

1 STATE OF OKLAHOMA

2 1st Session of the 47th Legislature (1999)

3 COMMITTEE SUBSTITUTE  
4 FOR ENGROSSED  
5 SENATE BILL NO. 589

By: Smith, Capps and Morgan of  
the Senate

and

Askins of the House

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9 COMMITTEE SUBSTITUTE

10 An Act relating to crimes and punishments; creating  
11 the Trademark Anti-Counterfeiting Act; providing  
12 short title; defining terms; criminalizing certain  
13 counterfeiting actions; providing penalties;  
14 providing certain presumption of offense; authorizing  
15 restitution for certain violation; providing for  
16 seizure and forfeiture of certain property pursuant  
17 to certain procedures; authorizing certain release of  
18 property under certain condition; providing for  
19 deposition of forfeited property; authorizing use of  
20 certain evidence in trial proceeding; allowing  
21 certain remedies to be cumulative; construing certain  
22 provision; amending 21 O.S. 1991, Section 1738, as  
23 last amended by Section 1, Chapter 65, O.S.L. 1993  
24 (21 O.S. Supp. 1998, Section 1738), which relates to  
25 seizure and forfeiture proceedings; including certain  
26 counterfeit items; providing for codification;  
27 providing an effective date; and declaring an  
28 emergency.

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BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified  
in the Oklahoma Statutes as Section 1990 of Title 21, unless there  
is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Trademark Anti-  
Counterfeiting Act".

SECTION 2. NEW LAW A new section of law to be codified  
in the Oklahoma Statutes as Section 1990.1 of Title 21, unless there  
is created a duplication in numbering, reads as follows:

For the purposes of this act:

1. "Counterfeit mark" means:

- 1 a. any unauthorized reproduction or copy of intellectual  
2 property, and  
3 b. intellectual property that is affixed to any item that  
4 is knowingly sold, offered for sale, manufactured or  
5 distributed or to any identifying services offered or  
6 rendered without the authority of the intellectual  
7 property owner;

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

11 3. "Retail value" means:

- 12 a. for items that bear a counterfeit mark and that are  
13 components of a finished product, the counterfeiter's  
14 regular selling price of the finished product on or in  
15 which the component would be utilized, or  
16 b. for all other items that bear a counterfeit mark or  
17 services that are identified by a counterfeit mark,  
18 the counterfeiter's regular selling price for those  
19 items or services.

20 SECTION 3. NEW LAW A new section of law to be codified in  
21 the Oklahoma Statutes as Section 1990.2 of Title 21, unless there is  
22 created a duplication in numbering, reads as follows:

23 A. Except as provided in subsections B and C of this section, a  
24 person who knowingly and with intent to sell or distribute, uses,  
25 displays, advertises, distributes, offers for sale, sells or  
26 possesses any item that bears a counterfeit mark or any service that  
27 is identified by a counterfeit mark shall, upon conviction, be  
28 guilty of a misdemeanor punishable by imprisonment in the county  
29 jail not exceeding one (1) year or by a fine not exceeding One  
30 Thousand Dollars (\$1,000.00) or by both such fine and imprisonment.

31 B. Any person who commits any prohibited act proscribed in  
32 subsection A of this section shall, upon conviction, be guilty of a

1 Schedule G felony punishable as provided in the state's sentencing  
2 matrix, or by a fine of not more than the retail value of such items  
3 or services or both such fine and imprisonment, if either:

4 1. The person has one previous conviction under any provision  
5 of this section; or

6 2. At least one of the following exists:

7 a. the violation involves more than one hundred but fewer  
8 than one thousand items that bear the counterfeit  
9 mark, or

10 b. the total retail value of all of the items or services  
11 that bear or are identified by the counterfeit mark is  
12 more than One Thousand Dollars (\$1,000.00) but less  
13 than Ten Thousand Dollars (\$10,000.00).

14 C. Any person who knowingly manufactures or produces with  
15 intent to sell or distribute any item that bears a counterfeit mark  
16 or any service that is identified by a counterfeit mark shall, upon  
17 conviction, be guilty of a Schedule F felony punishable as provided  
18 in the state's sentencing matrix, or by a fine not exceeding three  
19 times the retail value of such items or services, or by both such  
20 fine and imprisonment.

21 D. Any person who commits any prohibited act proscribed by  
22 subsection A of this section shall, upon conviction, be guilty of a  
23 Schedule E felony punishable as provided in the state's sentencing  
24 matrix, or by a fine not exceeding three times the retail value of  
25 such items or services, or by both such fine and imprisonment if  
26 either:

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

29 2. At least one of the following exists:

30 a. the violation involves at least one thousand items  
31 that bear the counterfeit mark, or

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1           b.    the total retail value of all of the items or services  
2                   that bear or are identified by the counterfeit mark is  
3                   at least Ten Thousand Dollars (\$10,000.00).

4           E.    For purposes of this section, any person who knowingly has  
5 possession, custody or control of at least twenty-six items that  
6 bear a counterfeit mark is presumed to possess the items with intent  
7 to sell or distribute the items.

8           F.    In any criminal proceeding in which a person is convicted of  
9 a violation of any provision of this section, the court may order  
10 the convicted person to pay restitution to the intellectual property  
11 owner in addition to any other provision allowed by law.

12          G.    The investigating law enforcement officer may seize any item  
13 that bears a counterfeit mark and all other personal property that  
14 is employed or used in connection with a violation of this section,  
15 including any items, objects, tools, machines, equipment,  
16 instrumentalities or vehicles. All personal property seized  
17 pursuant to this section shall be subject to forfeiture according to  
18 Section 1738 of Title 21 of the Oklahoma Statutes.

19          H.    After a forfeiture has been ordered by the district court, a  
20 law enforcement officer shall destroy all seized items that bear a  
21 counterfeit mark; however, if the counterfeit mark is removed from  
22 the seized items, the intellectual property owner may recommend to  
23 the court that the seized items be donated to a charitable  
24 organization.

25          I.    Any certificate of registration of any intellectual property  
26 pursuant to state or federal law is prima facie evidence of the  
27 facts stated in the certificate of registration and may be used at  
28 trial.

29          J.    In addition to other remedies allowed by law, an  
30 intellectual property owner who sustains a loss as a result of any  
31 violation of this section may file a civil action against the  
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1 defendant for recovery of up to treble damages and the costs of the  
2 suit including reasonable attorney fees.

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

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

11 SECTION 4. AMENDATORY 21 O.S. 1991, Section 1738, as  
12 last amended by Section 1, Chapter 65, O.S.L. 1993 (21 O.S. Supp.  
13 1998, Section 1738), is amended to read as follows:

14 Section 1738. A. Any commissioned peace officer of this state  
15 is authorized to seize any vehicle owned by or registered to the  
16 defendant used in the commission of any armed robbery offense  
17 defined in Section 801 of this title, or any vehicle owned by or  
18 registered to the defendant when such vehicle is used to facilitate  
19 the intentional discharge of any kind of firearm in violation of  
20 Section 652 of this title, or any vehicle, airplane, vessel,  
21 vehicles or parts of vehicles whose numbers have been removed,  
22 altered or obliterated so as to prevent determination of the true  
23 identity or ownership of said property and parts of vehicles which  
24 probable cause indicates are stolen but whose true ownership cannot  
25 be determined, or any vehicle owned by or registered to the  
26 defendant used in violation of the Trademark Anti-Counterfeiting  
27 Act, or any equipment owned by or registered to the defendant which  
28 is used in the attempt or commission of any act of burglary in the  
29 first or second degree, motor vehicle theft, unauthorized use of a  
30 vehicle, obliteration of distinguishing numbers on vehicles or  
31 criminal possession of vehicles with altered, removed or obliterated  
32 numbers as defined by Sections 1431, 1435, 1716, 1719 and 1720 of

1 this title or Sections 4-104 and 4-107 of Title 47 of the Oklahoma  
2 Statutes, or any equipment owned by or registered to the defendant  
3 used in violation of the Trademark Anti-Counterfeiting Act. Said  
4 property may be held as evidence until a forfeiture has been  
5 declared or a release ordered.

6 B. In addition to the property described in subsection A of  
7 this section, the following property is also subject to forfeiture  
8 pursuant to this ~~act~~ section:

9 1. Property used in the commission of theft of livestock or in  
10 any manner to facilitate the theft of livestock;

11 2. The proceeds gained from the commission of theft of  
12 livestock;

13 3. Personal property acquired with proceeds gained from the  
14 commission of theft of livestock; ~~and~~

15 4. All conveyances, including aircraft, vehicles or vessels,  
16 and horses or dogs which are used to transport or in any manner to  
17 facilitate the transportation for the purpose of the commission of  
18 theft of livestock; and

19 5. Any items having a counterfeit mark and all property that is  
20 owned by or registered to the defendant that is employed or used in  
21 connection with any violation of the Trademark Anti-Counterfeiting  
22 Act.

23 C. Notice of seizure and intended forfeiture proceeding shall  
24 be filed in the office of the clerk of the district court for the  
25 county wherein such property is seized and shall be given all owners  
26 and parties in interest.

27 D. Notice shall be given according to one of the following  
28 methods:

29 1. Upon each owner or party in interest whose right, title, or  
30 interest is of record in the Oklahoma Tax Commission or with the  
31 county clerk for filings under the Uniform Commercial Code, served  
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1 in the manner of service of process in civil cases prescribed by  
2 Section 2004 of Title 12 of the Oklahoma Statutes;

3 2. Upon each owner or party in interest whose name and address  
4 is known, served in the manner of service of process in civil cases  
5 prescribed by Section 2004 of Title 12 of the Oklahoma Statutes; or

6 3. Upon all other owners, whose addresses are unknown, but who  
7 are believed to have an interest in the property by one publication  
8 in a newspaper of general circulation in the county where the  
9 seizure was made.

10 E. Within sixty (60) days after the mailing or publication of  
11 the notice, the owner of the property and any other party in  
12 interest or claimant may file a verified answer and claim to the  
13 property described in the notice of seizure and of the intended  
14 forfeiture proceeding.

15 F. If at the end of sixty (60) days after the notice has been  
16 mailed or published there is no verified answer on file, the court  
17 shall hear evidence upon the fact of the unlawful use and may order  
18 the property forfeited to the state, if such fact is proven.

19 G. If a verified answer is filed, the forfeiture proceeding  
20 shall be set for hearing.

21 H. At the hearing the state shall prove by clear and convincing  
22 evidence that property was used in the attempt or commission of an  
23 act specified in subsection A of this section or is property  
24 described in subsection B of this section with knowledge by the  
25 owner of the property.

26 I. The claimant of any right, title, or interest in the  
27 property may prove ~~his~~ the lien, mortgage, or conditional sales  
28 contract to be bona fide and that ~~his~~ the right, title, or interest  
29 created by the document was created without any knowledge or reason  
30 to believe that the property was being, or was to be, used for the  
31 purpose charged.

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1 J. In the event of such proof, the court may order the property  
2 released to the bona fide or innocent owner, lien holder, mortgagee,  
3 or vendor if the amount due ~~him~~ such person is equal to, or in  
4 excess of, the value of the property as of the date of the seizure,  
5 it being the intention of this section to forfeit only the right,  
6 title, or interest of the purchaser, except for items bearing a  
7 counterfeit mark or used exclusively to manufacture a counterfeit  
8 mark.

9 K. If the amount due to such person is less than the value of  
10 the property, or if no bona fide claim is established, the property  
11 may be forfeited to the state and may be sold pursuant to judgment  
12 of the court, as on sale upon execution, and as provided in Section  
13 2-508 of Title 63 of the Oklahoma Statutes, except as otherwise  
14 provided for by law and for property bearing a counterfeit mark  
15 which shall be destroyed.

16 L. Property taken or detained pursuant to this section shall  
17 not be repleviable, but shall be deemed to be in the custody of the  
18 office of the district attorney of the county wherein the property  
19 was seized. ~~The~~ or in the custody of the law enforcement agency as  
20 provided in the Trademark Anti-Counterfeiting Act. Except for  
21 property required to be destroyed pursuant to the Trademark Anti-  
22 Counterfeiting Act, the district attorney shall release said  
23 property to the owner of the property if it is determined that the  
24 owner had no knowledge of the illegal use of the property or if  
25 there is insufficient evidence to sustain the burden of showing  
26 illegal use of such property. If the owner of the property  
27 stipulates to the forfeiture and waives the hearing, the district  
28 attorney may determine if the value of the property is equal to or  
29 less than the outstanding lien. If such lien exceeds the value of  
30 the property, the property may be released to the lien holder.  
31 Property which has not been released by the district attorney shall  
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1 be subject to the orders and decrees of the court or the official  
2 having jurisdiction thereof.

3 M. The district attorney, or the law enforcement agency holding  
4 property pursuant to the Trademark Anti-Counterfeiting Act, shall  
5 not be held civilly liable for having custody of the seized property  
6 or proceeding with a forfeiture action as provided for in this  
7 section.

8 N. Attorney fees shall not be assessed against the state or the  
9 district attorney for any actions or proceeding pursuant to Section  
10 1701 et seq. of this title.

11 O. The proceeds of the sale of any property shall be  
12 distributed as follows, in the order indicated:

13 1. To the bona fide or innocent purchaser, conditional sales  
14 vendor, or mortgagee of the property, if any, up to the amount of  
15 ~~his~~ such person's interest in the property, when the court declaring  
16 the forfeiture orders a distribution to such person;

17 2. To the payment of the actual reasonable expenses of  
18 preserving the property;

19 3. To the victim of the crime to compensate said victim for any  
20 loss ~~he may have~~ incurred as a result of the act for which such  
21 property was forfeited; and

22 4. The balance to a revolving fund in the office of the county  
23 treasurer of the county wherein the property was seized, to be  
24 distributed as follows: one-third (1/3) to the office of the  
25 arresting authorities; one-third (1/3) of said fund to be used and  
26 maintained as a revolving fund by the district attorney for the  
27 victim-witness fund, a reward fund or the evidence fund; and  
28 one-third (1/3) to go to the jail maintenance fund, with a yearly  
29 accounting to the board of county commissioners in whose county the  
30 fund is established. Monies from said fund may be used to pay costs  
31 for the storage of such property if such property is ordered  
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1 released to a bona fide or innocent owner, lien holder, mortgagee,  
2 or vendor and if such funds are available in said fund.

3 P. This fund shall be limited to One Hundred Thousand Dollars  
4 (\$100,000.00) at any one time in counties with population in excess  
5 of three hundred thousand (300,000) and Twenty-five Thousand Dollars  
6 (\$25,000.00) at any one time in counties with population less than  
7 three hundred thousand (300,000). Any amount in excess of these  
8 figures shall be placed in the general fund of the county. Whenever  
9 any property is forfeited pursuant to this section, the district  
10 court of jurisdiction may order that the property seized may be  
11 retained by the state, county, or municipal law enforcement agency  
12 which seized the property for its official use.

13 Q. If the court finds that the property was not used in the  
14 attempt or commission of an act specified in subsection A of this  
15 section and was not property subject to forfeiture pursuant to  
16 subsection B of this section and is not property bearing a  
17 counterfeit mark, the court shall order the property released to the  
18 owner as his right, title, or interest appears on record in the Tax  
19 Commission as of the seizure.

20 R. No vehicle, airplane, or vessel used by a person as a common  
21 carrier in the transaction of business as a common carrier shall be  
22 forfeited pursuant to the provisions of this section unless it shall  
23 be proven that the owner or other person in charge of such  
24 conveyance was a consenting party or privy to the attempt or  
25 commission of an act specified in subsection A or B of this section.  
26 No property shall be forfeited pursuant to the provisions of this  
27 section by reason of any act or omission established by the owner  
28 thereof to have been committed or omitted without the knowledge or  
29 consent of such owner, and by any person other than such owner while  
30 such property was unlawfully in the possession of a person other  
31 than the owner in violation of the criminal laws of the United  
32 States or of any state.

1 SECTION 5. This act shall become effective July 1, 1999.

2 SECTION 6. It being immediately necessary for the preservation  
3 of the public peace, health and safety, an emergency is hereby  
4 declared to exist, by reason whereof this act shall take effect and  
5 be in full force from and after its passage and approval.

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7 47-1-6641 LAC 6/11/15

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