

CRIMES CODE (18 PA.C.S.) - AMEND THEFT OF TRADE SECRETS

Act of Oct. 16, 1996, P.L. 715, No. 128

Cl. 18

Session of 1996

No. 1996-128

SB 1466

AN ACT

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for the theft of trade secrets; defining the offense of trademark counterfeiting; further providing for expungement of certain criminal records; and providing penalties.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 3930(a), (b) and (e) of Title 18 of the Pennsylvania Consolidated Statutes are amended to read:

§ 3930. Theft of trade secrets.

(a) Felony of the [third] **second** degree.--A person is guilty of a felony of the [third] **second** degree if he:

(1) by force or violence or by putting him in fear takes from the person of another any article representing a trade secret; or

(2) willfully and maliciously enters any building or other structure with intent to obtain unlawful possession of, or access to, an article representing a trade secret.

(b) [Misdemeanor of the first degree] **Felony of the third degree**.-- A person is guilty of a [misdemeanor of the first degree] **felony of the third degree** if he, with intent to wrongfully deprive of, or withhold from the owner, the control of a trade secret, or with intent to wrongfully appropriate a trade secret for his use, or for the use of another:

(1) unlawfully obtains possession of, or access to, an article representing a trade secret; or

(2) having lawfully obtained possession of an article representing a trade secret, or access thereto, converts such article to his own use or that of another person, while having possession thereof or access thereto makes, or causes to be made, a copy of such article, or exhibits such article to another.

\* \* \*

(e) Definitions.--As used in this section the following words and phrases shall have the meanings given to them in this subsection:

"Article." Any object, material, device or substance or copy thereof, including any writing, record, recording, drawing, description, sample, specimen, prototype, model, photograph, microorganism, blueprint or map.

"Copy." Any facsimile, replica, photograph or reproduction of, an article, or any note, drawing, sketch, or description

made of, or from an article.

"Representing." Describing, depicting, containing, constituting, reflecting or recording.

"Trade secret." The whole or any portion or phase of any scientific or technical information, design, process, procedure, formula or improvement **or customer or sales information or any other privileged or confidential information** which is of value and has been specifically identified by the owner as of a confidential character, and which has not been published or otherwise become a matter of general public knowledge. There shall be a rebuttable presumption that scientific or technical information **or customer or sales information or any other privileged or confidential information** has not been published or otherwise become a matter of general public knowledge when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by him to have access thereto for limited purposes.

Section 2. Title 18 is amended by adding a section to read:

**§ 4119. Trademark counterfeiting.**

(a) **Offense defined.**--Any person who knowingly manufactures, uses, displays, advertises, distributes, offers for sale, sells or possesses with intent to sell or distribute any items or services bearing or identified by a counterfeit mark shall be guilty of the crime of trademark counterfeiting.

(b) **Presumption.**--A person having possession, custody or control of more than 25 items bearing a counterfeit mark may be presumed to possess said items with intent to sell or distribute.

(c) **Penalties.**--

(1) Except as provided in paragraphs (2) and (3), a violation of this section constitutes a misdemeanor of the first degree.

(2) A violation of this section constitutes a felony of the third degree if:

(i) the defendant has previously been convicted under this section; or

(ii) the violation involves more than 100 but less than 1,000 items bearing a counterfeit mark or the total retail value of all items or services bearing or identified by a counterfeit mark is more than \$2,000, but less than \$10,000.

(3) A violation of this section constitutes a felony of the second degree if:

(i) the defendant has been previously convicted of two or more offenses under this section;

(ii) the violation involves the manufacture or production of items bearing counterfeit marks; or

(iii) the violation involves 1,000 or more items bearing a counterfeit mark or the total retail value of all items or services bearing or identified by a counterfeit mark is more than \$10,000.

(d) **Quantity or retail value.**--The quantity or retail value of items or services shall include the aggregate quantity or retail value of all items or services bearing or identified by every counterfeit mark the defendant manufactures, uses,

displays, advertises, distributes, offers for sale, sells or possesses.

(e) Fine.--Any person convicted under this section shall be fined in accordance with existing law or an amount up to three times the retail value of the items or services bearing or identified by a counterfeit mark, whichever is greater, unless extenuating circumstances are shown by the defendant.

(f) Seizure, forfeiture and disposition.--

(1) 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, knowingly employed or used in connection with a violation of this section may be seized by any law enforcement officer.

(2) All seized personal property referenced in paragraph (1) shall be forfeited in accordance with applicable law unless the prosecuting attorney responsible for the charges and the intellectual property owner consent in writing to another disposition.

(g) Evidence.--Any Federal or State certificate of registration of any intellectual property shall be prima facie evidence of the facts stated therein.

(h) Remedies cumulative.--The remedies provided for in this section shall be cumulative to the other civil and criminal remedies provided by law.

(i) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Counterfeit mark." Any of the following:

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

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

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

"Retail value." 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.

Section 3. Section 9122(c) of Title 18 is amended to read:

§ 9122. Expungement.

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(c) Maintenance of certain information required or authorized.--Notwithstanding any other provision of this chapter, the prosecuting attorney and the central repository shall, and the court may, maintain a list of the names and other criminal history record information of persons whose records are required by law or court rule to be expunged where the individual has successfully completed the conditions of any pretrial or post-trial diversion or probation program. Such

information shall be used solely for the purpose of determining subsequent eligibility for such programs **and for identifying persons in criminal investigations** . Criminal history record information may be expunged as provided in subsection (b)(1) and (2). Such information shall be made available to any court **or law enforcement agency** upon request.

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Section 4. This act shall take effect in 60 days.

APPROVED--The 16th day of October, A. D. 1996.

THOMAS J. RIDGE