REFERENCE TITLE: misbranded drugs; counterfeit marks; offense

State of Arizona
House of Representatives
Fifty-second Legislature
First Regular Session
2015

HB 2322

Introduced by
Representative Weninger

AN ACT

AMENDING SECTIONS 13-2301, 13-3406, 32-1967 AND 44-1453, ARIZONA REVISED STATUTES; RELATING TO MISBRANDED DRUGS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 13-2301, Arizona Revised Statutes, is amended to read:

13-2301. Definitions

A. For the purposes of sections 13-2302, 13-2303 and 13-2304:

1. "Collect an extension of credit" means to induce in any way any person to make repayment of that extension.

2. "Creditor" means any person making an extension of credit or any person claiming by, under or through any person making an extension of credit.

3. "Debtor" means any person to whom an extension of credit is made or any person who guarantees the repayment of an extension of credit, or in any manner undertakes to indemnify the creditor against loss resulting from the failure of any person to whom an extension is made to repay the extension.

4. "Extend credit" means to make or renew any loan or to enter into any agreement, tacit or express, whereby the repayment or satisfaction of any debt or claim, whether acknowledged or disputed, valid or invalid, and however arising, may or shall be deferred.

5. "Extortionate extension of credit" means any extension of credit with respect to which it is the understanding of the creditor and the debtor at the time the extension is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person or the reputation or property of any person.

6. "Extortionate means" means the use, or an express or implicit threat of use, of violence or other criminal means to cause harm to the person or the reputation or property of any person.

7. "Repayment of any extension of credit" means the repayment, satisfaction or discharge in whole or in part of any debt or claim, acknowledged or disputed, valid or invalid, resulting from or in connection with that extension of credit.

B. For the purposes of section 13-2305, 13-2306 or 13-2307:

1. "Dealer in property" means a person who buys and sells property as a business.

2. "Stolen property" means property of another as defined in section 13-1801 that has been the subject of any unlawful taking.

3. "Traffic" means to sell, transfer, distribute, dispense or otherwise dispose of stolen property to another person, or to buy, receive, possess or obtain control of stolen property, with the intent to sell, transfer, distribute, dispense or otherwise dispose of the property to another person.

C. For the purposes of this chapter:

1. "Animal activity" means a commercial enterprise that uses animals for food, clothing or fiber production, agriculture or biotechnology.

2. "Animal facility" means a building or premises where a commercial activity in which the use of animals is essential takes place, including a zoo, rodeo, circus, amusement park, hunting preserve and horse and dog event.

3. "Animal or ecological terrorism" means any felony in violation of section 13-2312, subsection B that involves at least three persons acting in concert, that involves the intentional or knowing infliction of property damage in an amount of more than ten thousand dollars to the property that is used by a person for the operation of a lawfully conducted animal activity or to a commercial enterprise that is engaged in a lawfully operated animal facility or research facility and that involves either:

(a) The use of a deadly weapon or dangerous instrument.

(b) The intentional or knowing infliction of serious physical injury on a person engaged in a lawfully conducted animal activity or participating in a lawfully conducted animal facility or research facility.

4. "Biological agent" means any microorganism, virus, infectious substance or biological product that may be engineered through biotechnology or any naturally occurring or bioengineered component of any microorganism, virus, infectious substance or biological product and that is capable of causing any of the following:

(a) Death, disease or physical injury in a human, animal, plant or other living organism.

(b) The deterioration or contamination of air, food, water, equipment, supplies or material of any kind.

5. "Combination" means persons who collaborate in carrying on or furthering the activities or purposes of a criminal syndicate even though such persons may not know each other's identity, membership in the combination changes from time to time or one or more members may stand in a wholesaler-retailer or other arm's length relationship with others as to activities or dealings between or among themselves in an illicit operation.

6. "Communication service provider" has the same meaning prescribed in section 13-3001.

7. "Criminal syndicate" means any combination of persons or enterprises engaging, or having the purpose of engaging, on a continuing basis in conduct that violates any one or more provisions of any felony statute of this state.

8. "Explosive agent" means an explosive as defined in section 13-3101 and flammable fuels or fire accelerants in amounts over fifty gallons but excludes:

(a) Fireworks as defined in section 36-1601.

(b) Firearms.

(c) A propellant actuated device or propellant actuated industrial tool.

(d) A device that is commercially manufactured primarily for the purpose of illumination.

(e) A rocket having a propellant charge of less than four ounces.

9. "Material support or resources" includes money or other financial securities, financial services, lodging, sustenance, training, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, disguises and other physical assets but does not include medical assistance, legal assistance or religious materials.

10. "Public establishment" means a structure that is owned, leased or operated by this state or a political subdivision of this state or a health care institution as defined in section 36-401.

11. "Research facility" means a laboratory, institution, medical care facility, government facility, public or private educational institution or nature preserve at which a scientific test, experiment or investigation involving the use of animals is lawfully carried out, conducted or attempted.

12. "Terrorism" means any felony, including any completed or preparatory offense, that involves the use of a deadly weapon or a weapon of mass destruction or the intentional or knowing infliction of serious physical injury with the intent to either:

(a) Influence the policy or affect the conduct of this state or any of the political subdivisions, agencies or instrumentalities of this state.

(b) Cause substantial damage to or substantial interruption of public communications, communication service providers, public transportation, common carriers, public utilities, public establishments or other public services.

13. "Toxin" means the toxic material of plants, animals, microorganisms, viruses, fungi or infectious substances or a recombinant molecule, whatever its origin or method of reproduction, including:

(a) Any poisonous substance or biological product that may be engineered through biotechnology and that is produced by a living organism.

(b) Any poisonous isomer or biological product, homolog or derivative of such substance.

14. "Vector" means a living organism or molecule, including a recombinant molecule or biological product that may be engineered through biotechnology, that is capable of carrying a biological agent or toxin to a host.

15. "Weapon of mass destruction" means:

(a) Any device or object that is designed or that the person intends to use to cause multiple deaths or serious physical injuries through the use of an explosive agent or the release, dissemination or impact of a toxin, biological agent, poisonous chemical, or its precursor, or any vector.

(b) Except as authorized and used in accordance with a license, registration or exemption by the radiation regulatory agency pursuant to section 30-672, any device or object that is designed or that the person intends to use to release radiation or radioactivity at a level that is dangerous to human life.

D. For the purposes of sections 13-2312, 13-2313, 13-2314 and 13-2315, unless the context otherwise requires:

1. "Control", in relation to an enterprise, means the possession of sufficient means to permit substantial direction over the affairs of an enterprise and, in relation to property, means to acquire or possess.

2. "Enterprise" means any corporation, partnership, association, labor union or other legal entity or any group of persons associated in fact although not a legal entity.

3. "Financial institution" means any business under the jurisdiction of the department of financial institutions or a banking or securities regulatory agency of the United States, a business coming within the definition of a bank, financial agency or financial institution as prescribed by 31 United States Code section 5312 or 31 Code of Federal Regulations section 1010.100 or a business under the jurisdiction of the securities division of the corporation commission, the state real estate department or the department of insurance.

4. "Racketeering" means any act, including any preparatory or completed offense, that is chargeable or indictable under the laws of the state or country in which the act occurred and, if the act occurred in a state or country other than this state, that would be chargeable or indictable under the laws of this state if the act had occurred in this state, and that would be punishable by imprisonment for more than one year under the laws of this state and, if the act occurred in a state or country other than this state, under the laws of the state or country in which the act occurred, regardless of whether the act is charged or indicted, and the act involves either:

(a) Terrorism, animal terrorism or ecological terrorism that results or is intended to result in a risk of serious physical injury or death.

(b) Any of the following acts if committed for financial gain:

(i) Homicide.

(ii) Robbery.

(iii) Kidnapping.

(iv) Forgery.

(v) Theft.

(vi) Bribery.

(vii) Gambling.

(viii) Usury.

(ix) Extortion.

(x) Extortionate extensions of credit.

(xi) Prohibited drugs, marijuana or other prohibited chemicals or substances.

(xii) Trafficking in explosives, weapons or stolen property.

(xiii) Participating in a criminal syndicate.

(xiv) Obstructing or hindering criminal investigations or prosecutions.

(xv) Asserting false claims including, but not limited to, false claims asserted through fraud or arson.

(xvi) Intentional or reckless false statements or publications concerning land for sale or lease or sale of subdivided lands or sale and mortgaging of unsubdivided lands.

(xvii) Resale of realty with intent to defraud.

(xviii) Intentional or reckless fraud in the purchase or sale of securities.

(xix) Intentional or reckless sale of unregistered securities or real property securities.

(xx) A scheme or artifice to defraud.

(xxi) Obscenity.

(xxii) Sexual exploitation of a minor.

(xxiii) Prostitution.

(xxiv) Restraint of trade or commerce in violation of section 34-252.

(xxv) Terrorism.

(xxvi) Money laundering.

(xxvii) Obscene or indecent telephone communications to minors for commercial purposes.

(xxviii) Counterfeiting marks as proscribed in section 44-1453.

(xxix) Animal terrorism or ecological terrorism.

(xxx) Smuggling of human beings.

(xxxi) Child prostitution.

(xxxii) Sex trafficking.

(xxxiii) Trafficking of persons for forced labor or services.

(xxxiv) MANUFACTURING, SELLING OR DISTRIBUTING MISBRANDED DRUGS IN VIOLATION OF SECTION 13-3406, SUBSECTION A, PARAGRAPH 9.

5. "Records" means any book, paper, writing, computer program, data, image or information that is collected, recorded, preserved or maintained in any form of storage medium.

6. "Remedy racketeering" means to enter a civil judgment pursuant to this chapter or chapter 39 of this title against property or a person who is subject to liability, including liability for injury to the state that is caused by racketeering or by actions in concert with racketeering.

E. For the purposes of sections 13-2316, 13-2316.01 and 13-2316.02:

1. "Access" means to instruct, communicate with, store data in, retrieve data from or otherwise make use of any resources of a computer, computer system or network.

2. "Access device" means any card, token, code, account number, electronic serial number, mobile or personal identification number, password, encryption key, biometric identifier or other means of account access, including a canceled or revoked access device, that can be used alone or in conjunction with another access device to obtain money, goods, services, computer or network access or any other thing of value or that can be used to initiate a transfer of any thing of value.

3. "Computer" means an electronic device that performs logic, arithmetic or memory functions by the manipulations of electronic or magnetic impulses and includes all input, output, processing, storage, software or communication facilities that are connected or related to such a device in a system or network.

4. "Computer contaminant" means any set of computer instructions that is designed to modify, damage, destroy, record or transmit information within a computer, computer system or network without the intent or permission of the owner of the information, computer system or network. Computer contaminant includes a group of computer instructions, such as viruses or worms, that is self-replicating or self-propagating and that is designed to contaminate other computer programs or computer data, to consume computer resources, to modify, destroy, record or transmit data or in some other fashion to usurp the normal operation of the computer, computer system or network.

5. "Computer program" means a series of instructions or statements, in a form acceptable to a computer, that permits the functioning of a computer system in a manner designed to provide appropriate products from the computer system.

6. "Computer software" means a set of computer programs, procedures and associated documentation concerned with the operation of a computer system.

7. "Computer system" means a set of related, connected or unconnected computer equipment, devices and software, including storage, media and peripheral devices.

8. "Critical infrastructure resource" means any computer or communications system or network that is involved in providing services necessary to ensure or protect the public health, safety or welfare, including services that are provided by any of the following:

(a) Medical personnel and institutions.

(b) Emergency services agencies.

(c) Public and private utilities, including water, power, communications and transportation services.

(d) Fire departments, districts or volunteer organizations.

(e) Law enforcement agencies.

(f) Financial institutions.

(g) Public educational institutions.

(h) Government agencies.

9. "False or fraudulent pretense" means the unauthorized use of an access device or the use of an access device to exceed authorized access.

10. "Financial instrument" means any check, draft, money order, certificate of deposit, letter of credit, bill of exchange, credit card or marketable security or any other written instrument as defined in section 13-2001 that is transferable for value.

11. "Network" includes a complex of interconnected computer or communication systems of any type.

12. "Property" means financial instruments, information, including electronically produced data, computer software and programs in either machine or human readable form, and anything of value, tangible or intangible.

13. "Proprietary or confidential computer security information" means information about a particular computer, computer system or network that relates to its access devices, security practices, methods and systems, architecture, communications facilities, encryption methods and system vulnerabilities and that is not made available to the public by its owner or operator.

14. "Services" includes computer time, data processing, storage functions and all types of communication functions.

Sec. 2. Section 13-3406, Arizona Revised Statutes, is amended to read:

13-3406. Possession, use, administration, acquisition, sale, manufacture or transportation of prescription-only drugs; misbranded drugs; classification; definition

A. A person shall not knowingly:

1. Possess or use a prescription-only drug unless the person obtains the prescription-only drug pursuant to a valid prescription of a prescriber who is licensed pursuant to title 32, chapter 7, 11, 13, 14, 15, 16, 17, 21, 25 or 29 or is similarly licensed in another state.

2. Unless the person holds a license or a permit issued pursuant to title 32, chapter 7, 11, 13, 14, 15, 16, 17, 18, 21, 25 or 29, possess a prescription-only drug for sale.

3. Unless the person holds a license or a permit issued pursuant to title 32, chapter 7, 11, 13, 14, 15, 16, 17, 18, 21, 25 or 29, possess equipment and chemicals for the purpose of manufacturing a prescription-only drug.

4. Unless the person holds a license or a permit issued pursuant to title 32, chapter 18, manufacture a prescription-only drug.

5. Administer a prescription-only drug to another person whose possession or use of the prescription-only drug violates ~~any provision of~~ this section.

6. Obtain or procure the administration of a prescription-only drug by fraud, deceit, misrepresentation or subterfuge.

7. Unless the person is authorized, transport for sale, import into this state or offer to transport for sale or import into this state, sell, transfer or offer to sell or transfer a prescription-only drug.

8. POSSESS OR USE A MISBRANDED DRUG.

9. MANUFACTURE, SELL OR DISTRIBUTE A MISBRANDED DRUG.

B. A person who violates:

1. SUBSECTION A, PARAGRAPH 9 OF THIS SECTION IS GUILTY OF A CLASS 4 FELONY.

2. Subsection A, paragraph 2 or 7 OF THIS SECTION is guilty of a class 6 felony.

~~1.~~ 3. Subsection A, paragraph 1, 3, 4, 5, ~~or~~ 6 OR 8 OF THIS SECTION is guilty of a class 1 misdemeanor.

4. SUBSECTION A, PARAGRAPH 8 OF THIS SECTION IS GUILTY OF A CLASS 2 MISDEMEANOR.

C. In addition to any other penalty prescribed by this title, the court shall order a person who is convicted of a violation of ~~any provision~~ SUBSECTION A, PARAGRAPH 1, 2, 3, 4, 5, 6 OR 7 of this section to pay a fine of one thousand dollars. A judge shall not suspend any part or all of the imposition of any fine required by this subsection.

D. IN ADDITION TO ANY OTHER PENALTY PRESCRIBED BY THIS TITLE AND NOTWITHSTANDING SECTION 13-802, THE COURT MAY ORDER A PERSON WHO IS CONVICTED OF A VIOLATION OF SUBSECTION A, PARAGRAPH 8 OF THIS SECTION TO PAY A FINE OF NOT MORE THAN TEN THOUSAND DOLLARS.

~~D.~~ E. A person who is convicted of a felony violation of ~~a provision of~~ this section for which probation or release before the expiration of the sentence imposed by the court is authorized is prohibited from using any marijuana, dangerous drug, narcotic drug or prescription-only drug except as lawfully administered by a practitioner and as a condition of any probation or release shall be required to submit to drug testing administered under the supervision of the probation department of the county or the state department of corrections, as appropriate, during the duration of the term of probation or before the expiration of the sentence imposed.

~~E.~~ F. If a person who is convicted of a violation of ~~a provision of~~ subsection A, paragraph 2 or 7 OF THIS SECTION is granted probation, the court shall order that as a condition of probation the person perform not less than two hundred forty hours of community restitution with an agency or organization providing counseling, rehabilitation or treatment for alcohol or drug abuse, an agency or organization that provides medical treatment to persons who abuse controlled substances, an agency or organization that serves persons who are victims of crime or any other appropriate agency or organization.

G. FOR THE PURPOSES OF THIS SECTION, "MISBRANDED DRUG" MEANS A DRUG THAT IS MISBRANDED AS PRESCRIBED IN SECTION 32-1967.

Sec. 3. Section 32-1967, Arizona Revised Statutes, is amended to read:

32-1967. Acts constituting misbranding of a drug or device; exceptions; interpretation of misleading label; definition

A. A drug or device is misbranded:

1. If its labeling is false or misleading in any particular.

2. If in package form unless it bears a label containing both:

(a) The name and place of business of the manufacturer, packer or distributor.

(b) An accurate statement of the quantity of the contents in terms of weight, measure or numerical count.

3. If any word, statement or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed on the label or labeling. Compliance with the federal act shall be deemed compliance with this chapter except for compliance with paragraph 16 of this subsection.

4. If it is for use by humans and contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana, morphine, opium, paraldehyde, peyote or sulfonmethane, or any chemical derivative of such substance, which derivative or other substance has been found to be habit-forming, unless its label bears the name and quantity or proportion of such substance or derivative.

5. If it is a drug unless its label bears, to the exclusion of any other nonproprietary name, both:

(a) The established name of the drug, if there is an established name.

(b) In case it is fabricated from two or more ingredients, the established name and quantity of each active ingredient, including the kind and quantity or proportion of any alcohol, and also including, whether active or not, the established name and quantity or proportion of any bromides, ether, chloroform, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glycosides, mercury, strychnine or thyroid, or derivative or preparation of any such substances, provided that the requirements for stating the quantity of the active ingredients, other than those specifically named in this subdivision, apply only to prescription drugs.

6. Unless its labeling bears both:

(a) Adequate directions for use.

(b) Adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in a manner and form as are necessary for the protection of users.

7. If it is recognized in an official compendium, unless it is packed and labeled as prescribed in such compendium, provided that the method of packing may be modified with the consent of the board.

8. If it has been found by the board to be a drug or device liable to deterioration, unless it is packaged in that form and manner, and its label bears a statement of such precautions, as the rules issued by the board require as necessary for the protection of public health.

9. If its container is so made, formed or filled as to be misleading.

10. If it is an imitation of another drug or device.

11. If it is offered for sale under the name of another drug or device.

12. If it is dangerous to health when used in the dosage~~,~~ OR manner or with the frequency or duration prescribed, recommended or suggested in the labeling of the drug or device.

13. If it is a color additive, the intended use of which in or on drugs or devices is for the purpose of coloring only, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive in the federal act or board rule.

14. In the case of any prescription-only drug or controlled substance distributed or offered for sale in this state, unless the manufacturer, packer or distributor of such drug or substance includes in all advertisements and other printed matter with respect to that drug a true statement of:

(a) The established name.

(b) The formula showing quantitatively each ingredient.

(c) Other information in brief summary relating to side effects, contraindications or effectiveness as required in board rules or the federal act.

15. If a trademark, trade name or other identifying mark, imprint or device of another drug or device or any likeness of another drug or device has been placed on the drug or device or on its container with intent to defraud.

16. In the case of any prescription-only drug or controlled substance if in final dosage form unless it bears a label containing both:

(a) The name and place of business of the manufacturer, and if different, the packer or distributor.

(b) An accurate statement of the quantity of the contents in terms of weight, measure or numerical count.

17. IN THE CASE OF ANY FOREIGN DANGEROUS DRUG, IF IT IS NOT APPROVED BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION OR IS OBTAINED OUTSIDE OF THE LICENSED SUPPLY CHAIN REGULATED BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION, THE BOARD OR THE DEPARTMENT OF HEALTH SERVICES. THIS PARAGRAPH DOES NOT APPLY TO A FOREIGN DANGEROUS DRUG THAT IS AUTHORIZED FOR USE BY A STATE LAW OR THAT IS IMPORTED LAWFULLY UNDER THE FOOD, DRUG AND COSMETIC ACT (21 UNITED STATES CODE SECTION 301, ET SEQ.) OR PURSUANT TO AN ANNOUNCEMENT BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION OF THE EXERCISE OF ENFORCEMENT DISCRETION FOR INSTANCES, INCLUDING CLINICAL RESEARCH PURPOSES, DRUG SHORTAGES, DEVELOPMENT OF COUNTERMEASURES AGAINST CHEMICAL, BIOLOGICAL, RADIOLOGICAL AND NUCLEAR TERRORISM AGENTS, OR PANDEMIC INFLUENZA PREPAREDNESS AND RESPONSE.

B. Drugs and devices ~~which~~ THAT are to be processed, labeled or repacked at establishments other than those where originally processed or packed are exempt from any labeling or packaging requirements of this chapter, provided that such drugs and devices are being delivered, manufactured, processed, labeled, repacked or otherwise held in compliance with board rules or under the federal act.

C. If an article is alleged to be misbranded because the labeling is misleading, then in determining whether the labeling is misleading there shall be taken into account, among other things, not only representations

made or suggested by statement, word, design, device or any combination of them, but also the extent to which the labeling fails to reveal facts material in the light of such representations, or material with respect to consequences which may result from the use of the article to which the labeling relates under the conditions of use prescribed in the labeling or under such conditions of use as are customary or usual.

D. A DRUG OR DEVICE IS NOT CONSIDERED MISBRANDED IF IT IS INTENDED FOR THE USE IN PHARMACEUTICAL COMPOUNDING BY A LICENSED PHARMACIST, PHYSICIAN OR REGISTERED OUTSOURCING FACILITY IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 18 OF THIS TITLE AND THE FOOD, DRUG AND COSMETIC ACT (21 UNITED STATES CODE SECTION 321a AND 321b).

E. THIS SECTION DOES NOT APPLY TO ANY DRUG OR DEVICE, WHETHER OR NOT APPROVED BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION, THAT IS MANUFACTURED, PACKED OR DISTRIBUTED FOR USE IN PHARMACEUTICAL COMPOUNDING BY A LICENSED PHARMACIST, PHYSICIAN OR REGISTERED OUTSOURCING FACILITY IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 18 OF THIS TITLE, AND THE FOOD, DRUG AND COSMETIC ACT (21 UNITED STATES CODE SECTION 321a AND 321b).

F. FOR THE PURPOSES OF THIS SECTION, "DANGEROUS DRUG" MEANS ANY DRUG THAT IS UNSAFE FOR SELF USE IN HUMANS OR ANIMALS AND INCLUDES:

1. ANY DRUG THAT BEARS THE LEGEND: "CAUTION: FEDERAL LAW PROHIBITS DISPENSING WITHOUT PRESCRIPTION", "RX ONLY", OR WORDS OF SIMILAR IMPORT.

2. ANY DEVICE THAT BEARS THE STATEMENT: "CAUTION: FEDERAL LAW RESTRICTS THIS DEVICE TO SALE BY OR ON THE ORDER OF A ____", "RX ONLY", OR WORDS OF SIMILAR IMPORT, THE BLANK TO BE FILLED IN WITH THE DESIGNATION OF THE PRACTITIONER LICENSED TO USE OR ORDER USE OF THE DEVICE.

3. ANY OTHER DRUG OR DEVICE THAT BY FEDERAL OR STATE LAW CAN BE LAWFULLY DISPENSED ONLY ON PRESCRIPTION.

Sec. 4. Section 44-1453, Arizona Revised Statutes, is amended to read:

44-1453. Counterfeit marks; violation; classification; presumption; seizure; forfeiture; remedies; definitions

A. Except as provided in subsections B, C and D of this section, a person who knowingly and with intent to sell or distribute uses, displays, advertises, distributes, offers for sale, sells or possesses any item that bears a counterfeit mark or any service that is identified by a counterfeit mark is guilty of a class 1 misdemeanor.

B. A person who commits any act proscribed in subsection A of this section is guilty of a class 6 felony if either:

1. The person has one previous conviction under this section.

2. At least one of the following is true:

(a) The violation involves more than one hundred but fewer than one thousand items that bear the counterfeit mark.

(b) The total retail value of all of the items or services that bear or are identified by the counterfeit mark is more than one thousand dollars but less than ten thousand dollars.

C. A person who knowingly manufactures or produces with intent to sell or distribute any item that bears a counterfeit mark or any service that is identified by a counterfeit mark is guilty of a class 5 felony.

D. A person who commits any act proscribed by subsection A of this section is guilty of a class 5 felony if either:

1. The person has two or more previous convictions under this section.

2. At least one of the following is true:

(a) The violation involves at least one thousand items that bear the counterfeit mark.

(b) The total retail value of all of the items or services that bear or are identified by the counterfeit mark is at least ten thousand dollars.

E. A person who knowingly has possession, custody or control of at least twenty-six items that bear a counterfeit mark is presumed to possess the items with intent to sell or distribute the items.

F. In any criminal proceeding in which a person is convicted of a violation of this section, the court may order the convicted person to pay restitution to the intellectual property owner.

G. A law enforcement officer may seize any item that bears a counterfeit mark and all other personal property that is employed or used in connection with a violation of this section, including any items, objects, tools, machines, equipment, instrumentalities or vehicles. All personal property seized pursuant to this section shall be forfeited pursuant to title 13, chapter 39.

H. After a disposition or final judgment, on the request of the intellectual property owner, a law enforcement officer shall release all seized items that bear a counterfeit mark to the intellectual property owner for destruction or disposition. If the intellectual property owner does not request the release of the seized items that bear a counterfeit mark, the law enforcement officer shall destroy the items unless the intellectual property owner consents to another form of disposition.

I. Any certificate of registration pursuant to this article or federal law of any intellectual property is prima facie evidence of the facts stated in the certificate of registration.

J. In addition to the remedies provided in section 44-1451, an intellectual property owner who sustains a loss as a result of a violation of this section may file an action in superior court for recovery of up to treble damages and the costs of the suit including reasonable attorney fees.

K. The remedies provided in this section are cumulative to all other civil and criminal remedies provided by law.

L. For the purposes of this section, the quantity or retail value of items or services includes the aggregate quantity or retail value of all items that the defendant manufactures, uses, displays, advertises, distributes, offers for sale, sells or possesses and that bear a counterfeit mark or that are identified by a counterfeit mark.

M. For the purposes of this section:

1. "Counterfeit mark" means:

(a) Any unauthorized reproduction or copy of intellectual property.

(b) Intellectual property that is affixed to any item that is knowingly sold, offered for sale, manufactured or distributed or to any identifying services offered or rendered without the authority of the intellectual property owner.

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

3. "Item" includes:

(a) Any component that is designed, marketed or otherwise intended to be used on or in connection with any goods or services.

(b) Any component of a finished product.

4. "Retail value" means:

(a) For items that bear a counterfeit mark and that are components of a finished product, the ~~counterfeiter's regular selling~~ MANUFACTURER'S SUGGESTED RETAIL price of the finished product on or in which the component would be utilized.

(b) For all other items that bear a counterfeit mark or services that are identified by a counterfeit mark, the ~~counterfeiter's regular selling~~ MANUFACTURER'S SUGGESTED RETAIL price for those items or services.