

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 2174

S.P. 775

In Senate, April 8, 1999

**An Act to Protect the Citizens of Maine from the Dangers of Counterfeit
Consumer Goods.**

(AFTER DEADLINE)

(EMERGENCY)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule
205.

Reference to the Committee on Criminal Justice suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator KILKELLY of Lincoln.
Cosponsored by Representative FISHER of Brewer and
Senators: LaFOUNTAIN of York, NUTTING of Androscoggin, RAND of Cumberland,
Representatives: COLWELL of Gardiner, LEMONT of Kittery, McALEVEY of Waterboro,
POVICH of Ellsworth, WHEELER of Eliot.

2 **Emergency preamble.** Whereas, Acts of the Legislature do not
become effective until 90 days after adjournment unless enacted
as emergencies; and

4 Whereas, the manufacture and sale of counterfeit consumer
6 products present a clear and present health risk to the citizens
of this State; and

8 Whereas, current law allows a manufacturer or retailer of
10 counterfeit consumer products to retain those products following
a conviction; and

12 Whereas, current law provides a maximum penalty of no more
14 than 6 months imprisonment and a fine of no more than \$1,000 for
a person and \$10,000 for an organization; and

16 Whereas, these penalties do not effectively deter the
18 manufacture and sale of counterfeit goods; and

20 Whereas, the summer tourist season coincides with a large
increase of counterfeit consumer products within this State; and

22 Whereas, in the judgment of the Legislature, these facts
24 create an emergency within the meaning of the Constitution of
Maine and require the following legislation as immediately
26 necessary for the preservation of the public peace, health and
safety; now, therefore,

28 **Be it enacted by the People of the State of Maine as follows:**

30 **Sec. 1. 17-A MRSA §705**, as amended by PL 1979, c. 129, is
32 further amended by inserting at the end a new paragraph to read:

34 If a person may be prosecuted under both this section and
36 section 705-A, the person must be prosecuted under section 705-A.

38 **Sec. 2. 17-A MRSA §705-A** is enacted to read:

40 **§705-A. Trademark counterfeiting**

42 **1. Definitions.** As used in this section, unless the
context otherwise indicates, the following terms have the
44 following meanings.

46 A. "Counterfeit mark" means:

48 (1) Any unauthorized reproduction or copy of
intellectual property; or

50 (2) Intellectual property affixed to any item

2 knowingly sold, offered for sale, manufactured or
3 distributed or identifying services offered or rendered
4 without the authority of the owner of the intellectual
5 property.

6 B. "Intellectual property" means any trademark, service
7 mark, trade name, label, term, device, design or word
8 adopted or used by a person to identify that person's goods
9 or services.

10 C. "Organization" and "person" have the same meanings as
11 defined in section 2.

12 D. "Retail value" means the counterfeiter's regular selling
13 price for the item or service bearing or identified by a
14 counterfeit mark. In the case of items bearing a
15 counterfeit mark that are components of a finished product,
16 the retail value is the counterfeiter's regular selling
17 price of the finished product on or in which the component
18 is used.

19 2. Violation. Notwithstanding Title 22, chapter 551, a
20 person is guilty of trademark counterfeiting if that person
21 willfully manufactures, uses, displays, advertises, distributes,
22 offers for sale, sells or possesses with intent to sell or
23 distribute any item or services bearing or identified by a
24 counterfeit mark.

25 A person having possession, custody or control of more than 25
26 items bearing a counterfeit mark is presumed to possess those
27 items with intent to sell or distribute.

28 3. Penalties. The following penalties apply for a
29 violation of this section.

30 A. Trademark counterfeiting is a Class D crime, except as
31 provided in paragraphs B and C.

32 B. Counterfeiting is a Class C crime if:

33 (1) The defendant has been previously convicted once
34 under this section;

35 (2) The violation involves more than 100 but fewer
36 than 1,000 items bearing a counterfeit mark; or

37 (3) The total retail value of all items bearing or
38 services identified by a counterfeit mark is more than
39 \$1,000 but less than \$10,000.

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C. Counterfeiting is a Class B crime if:

- (1) The defendant has been previously convicted more than once under this section;
- (2) The violation involves the manufacture or production of items bearing counterfeit marks;
- (3) The violation involves 1,000 or more items bearing a counterfeit mark; or
- (4) The total retail value of all items bearing or services identified by a counterfeit mark is \$10,000 or more.

For the purposes of this subsection, the quantity or retail value of items or services includes the aggregate quantity or retail value of all items bearing or services identified by every counterfeit mark the defendant manufactures, uses, displays, advertises, distributes, offers for sale, sells or possesses.

4. Seizure, forfeiture and disposition. Any item bearing a counterfeit mark and all personal property, including, but not limited to, any item, object, tool, machine, equipment, instrumentality or vehicle employed or used in connection with a violation of this section must be seized by a law enforcement officer.

A person convicted of a violation of this section forfeits to the State all rights, privileges, interests and claims to all property seized in accordance with this subsection.

5. Prosecution. If a person may be prosecuted under this section and section 705, the person must be prosecuted under this section.

Nothing in this section may be construed to limit the operation of Title 10, chapter 301-A.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

SUMMARY

This bill clarifies and enhances penalties for the manufacture and sale of counterfeit consumer products and requires the forfeiture of seized counterfeit consumer products.