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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995



ENROLLED

SENATE BILL NO. 261

(By Senator WOOTEN, ET AL)



PASSED MARCH 9, 1995

In Effect 90 days FROM Passage

ENROLLED

Senate Bill No. 261

(BY SENATORS WOOTON, OLIVERIO, BOWMAN, BUCKALEW,
SCOTT, WHITE, ANDERSON AND DITTMAR)

[Passed March 9, 1995; in effect ninety 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:

That section fifty, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

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 com-
- 2 mercial advantage or private financial gain transfer by
- 3 electronic or mechanical means or cause to be trans-
- 4 ferred by electronic or mechanical means with intent to
- 5 sell for profit the recorded sounds contained on any

6 phonograph record, disc, tape, film or other device
7 without the permission of the owner of such recorded
8 sounds or his authorized representative, or to knowingly,
9 or with reasonable grounds to know, sell or possess with
10 intent to sell any phonograph record, disc, tape, film or
11 other device containing such unauthorized transferred
12 recorded sounds. This paragraph applies to sound
13 recordings initially fixed prior to the fifteenth day of
14 February, one thousand nine hundred seventy-two.

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

22 No person shall knowingly and willfully for commer-
23 cial advantage or private financial gain record or fix or
24 cause to be recorded or fixed on any type of recording
25 device a live performance with the knowledge that the
26 live performance is being recorded or fixed without the
27 consent of the owner.

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

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

42 (c) (1) For the purpose of this section, the term "owner"

43 means the person vested with the rights to and owner-
44 ship of the original fixation of sounds, images or any
45 audio-visual combination embodied in the master
46 phonograph record, master disc, master tape, master film
47 or other device used for transferring sounds or images on
48 phonograph records, discs, tapes, films, video tapes or
49 video cassettes or other similar articles upon which
50 sounds, images or any audio-visual combination are
51 recorded and from which the transferred recorded
52 sounds and or images are directly derived.

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

63 (2) For the purposes of this section, the term "manu-
64 facturer" means the person who transfers, authorizes or
65 causes the transfer of a recording of sounds, images or
66 any audio-visual combination to a phonograph record,
67 disc, tape, film, video tape, video cassette or other
68 device.

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

76 (2) Any person convicted of an offense under this
77 section involving at least one hundred but less than one
78 thousand unlawful sound recordings or at least twenty
79 but less than sixty-five audio-visual recordings shall be
80 guilty of a felony, and, upon conviction thereof, shall be

81 fined not less than one thousand dollars nor more than
82 five thousand dollars, or imprisoned for not more than
83 two years in the penitentiary or both fined and impris-
84 oned.

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

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

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

103 If a person is convicted of any violation under this
104 chapter, the court in its judgment of conviction shall
105 order the forfeiture and destruction or release to a law-
106 enforcement agency for use in official agency business of
107 all infringing recordings and of any equipment or
108 components used or intended to be used in the produc-
109 tion of the recordings. All infringing phonograph
110 records, discs, tapes, films, video tapes, video cassettes
111 or other devices shall be destroyed once they are no
112 longer needed for court proceedings. Nothing contained
113 herein shall apply to televisions and radio stations
114 licensed by the federal communications commission or to
115 educational institutions, when the purpose of such
116 reproduction is limited and used for criticism, comments,
117 news reporting, archival or educational purposes.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Randy Schowover
.....
Chairman Senate Committee

Ernest C. Moore
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Darrell Edwards
.....
Clerk of the Senate

Donald L. Kepp
.....
Clerk of the House of Delegates

Eul Ray Tomblin
.....
President of the Senate

Carl Albert
.....
Speaker House of Delegates

The within is approved..... this the *21st*.....

day of *March*....., 1995.

Gaston Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/22/95

Time 3:25 pm