

LEGISLATIVE ASSEMBLY

LAW No. 1

(January 5, 2004)

Amending and updating the Penal and Judicial Codes, and Law No. 35 of 1996, and repealing an Article of the Penal Code and Law No. 15 of 1994, referring to industrial property rights.

THE LEGISLATIVE ASSEMBLY

DECREES:

Article 1. Article 382 of the Penal Code shall read as follows:

Article 382. Any person who manufactures or assembles a product covered by an invention or utility model patent without the consent of the holder of the title to the industrial property right registered with the Office of Industrial Property at the Ministry of Trade and Industry, or markets or places in circulation a product or object thus manufactured or assembled, shall be sanctioned with a prison sentence from two to four years.

The same sanction shall be imposed for using patented processes without the consent of the holder of the title to the industrial property right registered with the Office of Industrial Property at the Ministry of Trade and Industry.

Article 2. Article 382-A shall be added to the Penal Code, as follows:

Article 382-A. Any person who adulterates or imitates a protected industrial design shall be sanctioned with a prison sentence from two to four years.

The same sanction shall be imposed on any person who reproduces, manufactures or assembles a product or object resulting from an industrial design without the respective license registered with the Industrial Property Registry Office at the Ministry of Trade and Industry, or markets or places in circulation any products or objects thus manufactured or assembled.

Article 3. Article 382-B shall be added to the Penal Code, as follows:

Article 382-B. Any person who falsifies, alters or imitates a mark, a trade name or any advertising sign or expression shall be sanctioned with a prison sentence from two to four years.

The same sanction shall be applied to any person who markets or places in circulation a product, or offers or provides services, with counterfeit, altered or imitated marks.

Article 4. Article 382-C shall be added to the Penal Code, as follows:

Article 382-C. Any person who manufactures, markets or places in circulation any product or provides services that bear an indication of its source or appellation of origin, violating industrial property rights, shall be sanctioned with a prison sentence from one to two years.

Article 5. Article 382-D shall be added to the Penal Code, as follows:

Article 382-D. Any person who reveals an industrial or trade secret, without justified cause, having been warned about the confidentiality thereof, in order to obtain an economic benefit for himself or for a third party, or in order to cause harm to the person keeping the secret or to the authorized user thereof, shall be sanctioned with a prison sentence from one to three years.

Article 6. Article 382-E shall be added to the Penal Code, as follows:

Article 382-E. Any person who appropriates or uses information contained in a trade or industrial secret, without the consent of the person keeping it or from the authorized user, in order to obtain an economic benefit for himself or for any third party, or in order to cause harm to the person keeping the secret or to the authorized user thereof, shall be sanctioned with a prison sentence from two to four years.

Article 7. Article 382-F shall be added to the Penal Code, as follows:

Article 382 F. Any person who markets or places in circulation a protected plant variety that may be used as reproduction or propagation material, without the respective license registered with the Industrial Property Registry Office at the Ministry of Trade and Industry, shall be sanctioned with a prison sentence from two to four years.

Article 8. Article 383 of the Penal Code shall read as follows:

Article 383. Public Servants who use or disclose, for their own benefit or for that of any third party, information or documentation inherent in some industrial property right, that they are aware of because of their office and that should remain a secret, shall be sanctioned with a prison sentence from two to four years and with 200 to 365 fine-days.

Article 9. Article 384 of the Penal Code shall read as follows:

Article 384. Any person who engages in any conduct that infringes Articles 382, 382-A, 382-B, 382-C, 382-D, 382-E and 382-F of this Code, while endangering public health, shall be sanctioned with a prison sentence from 30 months to six years.

Article 10. Article 384-A shall be added to the Penal Code, as follows:

Article 384-A. For those cases set forth under Articles 382, 382-A, 382-B, 382-C, 382-D, 382-E and 382-F of this Code, while any person who willfully commits such an unlawful act is an itinerant trader or peddler, whether authorized to engage in such activities by a competent authority, or not, shall be sanctioned with a sixth of the prison sentence stipulated therein.

If public health were at risk, it shall be sanctioned with a prison sentence from one to two years.

Article 11. Article 389 of the Penal Code shall read as follows:

Article 389. Any person who receives, deposits, trades, converts or transfers monies, securities, titles or other financial resources or assets, with the knowledge that they came from activities related to drug trafficking, aggravated fraud, illegal arms trafficking, people trafficking, kidnapping, blackmail, embezzlement, corruption of public servants, acts of terrorism, international vehicle trafficking or theft, or any crimes against intellectual property in general, stipulated in Panamanian criminal law, in order to hide or cover up their unlawful origin, or helps to evade the legal consequences of such punishable deeds, shall be sanctioned with a prison sentence from five to 12 years or with 100 to 200 fine-days.

Article 12. The Title of Chapter IV of Volume XII of Book II of the Penal Code shall read as follows:

Crimes against Industrial Property Rights

Article 13. Sub-Section 13 of Section C of Article 159 of the Judicial Code shall read as follows:

Article 159. Circuit Judges shall have jurisdiction to hear the following in the first instance:

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13. Criminal trials for robbery, theft of one or more heads of livestock, unfair competition, crimes against industrial property rights, crimes against copyright and related rights, embezzlement, criminal trials against judges and municipal magistrates as well as against any public officials in general with authority and jurisdiction over one or more districts in their respective judicial circuits, and any other crime that, according to criminal law, would incur a prison sentence of more than two years; and

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Article 14. A final paragraph shall be added to Article 2159 of the Judicial Code, as follows:

Article 2159.

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When dealing with crimes against copyright and related rights, as well as against industrial property rights, the bail amount to be set shall not be less than five thousand balboas (PAB5,000).

Article 15. Article 165 of Law No. 35, of 1996, shall read as follows:

Article 165. The civil Judge shall apply, to whoever may engage in such conduct as set forth in the previous article, each and every one of the following sanctions:

(1) A fine from ten thousand balboas (PAB10,000.00) to two hundred thousand balboas (PAB200,000.00). This fine shall be applied both to those who violate the rules of this chapter, as well as to their accomplices or accessories.

When dealing with companies operating in free trade zones, export processing zones or any other special zones existing in Panama, the applicable fine shall be the equivalent of twenty-five percent (25%) of the company's monthly turnover; however, such a fine shall, under no circumstances, be lower than seventy-five thousand balboas (PAB75,000.00).

In those cases where public health is being endangered or affected, the fine shall be from twenty thousand balboas (PAB20,000.00) to five hundred thousand balboas (PAB500,000.00);

(2) A suspension of the right to engage in trade or operate an industry for a period of three months;

(3) A suspension or cancellation of the operating key or permit granted by the Administration of the Colón Free Zone, free trade zones, export processing zones or special zones existing in Panama. Suspensions will be applied for a minimum of three months.

For repeat offenders, the sanctions set forth in sections 2 and 3 of this Article shall be applied for a period of one year and the sanction set forth in Section 1 may be increased up to four times the maximum fine established therein, without prejudice to any other stipulation in the Law governing trade and industry.

Paragraph 1: Criminal Judges shall impose such sanctions as set forth under Sections 2 and 3 of this Article.

Paragraph 2: As for the sanction established in Section 1 of this Article, in the case of itinerant traders or peddlers, the fines shall range from five hundred balboas (PAB500.00) to five thousand balboas (PAB5,000.00).

Article 16. Article 173 of Law No. 35, of 1996, shall read as follows:

Article 173. For crimes against copyright and related rights, as well as for crimes against industrial property rights, plant varieties obtained and collective intellectual property rights, the Office of the Public Prosecutor shall bring proceedings *ex officio*, when made aware, by any means, of such crimes having been committed.

The competent authority shall immediately adopt all such precautionary measures that may be needed to ensure that the criminal suit proceeds effectively; *inter alia*, provisional detention of the goods that are the subject of the investigation, as well as any of the other means that were used for committing the crime.

Paragraph. In any instance of such criminal proceedings, prior to a final judgment, the Judge or Court shall order that the process be terminated and the docket shelved, when the party holding title to the right and the defendant both together so request.

Article 17. This Law amends Articles 382, 383, 384 and 389 of the Penal Code, Sub-Section 13 of Section “c” of Article 159 of the Judicial Code and Articles 165 and 173 of Law No. 35, of May 10, 1996, as well as the Title of Chapter IV of Volume XII of Book II of the Penal Code; adds Articles 382-A, 382-B, 382-C, 382-D, 382-E, 382-F and 384-A to the Penal Code and a final Paragraph to Article 2159 of the Judicial Code, repealing Article 385 of the Penal Code and Article 126 of Law 15, of August 8, 1994.

Article 18. This Law shall come into force from the time of its enactment.

FOR COMMUNICATION AND EXECUTION

Approved after third reading at the Justo Arosemena Palace, in the city of Panama, on the 18th day of the month of November of the year two thousand and three (2003).

**The Speaker
JACOBO L. SALAS DÍAZ**

**The Acting Secretary General
EDWIN E. CABRERA U.**

**NATIONAL EXECUTIVE AUTHORITY – OFFICE OF THE PRESIDENT OF
THE REPUBLIC – PANAMA – REPUBLIC OF PANAMA, JANUARY 5, 2004**

**MIREYA MOSCOSO
President of the Republic**

**ARNULFO ESCALONA ÁVILA
Minister of Government and Justice**