

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. 1417

COUNCIL/COMMITTEE ACTION

ADOPTED ___ (Y/N)
ADOPTED AS AMENDED ___ (Y/N)
ADOPTED W/O OBJECTION ___ (Y/N)
FAILED TO ADOPT ___ (Y/N)
WITHDRAWN ___ (Y/N)
OTHER _____

1 Council/Committee hearing bill: Homeland Security & Public Safety
2 Representative Gardiner offered the following:

3
4 **Amendment**

5 Remove lines 122-221 and insert:

6 Section 3. Section 831.032, Florida Statutes, is created
7 to read:

8 831.032 Offenses involving forging or counterfeiting
9 private labels.--

10 (1) Whoever, knowingly and willfully, forges or
11 counterfeits, or causes or procures to be forged or
12 counterfeited, manufactures, distributes or transports, or
13 possesses with intent to distribute or transport, upon or in
14 connection with any goods or services, the trademark or service
15 mark of any person, entity, or association, which goods or
16 services are intended for resale, or knowingly possesses tools
17 or other reproduction materials for reproduction of specific
18 forged or counterfeit trademarks or service marks commits the
19 crime of counterfeiting.

20 (2) Whoever knowingly sells or offers for sale, or
21 knowingly purchases and keeps or has in his or her possession,

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22 with intent that the same shall be sold or disposed, or vends
23 any goods having thereon a forged or counterfeit trademark, or
24 who knowingly sells or offers for sale any service which is sold
25 in conjunction with a forged or counterfeit service mark, of any
26 person, entity, or association, knowing the same to be forged or
27 counterfeited, commits the crime of selling or offering for sale
28 counterfeit goods or services.

29 (3) (a) Violation of subsection (1) or subsection (2) is
30 a misdemeanor of the first degree, punishable as provided in s.
31 775.082 or s. 775.083, except that:

32 1. A violation of subsection (1) or subsection (2) is a
33 felony of the third degree, punishable as provided in s.
34 775.082, s. 775.083, or s. 775.084, if the offense involves 100
35 or more but less than 1,000 items bearing one or more
36 counterfeit marks, or if the goods involved in the offense have
37 a total retail value of more than \$ 2,500, but less than
38 \$20,000.

39 2. A violation of subsection (1) or subsection (2) is a
40 felony of the second degree, punishable as provided in s.
41 775.082, s. 775.083, or s. 775.084, if the offense involves
42 1,000 or more items bearing one or more counterfeit marks or if
43 the goods involved in the offense have a total retail value of
44 \$20,000 or more.

45 3. A violation of subsection (1) or subsection (2) is a
46 felony of the third degree, punishable as provided in s.
47 775.082, s. 775.083, or s. 775.084 if, during the commission or
48 as a result of the commission of the offense, the person
49 engaging in the offense knowingly or by culpable negligence
50 causes or allows to be caused bodily injury to another.

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51 4. A violation of subsection (1) or subsection (2) is a
52 felony of the second degree, punishable as provided in s.
53 775.082, s. 775.083, or s. 775.084 if, during the commission or
54 as a result of the commission of the offense, the person
55 engaging in the offense knowingly or by culpable negligence
56 causes or allows to be caused serious bodily injury to another.

57 5. A violation of subsection (1) or subsection (2) is a
58 felony of the first degree, punishable as provided in s.
59 775.082, s. 775.083, or s. 775.084 if, during the commission or
60 as a result of the commission of the offense, the person
61 engaging in the offense knowingly or by culpable negligence
62 causes or allows to be caused death to another commits a felony
63 of the first degree, punishable as provided in s. 775.082, s.
64 775.083, or s. 775.084.

65 (b) For any person who, having previously been convicted
66 for an offense under this section, is subsequently convicted for
67 another offense under this section, such subsequent offense
68 shall be reclassified as follows:

69 1. In the case of a felony of the second degree, to a
70 felony of the first degree.

71 2. In the case of a felony of the third degree, to a
72 felony of the second degree.

73 3. In the case of a misdemeanor of the first degree, to a
74 felony of the third degree. For purposes of sentencing under
75 chapter 921 and determining incentive gain-time eligibility
76 under chapter 944, such offense is ranked in level 4 of the
77 offense severity ranking chart.

78
79 For purposes of sentencing under chapter 921 and determining
80 incentive gain-time eligibility under chapter 944, a felony

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81 offense that is reclassified under this paragraph is ranked one
82 level above the ranking under s. 921.0022 or s. 921.0023 of the
83 felony offense committed.

84 (c) In lieu of a fine otherwise authorized by law, when
85 any person has been convicted of an offense under this section,
86 the court may fine the person up to three times the retail value
87 of the goods seized, manufactured, or sold, whichever is
88 greater, and may enter orders awarding court costs and the costs
89 of investigation and prosecution, reasonably incurred. The court
90 shall hold a hearing to determine the amount of the fine
91 authorized by this paragraph.

92 (d) When a person is convicted of an offense under this
93 section, the court, pursuant to s. 775.089, shall order the
94 person to pay restitution to the trademark owner and any other
95 victim of the offense. In determining the value of the property
96 loss to the trademark owner, the court shall include expenses
97 incurred by the trademark owner in the investigation or
98 prosecution of the offense as well as the disgorgement of any
99 profits realized by a person convicted of the offense.

100 (4) All defenses, affirmative defenses, and limitations on
101 remedies that would be applicable in an action under the Lanham
102 Act, 15 U.S.C. ss. 1051 et seq., or to an action under s.
103 495.131 shall be applicable in a prosecution under this section.