WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1995

ENROLLED

SENATE BILL NO. 261

(By Senator (ALDRICH) ET AL.)

PASSED March 9, 1995
In Effect 90 days from Passage
AN ACT to amend and reenact section fifty, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to unauthorized transferral of recorded sounds; sale and possession; penalties; civil action; and definition.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-50. Unauthorized transferral of recorded sounds; sale and possession; penalties; civil action; definition.

1 (a) No person shall knowingly and willfully for commercial advantage or private financial gain transfer by electronic or mechanical means or cause to be transferred by electronic or mechanical means with intent to sell for profit the recorded sounds contained on any
phonograph record, disc, tape, film or other device
without the permission of the owner of such recorded
sounds or his authorized representative, or to knowingly,
or with reasonable grounds to know, sell or possess with
intent to sell any phonograph record, disc, tape, film or
other device containing such unauthorized transferred
recorded sounds. This paragraph applies to sound
recordings initially fixed prior to the fifteenth day of
February, one thousand nine hundred seventy-two.

No person shall knowingly and willfully for commer-
cial advantage or private financial gain offer for sale,
sell, rent, transport, cause the sale, resale, rental or
transportation of or possess for one or more of these
purposes a recording of a live performance with the
knowledge that the live performance has been recorded
or fixed without the consent of the owner.

No person shall knowingly and willfully for commer-
cial advantage or private financial gain offer for sale,
sell, rent, transport, cause the sale, resale, rental or
transportation of or possess for one or more of these
purposes, any phonograph record, disc, tape, film, video
tape, video cassette or other device which fails to clearly
and conspicuously disclose the actual name and address
of the manufacturer thereof.

(b) Any owner of such recorded sounds, images or any
audio-visual combination and any person lawfully
transferring such sounds by agreement with such owner
shall have a cause of action for the unauthorized trans-
ferral of such sounds and shall be entitled to treble
damages resulting therefrom.

(c) (1) For the purpose of this section, the term "owner"
means the person vested with the rights to and owner-
ship of the original fixation of sounds, images or any
audio-visual combination embodied in the master
phonograph record, master disc, master tape, master film
or other device used for transferring sounds or images on
phonograph records, discs, tapes, films, video tapes or
video cassettes or other similar articles upon which
sounds, images or any audio-visual combination are
recorded and from which the transferred recorded
sounds and or images are directly derived.

In the absence of a written agreement or law to the
contrary, the performer or performers of a live perfor-
mance are presumed to own the rights to record or fix
the sounds, images or any audio-visual combination of a
live performance. A person who is authorized to main-
tain custody and control over business records that
reflect whether or not the owner or owners of a live
performance consented to having a live performance
recorded or fixed is a proper witness in a proceeding
regarding the issue of consent.

(2) For the purposes of this section, the term “manu-
facter” means the person who transfers, authorizes or
causes the transfer of a recording of sounds, images or
any audio-visual combination to a phonograph record,
disc, tape, film, video tape, video cassette or other
device.

(d) (1) Any person convicted of an offense under this
section involving less than one hundred unlawful sound
recordings or less than twenty unlawful audio-visual
recordings shall be guilty of a misdemeanor, and, upon
conviction thereof, shall be fined not more than one
thousand dollars, or imprisoned for not more than one
year in jail or both fined and imprisoned.

(2) Any person convicted of an offense under this
section involving at least one hundred but less than one
thousand unlawful sound recordings or at least twenty
but less than sixty-five audio-visual recordings shall be
guilty of a felony, and, upon conviction thereof, shall be
fined not less than one thousand dollars nor more than
five thousand dollars, or imprisoned for not more than
two years in the penitentiary or both fined and impris-
oned.

(3) Any person convicted of an offense under this
section involving at least one thousand unlawful sound
recordings or at least sixty-five unlawful audio-visual
recordings shall be guilty of a felony, and, upon convic-
tion thereof, shall be fined not less than five thousand
dollars nor more than ten thousand dollars, or impris-
oned for not more than five years in the penitentiary or
both fined and imprisoned.

(4) Any person convicted of a second or subsequent
offense under this section shall be guilty of a felony, and,
upon conviction thereof, shall be fined not less than one
thousand dollars nor more than ten thousand dollars, or
imprisoned for not more than five years or both fined
and imprisoned.

(5) Any unauthorized recorded sounds or images
produced in violation of this section and any equipment
used for such purpose, shall be confiscated by the
appropriate law-enforcement agency.

If a person is convicted of any violation under this
chapter, the court in its judgment of conviction shall
order the forfeiture and destruction or release to a law-

enforcement agency for use in official agency business of
all infringing recordings and of any equipment or
components used or intended to be used in the produc-
tion of the recordings. All infringing phonograph

records, discs, tapes, films, video tapes, video cassettes
or other devices shall be destroyed once they are no
longer needed for court proceedings. Nothing contained
herein shall apply to televisions and radio stations
licensed by the federal communications commission or to
educational institutions, when the purpose of such
reproduction is limited and used for criticism, comments,
news reporting, archival or educational purposes.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

President of the Senate

Speaker House of Delegates

The within ................ approved this the 21st day of ........... March, 1925.

Governor