing, distributing, offering for sale, selling, or possessing with intent to sell any counterfeited item or service, knowing or having reason to know that the item or service is counterfeit.

Subd. 3. Penalties. Prescribes penalties for these counterfeiting offenses as follows:

a **five year felony** penalty and up to a \$100,000 fine for: (1) the manufacture or production of any number of counterfeited items; (2) the distribution, sale, offer to sell, or possession with intent to sell 1,000 or more counterfeited items; (3) the distribution, sale, offer to sell, or possession with intent to sell counterfeited items having a retail value of more than \$10,000; and (4) any counterfeiting violation by a defendant who has two or more prior convictions for counterfeiting intellectual property;

a **three year felony** penalty and up to a \$50,000 fine for: (1) the distribution, sale, offer to sell, or possession with intent to sell more than 100 but fewer than 1,000 counterfeited items; (2) the distribution, sale, offer to sell, or possession with intent to sell counterfeited items having a retail value of more than \$1,000 but not more than \$10,000; and (3) any counterfeiting violation by a defendant who has a prior conviction for counterfeiting intellectual property; and

a **gross misdemeanor** penalty for the distribution, sale, offer to sell, or possession with intent to sell smaller quantities (100 or fewer) of counterfeited items or items having a lower retail value (\$1,000 or less) than those described above.

Also permits aggregation of the quantity or retail value of multiple, separate counterfeited items or services for purposes of determining the appropriate penalty under this subdivision.

Subd. 4. Alternative fine. Provides a procedure for the sentencing court to order payment of an alternative fine that is equal to three times the gross value gained or gross loss caused, whichever is greater, plus court costs and the costs of investigation and prosecution, and minus the value of any property forfeited. This type of alternative fine is authorized under current law for persons convicted of a racketeering offense under Minn. Stat. § 609.902.

Subd. 5. Forfeiture. Authorizes the forfeiture of proceeds of a counterfeiting crime as well as property used to commit or facilitate the commission of the counterfeiting crime. Proposes one deviation from the general forfeiture law's disposition provision by authorizing the owner of the intellectual property to demand that the property bearing the counterfeit mark be destroyed following forfeiture, not sold at auction.

Subd. 6. Prima facie evidence. Provides that a Minnesota or federal certificate of registration of an intellectual property is *prima facie* evidence of the registrant's ownership and exclusive right to use the intellectual property.

3 Racketeering crime; definitions. Adds the new counterfeiting intellectual property crime to the list of criminal acts covered by Minn. Stat. § 609.902, the racketeering crime. This crime provides separate criminal penalties for persons who engage in a pattern of organized criminal activity.

4 Effective date. August 1, 1999, for violations occurring on or after that date.