

A Bill for an Act Relating to Trademark Counterfeiting.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 708, Hawaii Revised Statutes, is amended by adding a new section to part VII to be appropriately designated and to read as follows:

“§708- Trademark counterfeiting. (1) A person commits the offense of trademark counterfeiting who knowingly manufactures, produces, displays, advertises, distributes, offers for sale, sells, or possesses with the intent to sell or distribute any item bearing or identified by a counterfeit mark, knowing that the mark is counterfeit.

(2) As used in this section:

“Counterfeit mark” means any spurious mark that is identical to or confusingly similar to any print, label, trademark, service mark, or trade name registered in accordance with chapter 482 or registered on the Principal Register of the United States Patent and Trademark Office.

“Sale” includes resale.

(3) Trademark counterfeiting is a class C felony.

(4) In any action brought under this section resulting in a conviction or a plea of nolo contendere, the court shall order the forfeiture and destruction of all counterfeit marks and the forfeiture and destruction or other disposition of all items bearing a counterfeit mark, and all personal property, including any items, objects, tools, machines, equipment, instrumentalities, or vehicles of any kind, employed or used in connection with a violation of this section, in accordance with the procedures set forth in chapter 712A.”

SECTION 2. Section 706-606.5, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) Notwithstanding section 706-669 and any other law to the contrary, any person convicted of murder in the second degree, any class A felony, any class B felony, or any of the following class C felonies: section 707-703 relating to negligent homicide in the first degree; 707-711 relating to assault in the second degree; 707-713 relating to reckless endangering in the first degree; 707-716 relating to terroristic threatening in the first degree; 707-721 relating to unlawful imprisonment in the first degree; 707-732 relating to sexual assault or rape in the third degree; 707-735 relating to sodomy in the third degree; 707-736 relating to sexual abuse in the first degree; 707-751 relating to promoting child abuse in the second degree; 707-766 relating to extortion in the second degree; 708-811 relating to burglary in the second degree; 708-821 relating to criminal property damage in the second degree; 708-831 relating to theft in the first degree as amended by Act 68, Session Laws of Hawaii 1981; 708-831 relating to theft in the second degree; 708-835.5 relating to theft of livestock; 708-836 relating to unauthorized control of propelled vehicle; 708-852 relating to forgery in the second degree; 708-854 relating to criminal possession of a forgery device; 708- relating to trademark counterfeiting; 710-1031 relating to intimidation of a correctional worker; 710-1071 relating to intimidating a witness; 711-1103 relating to riot; 712-1203 relating to promoting prostitution in the second degree; 712-1221 relating to gambling in the first degree; 712-1224 relating to possession of gambling records in the first degree; 712-1243 relating to promoting a dangerous drug in the third degree; 712-1247 relating to promoting a detrimental drug in the first degree; 134-7 relating to ownership or possession of firearms or

ammunition by persons convicted of certain crimes; 134-8 relating to ownership, etc., of prohibited weapons; 134-9 relating to permits to carry, or who is convicted of attempting to commit murder in the second degree, any class A felony, any class B felony, or any of the class C felony offenses enumerated above and who has a prior conviction or prior convictions for the following felonies, including an attempt to commit the same: murder, murder in the first or second degree, a class A felony, a class B felony, any of the class C felony offenses enumerated above, or any felony conviction of another jurisdiction shall be sentenced to a mandatory minimum period of imprisonment without possibility of parole during such period as follows:

- (a) One prior felony conviction:
 - (i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree—ten years;
 - (ii) Where the instant conviction is for a class A felony—six years, eight months;
 - (iii) Where the instant conviction is for a class B felony—three years, four months;
 - (iv) Where the instant conviction is for a class C felony offense enumerated above—one year, eight months;
- (b) Two prior felony convictions:
 - (i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree—twenty years;
 - (ii) Where the instant conviction is for a class A felony—thirteen years, four months;
 - (iii) Where the instant conviction is for a class B felony—six years, eight months;
 - (iv) Where the instant conviction is for a class C felony offense enumerated above—three years, four months;
- (c) Three or more prior felony convictions:
 - (i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree—thirty years;
 - (ii) Where the instant conviction is for a class A felony—twenty years;
 - (iii) Where the instant conviction is for a class B felony—ten years;
 - (iv) Where the instant conviction is for a class C felony offense enumerated above—five years.”

SECTION 3. Section 712A-4, Hawaii Revised Statutes, is amended to read as follows:

“§712A-4 **Covered offenses.** Offenses for which property is subject to forfeiture under this chapter are:

- (a) All offenses which specifically authorize forfeiture;
- (b) Murder, kidnapping, gambling, criminal property damage, robbery, bribery, extortion, theft, burglary, money laundering, trademark counterfeiting, promoting a dangerous, harmful, or detrimental drug, or commercial promotion of marijuana, which is chargeable as a felony offense under state law;
- (c) The manufacture, sale, or distribution of a controlled substance in violation of chapter 329, promoting detrimental drugs or intoxicating compounds, promoting pornography, promoting pornography for minors, or promoting prostitution, which is chargeable as a felony or misdemeanor offense, but not as a petty misdemeanor, under state law; and

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- (d) The attempt, conspiracy, solicitation, coercion, or intimidation of another to commit any offense for which property is subject to forfeiture.”

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. New statutory material is underscored.¹

SECTION 6. This Act shall take effect upon its approval.

(Approved June 21, 1997.)

Note

1. Edited pursuant to HRS §23G-16.5.