

714.26 Intellectual property counterfeiting.

1. *Definitions.* As used in this section unless the context otherwise requires:

a. *"Counterfeit mark"* means any unauthorized reproduction or copy of intellectual property, or intellectual property affixed to any item knowingly sold, offered for sale, manufactured, or distributed, or identifying services offered or rendered, without authority of the owner of the intellectual property.

b. *"Intellectual property"* means any trademark, service mark, trade name, label, term, device, design, or word adopted or used by a person to identify the items or services of the person.

c. *"Retail value"* means the highest value of an item determined by any reasonable standard at the time the item bearing or identified by a counterfeit mark is seized. If a seized item bearing or identified by a counterfeit mark is a component of a finished product, *"retail value"* also means the highest value, determined by any reasonable standard, of the finished product on which the component would have been utilized. The retail value shall be the retail value of the aggregate quantity of all items seized which bear or are identified by a counterfeit mark. For purposes of this paragraph, reasonable standard includes but is not limited to the market value within the community, actual value, replacement value, or the counterfeiter's regular selling price for the item bearing or identified by a counterfeit mark, or the intellectual property owner's regular selling price for an item similar to the item bearing or identified by a counterfeit mark.

2. *Criminal offense.* A person who knowingly manufactures, produces, displays, advertises, distributes, offers for sale, sells, possesses with intent to sell or distributes any item or knowingly provides service bearing or identified by a counterfeit mark commits intellectual property counterfeiting.

a. A person commits intellectual property counterfeiting in the first degree if any of the following apply:

(1) The person is manufacturing or producing an item bearing or identified by a counterfeit mark.

(2) The offense involves more than one thousand items bearing or identified by a counterfeit mark or the total retail value of such items is equal to or greater than ten thousand dollars.

(3) The offense is a third or subsequent violation of this section.

Intellectual property counterfeiting in the first degree is a class "C" felony.

b. A person commits intellectual property counterfeiting in the second degree if any of the following apply:

(1) The offense involves more than one hundred items but does not involve more than one thousand items bearing or identified by a counterfeit mark or the total retail value of such items is equal to or greater than one thousand dollars but less than ten thousand dollars.

(2) The offense is a second violation of this section.

Intellectual property counterfeiting in the second degree is a class "D" felony.

c. All intellectual property counterfeiting which is not intellectual property counterfeiting in the first degree or second degree is intellectual property counterfeiting in the third degree. Intellectual property counterfeiting in the third degree is an aggravated misdemeanor.

3. *Evidence.* Any state or federal certificate of registration of any intellectual property shall be prima facie evidence of ownership of the intellectual property in dispute.

4. Seizure and disposition. Any items bearing or identified by a counterfeit mark, and all personal property, including but not limited to any items, objects, tools, machines, equipment, instrumentalities, or vehicles used in connection with a violation of this section, shall be seized by any law enforcement agency.

a. All seized personal property shall be disposed of in accordance with section 809.5 or as provided in paragraph "*b*".

b. Upon request of the intellectual property owner, all seized items bearing or identified by a counterfeit mark shall be released by the seizing agency to the intellectual property owner for destruction or disposition. If the intellectual property owner does not request release of the seized items, the items shall be destroyed unless the intellectual property owner consents to another disposition.

2004 Acts, ch 1112, §1; 2004 Acts, ch 1175, §390