



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB5816

Introduced 2/10/2010, by Rep. Michael J. Zalewski

SYNOPSIS AS INTRODUCED:

720 ILCS 5/16-7	from Ch. 38, par. 16-7
720 ILCS 5/16-8	from Ch. 38, par. 16-8
765 ILCS 1040/2	from Ch. 140, par. 24
765 ILCS 1040/8	

Amends the Criminal Code of 1961. Makes technical changes in the Sections concerning the offenses of unlawful use of recorded sounds or images and unlawful use of unidentified sound or audio visual recordings. Amends the Counterfeit Trademark Act. Makes technical changes in the Sections concerning the use of counterfeit marks and the penalties for selling or using counterfeit items.

LRB096 19175 RLC 34566 b

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Criminal Code of 1961 is amended by changing
5 Sections 16-7 and 16-8 as follows:

6 (720 ILCS 5/16-7) (from Ch. 38, par. 16-7)

7 Sec. 16-7. Unlawful use of recorded sounds or images.

8 (a) A person commits unlawful use of recorded sounds or
9 images when he:

10 (1) Intentionally, knowingly or recklessly transfers
11 or causes to be transferred without the consent of the
12 owner, any sounds or images recorded on any sound or audio
13 visual recording with the purpose of selling or causing to
14 be sold, or using or causing to be used for profit the
15 article to which such sounds or recordings of sound are
16 transferred.

17 (2) Intentionally, knowingly or recklessly sells,
18 offers for sale, advertises for sale, uses or causes to be
19 used for profit any such article described in subsection
20 16-7(a) (1) without consent of the owner.

21 (3) Intentionally, knowingly or recklessly offers or
22 makes available for a fee, rental or any other form of
23 compensation, directly or indirectly, any equipment or

1 machinery for the purpose of use by another to reproduce or
2 transfer, without the consent of the owner, any sounds or
3 images recorded on any sound or audio visual recording to
4 another sound or audio visual recording or for the purpose
5 of use by another to manufacture any sound or audio visual
6 recording in violation of Section 16-8.

7 (4) Intentionally, knowingly or recklessly transfers
8 or causes to be transferred without the consent of the
9 owner, any live performance with the purpose of selling or
10 causing to be sold, or using or causing to be used for
11 profit the sound or audio visual recording to which the
12 performance is transferred.

13 (b) As used in this Section and Section 16-8:

14 (1) "Person" means any individual, partnership,
15 corporation, association or other entity.

16 (2) "Owner" means the person who owns the master sound
17 recording on which sound is recorded and from which the
18 transferred recorded sounds are directly or indirectly
19 derived, or the person who owns the rights to record or
20 authorize the recording of a live performance.

21 (3) "Sound or audio visual recording" means any sound
22 or audio visual phonograph record, disc, pre-recorded
23 tape, film, wire, magnetic tape or other object, device or
24 medium, now known or hereafter invented, by which sounds or
25 images may be reproduced with or without the use of any
26 additional machine, equipment or device.

1 (4) "Master sound recording" means the original
2 physical object on which a given set of sounds were first
3 recorded and which the original object from which all
4 subsequent sound recordings embodying the same set of
5 sounds are directly or indirectly derived.

6 (5) "Unidentified sound or ~~or~~ audio visual recording"
7 means a sound or audio visual recording without the actual
8 name and full and correct street address of the
9 manufacturer, and the name of the actual performers or
10 groups prominently and legibly printed on the outside cover
11 or jacket and on the label of such sound or audio visual
12 recording.

13 (6) "Manufacturer" means the person who actually makes
14 or causes to be made a sound or audio visual recording. The
15 term manufacturer does not include a person who
16 manufactures the medium upon which sounds or visual images
17 can be recorded or stored, or who manufactures the
18 cartridge or casing itself.

19 (c) Unlawful use of recorded sounds or images is a Class 4
20 felony; however:

21 (1) If the offense involves more than 100 but not
22 exceeding 1000 unidentified sound recordings or more than 7
23 but not exceeding 65 unidentified audio visual recordings
24 during any 180 day period the authorized fine is up to
25 \$100,000; and

26 (2) If the offense involves more than 1,000

1 unidentified sound recordings or more than 65 unidentified
2 audio visual recordings during any 180 day period the
3 authorized fine is up to \$250,000.

4 (d) This Section shall neither enlarge nor diminish the
5 rights of parties in private litigation.

6 (e) This Section does not apply to any person engaged in
7 the business of radio or television broadcasting who transfers,
8 or causes to be transferred, any sounds (other than from the
9 sound track of a motion picture) solely for the purpose of
10 broadcast transmission.

11 (f) If any provision or item of this Section or the
12 application thereof is held invalid, such invalidity shall not
13 affect other provisions, items or applications of this Section
14 which can be given effect without the invalid provisions, items
15 or applications and to this end the provisions of this Section
16 are hereby declared severable.

17 (g) Each and every individual manufacture, distribution or
18 sale or transfer for a consideration of such recorded devices
19 in contravention of this Section constitutes a separate
20 violation of this Section.

21 (h) Any sound or audio visual recordings containing
22 transferred sounds or a performance whose transfer was not
23 authorized by the owner of the master sound recording or
24 performance, in violation of this Section, or in the attempt to
25 commit such violation as defined in Section 8-2, or in a
26 solicitation to commit such offense as defined in Section 8-1,

1 may be confiscated and destroyed upon conclusion of the case or
2 cases to which they are relevant, except that the Court may
3 enter an order preserving them as evidence for use in other
4 cases or pending the final determination of an appeal.

5 (i) It is an affirmative defense to any charge of unlawful
6 use of recorded sounds or images that the recorded sounds or
7 images so used are public domain material. For purposes of this
8 Section, recorded sounds are deemed to be in the public domain
9 if the recorded sounds were copyrighted pursuant to the
10 copyright laws of the United States, as the same may be amended
11 from time to time, and the term of the copyright and any
12 extensions or renewals thereof has expired.

13 (Source: P.A. 95-485, eff. 1-1-08.)

14 (720 ILCS 5/16-8) (from Ch. 38, par. 16-8)

15 Sec. 16-8. Unlawful use of unidentified sound or audio
16 visual recordings.

17 (a) A person commits unlawful use of ~~of~~ unidentified sound
18 or audio visual recordings when he intentionally, knowingly,
19 recklessly or negligently for profit manufactures, advertises
20 or offers for sale, sells, distributes, transports, vends,
21 circulates, performs, leases, or possesses for such purposes,
22 unidentified sound or audio visual recordings or causes the
23 manufacture, advertisement or offer for sale, sale,
24 distribution, transportation, vending, circulation,
25 performance, lease, or possession for such purposes,

1 unidentified sound or audio visual recordings.

2 (b) Unlawful use of unidentified sound or audio visual
3 recordings is a Class 4 felony; however:

4 (1) If the offense involves more than 100 but not
5 exceeding 1000 unidentified sound recordings or more than 7
6 but not exceeding 65 unidentified audio visual recordings
7 during any 180 day period the authorized fine is up to
8 \$100,000; and

9 (2) If the offense involves more than 1,000
10 unidentified sound recordings or more than 65 unidentified
11 audio visual recordings during any 180 day period the
12 authorized fine is up to \$250,000.

13 (c) Each and every individual manufacture, advertisement
14 or offer for sale, sale, distribution, transportation,
15 vending, circulation, performance, lease, or possession for
16 such purposes, an unidentified sound or audio visual recording
17 constitutes a separate violation of this Section.

18 (c-5) Upon conviction of any violation of this Section, the
19 offender shall be sentenced to make restitution to any owner or
20 lawful producer of a master sound or audio visual recording, or
21 to the trade association representing such owner or lawful
22 producer, that has suffered injury resulting from the crime.
23 The order of restitution shall be based on the aggregate
24 wholesale value of lawfully manufactured and authorized sound
25 or audio visual recordings corresponding to the non-conforming
26 recorded devices involved in the offense, and shall include

1 investigative costs relating to the offense.

2 (d) If any provision or item of this Section or the
3 application thereof is held invalid, such invalidity shall not
4 affect other provisions, items or applications of this Section
5 which can be given effect without the invalid provisions, items
6 or applications and to this end the provisions of this Section
7 are hereby declared severable.

8 (e) Any unidentified sound or audio visual recording used
9 in violation of this Section, or in the attempt to commit such
10 violation as defined in Section 8-4, or in a conspiracy to
11 commit such violation as defined in Section 8-2, or in a
12 solicitation to commit such offense as defined in Section 8-1,
13 may be confiscated and destroyed upon conclusion of the case or
14 cases to which they are relevant, except that the Court may
15 enter an order preserving them as evidence for use in other
16 cases or pending the final determination of an appeal.

17 (Source: P.A. 95-485, eff. 1-1-08.)

18 Section 10. The Counterfeit Trademark Act is amended by
19 changing Sections 2 and 8 as follows:

20 (765 ILCS 1040/2) (from Ch. 140, par. 24)

21 Sec. 2. Whoever uses a counterfeit mark or ~~or~~ imitates any
22 trade-mark or service mark of which he or she is not the
23 rightful owner or in any way utters or circulates any
24 counterfeit or imitation of such a trade-mark or service mark

1 or knowingly uses such counterfeit or imitation or knowingly
2 sells or disposes of or keeps or has in his or her possession,
3 with intent that the same shall be sold or disposed of, any
4 goods, wares, merchandise, or other product of labor or
5 service, to which any such counterfeit or imitation is attached
6 or affixed, or on which any such counterfeit or imitation is
7 printed, painted, stamped or impressed, or knowingly sells or
8 disposes of any goods, wares, merchandise or other product of
9 labor contained in any box, case, can, or package to which or
10 on which any such counterfeit or imitation is attached,
11 affixed, printed, painted, stamped or impressed, or keeps or
12 has in his possession with intent that the same shall be sold
13 or disposed of, any goods, wares, merchandise or other product
14 of labor in any box, case, can or package to which or on which
15 any such counterfeit, or imitation is attached, affixed,
16 printed, painted, stamped or impressed or knowingly sells a
17 service using a counterfeit service mark, shall be guilty of a
18 Class A misdemeanor for each offense, or in the case of a
19 counterfeit item shall be punished as provided in Section 8.

20 (Source: P.A. 96-631, eff. 1-1-10.)

21 (765 ILCS 1040/8)

22 Sec. 8. Sentence.

23 (a) A person who ~~who~~ knowingly sells, offers for sale,
24 holds for sale, or uses fewer than 100 counterfeit items or
25 counterfeit items having a retail value in the aggregate of

1 \$300 or less is guilty of a Class A misdemeanor and shall be
2 fined at least 25% of the retail value of all counterfeit items
3 but no more than \$1,000, except as follows:

4 (1) A person who has a prior conviction for a violation
5 of this Act within the preceding 5 years is guilty of a
6 Class 4 felony and shall be fined at least 50% but no more
7 than 100% of the retail value of all counterfeit items.

8 (2) A person who, as a result of the offense, causes
9 bodily harm to another is guilty of a Class 3 felony and
10 shall be fined at least 50% but no more than 100% of the
11 retail value of all counterfeit items.

12 (3) A person who, as a result of the offense, causes
13 serious bodily harm to, or the death of, another is guilty
14 of a Class 2 felony.

15 (b) A person who knowingly sells, offers for sale, holds
16 for sale, or uses 100 or more but fewer than 500 counterfeit
17 items or counterfeit items having a retail value in the
18 aggregate of more than \$300 but less than \$10,000 is guilty of
19 a Class 3 felony and shall be fined at least 25% but no more
20 than 100% of the retail value of all counterfeit items, except
21 as follows:

22 (1) A person who has a prior conviction for a violation
23 of this Act within the preceding 5 years is guilty of a
24 Class 2 felony and shall be fined at least 50% but no more
25 than 100% of the retail value of all counterfeit items.

26 (2) A person who, as a result of the offense, causes

1 serious bodily harm to, or the death of, another is guilty
2 of a Class 2 felony.

3 (c) A person who knowingly sells, offers for sale, holds
4 for sale, or uses 500 or more but fewer than 2,000 counterfeit
5 items or counterfeit items having a retail value in the
6 aggregate of \$10,000 or more but less than \$100,000 is guilty
7 of a Class 2 felony and shall be fined at least 50% but no more
8 than 100% of the retail value of all counterfeit items, except
9 that a person who has a prior conviction of this Act within the
10 preceding 5 years is guilty of a Class 2 felony and shall be
11 fined at least 100% but no more than 300% of the retail value
12 of all counterfeit items.

13 (d) A person who knowingly sells, offers for sale, holds
14 for sale, or uses 2,000 or more counterfeit items or
15 counterfeit items having a retail value in the aggregate of
16 \$100,000 but less than \$500,000 is guilty of a Class 1 felony
17 and shall be fined at least 50% but no more than 100% of the
18 retail value of all counterfeit items, except that a person who
19 has a prior conviction of this Act within the preceding 5 years
20 is guilty of a Class 1 felony and shall be fined at least 100%
21 but no more than 300% of the retail value of all counterfeit
22 items.

23 (e) A person who knowingly sells, offers for sale, holds
24 for sale, or uses 2,000 or more counterfeit items or
25 counterfeit items having a retail value in the aggregate of
26 \$500,000 or more is guilty of a Class 1 non-probationable

1 felony.

2 (e-5) For the purposes of determining the number of
3 counterfeit items under subsection (a), (b), (c), (d), or (e),
4 the service marks or trade marks need not be an aggregate of
5 identical marks but may be the aggregate of all counterfeit
6 items offered for sale, held for sale, or used by the
7 defendant.

8 (f) Unless otherwise specifically provided, a person,
9 including a corporation, convicted of violating this Act shall
10 be fined at least 25% of the retail value of all the
11 counterfeit items. In addition to any fine, the court shall
12 order that restitution be paid to the owners of the trademark,
13 trade name, or service mark, and to any other victim of the
14 offense.

15 A manufacturer of counterfeit items is guilty of a Class 3
16 felony for a first offense and a Class 2 felony for second or
17 subsequent offenses and may be fined up to 3 times the retail
18 value of all counterfeit items produced by the manufacturer.

19 (h) A person having possession, custody, or control of more
20 than 25 counterfeit items or counterfeit marks shall be
21 presumed not to be simply in possession of such, but to possess
22 said items with intent to offer for sale, to sell, or to
23 distribute.

24 (i) A state or federal certificate of registration of
25 trademark is prima facie evidence of the facts stated therein.

26 (j) The remedies provided herein shall be cumulative to the

1 other civil and criminal remedies provided by law.

2 (Source: P.A. 96-631, eff. 1-1-10.)