

CHAPTER 356

(HB 789)

AN ACT relating to intellectual property.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 365 IS CREATED TO READ AS FOLLOWS:

(1) *As used in this section:*

(a) *"Counterfeit mark" means:*

1. *Any unauthorized reproduction or copy of intellectual property; or*
2. *Intellectual property knowingly affixed to any item without the 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 person's goods or services.*

(c) *"Person" includes, in addition to its meaning under KRS 446.010, any association, organization, or entity amenable to suit in a court of law.*

(d) *"Retail value" means the counterfeiter's regular selling price for the item or service bearing or identified by the counterfeit mark. In the case of items bearing a counterfeit mark which are components of a finished product, the retail value shall be the counterfeiter's regular selling price of the finished product on or in which the component would be utilized.*

(2) *Any person who willfully manufactures, uses, displays, advertises, distributes, offers for sale, sells, or possesses with intent to sell or distribute any item or service that the person knows bears or is identified by a counterfeit mark shall be guilty of counterfeiting.*

(3) *A person having possession, custody, or control of more than twenty-five (25) items that the person knows bears or is identified by a counterfeit mark shall be presumed to possess the items with the intent to sell or distribute.*

(4) *Any person who violates the provisions of this section shall be guilty of a Class A misdemeanor, except where the person has been previously convicted of a violation of this section or the violation involves more than one hundred (100) items bearing a counterfeit mark or the total retail value of all items bearing, or services identified by, a counterfeit mark is more than one thousand dollars (\$1,000), in which case the person shall be guilty of a Class D felony. Unless reduced by the court for extenuating circumstances and notwithstanding KRS Chapter 534, upon conviction the offender shall, in addition to any other allowable disposition, be fined an amount equal to the greater of:*

(a) *Three (3) times the retail value of the items bearing, or services identified by, the counterfeit mark;*

(b) *Double the amount of the defendant's gain from commission of the offense; or (c)*

As otherwise allowed in KRS Chapter 534 for felonies and misdemeanors.

(5) *For purposes of this section, the quantity or retail value of items or services shall include 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.

- (6) Except for items in the possession of a person not in violation of this section, any items bearing a counterfeit mark, and all personal property, including but not limited to, any items, objects, tools, machines, equipment, instrumentalities, or vehicles of any kind, employed or used in connection with a violation of this section shall be seized by any law enforcement officer.*

 - (a) Except as otherwise provided in this subsection, all personal property seized under this subsection shall be forfeited in accordance with KRS 431.100.*
 - (b) Upon request of the intellectual property owner, all seized items bearing a counterfeit mark shall be released to the intellectual property owner.*
 - (c) If the intellectual property owner does not request release of seized items bearing a counterfeit mark, the items shall be destroyed unless the intellectual property owner consents to another disposition.*
- (7) Any state or federal certificate of registration of any intellectual property shall be prima facie evidence of the facts stated in the certificate.*
- (8) The remedies provided in this section shall be cumulative to other civil and criminal remedies provided by law.*
- (9) Notwithstanding any statute to the contrary, fines imposed under this section shall be paid into the Crime Victims Compensation Fund established in KRS 346.185. Approved April 6, 2000*

