

FILED

2005 APR -6 P 3: 54

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2005



ENROLLED

House Bill No. 2129

(By Delegates Amores, Craig, Pethtel, Armstead)



28

Passed March ~~17~~, 2005

In Effect Ninety Days from Passage

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E N R O L L E D

H. B. 2129

(BY DELEGATES AMORES, CRAIG, PETHTEL, ARMSTEAD)

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[Passed March ~~17~~, 2005; in effect ninety days from passage.]

*ok
b.m.s.*

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-3-58, relating to the unlawful use of an audio-visual recording device in a motion picture theater; defining certain terms; providing immunity for theater owner who detains person violating this section; and providing penalties.

Be It Enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931 , as amended, be amended by adding thereto a new section, designated §61-3-58, to read as follows:

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-58. Unlawful operation of a recording device.

- 1 (a)(1) Any person who knowingly operates the audiovisual
- 2 recording function of any device in a motion picture theater in
- 3 order to record the motion picture that is being exhibited,
- 4 without the written consent of the motion picture theater owner,

5 and with intent to distribute, or cause the distribution of,
6 multiple copies of the motion picture, for pecuniary gain, is
7 guilty of a felony, and upon conviction thereof, shall be fined
8 not less than five hundred dollars nor more than one thousand
9 dollars or imprisoned in a correctional facility for not more than
10 one nor more than ten years, or both fined and imprisoned.

11 (2) Any person who knowingly operates the audiovisual
12 recording function of any device in a motion picture theater in
13 order to record the motion picture that is being exhibited,
14 without the written consent of the motion picture theater owner,
15 and with intent to distribute, or cause the distribution of,
16 multiple copies of the motion picture, but not for pecuniary
17 gain, is guilty of a felony, and upon conviction thereof, shall be
18 fined not less than one hundred dollars nor more than five
19 hundred dollars or imprisoned in a correctional facility for not
20 less than one year nor more than three years, or both fined and
21 imprisoned, or, in the discretion of the court, be confined in a
22 regional jail not more than one year and fined not more than
23 one thousand dollars.

24 (3) Any person who knowingly operates the audiovisual
25 recording function of any device in a motion picture theater in
26 order to record the motion picture that is being exhibited,
27 without the written consent of the motion picture theater owner,
28 and without the intent to distribute, or cause the distribution of,
29 multiple copies of the motion picture, is guilty of a misde-
30 meanor, and upon conviction thereof, shall be fined not more
31 than one hundred dollars.

32 (4) Any person who commits the acts described in subdivi-
33 sion (1) of this subsection is civilly liable for actual damages
34 arising from his or her distribution of copies of the motion
35 picture. A conviction for the offense described in subdivision
36 (1) of this subsection is not a prerequisite to the maintenance of
37 a civil action authorized by this subdivision.

38 (b) The term “audiovisual recording function” means the
39 capability of a device to record or transmit a motion picture or
40 any part thereof by means of any technology now known or
41 later developed.

42 (c) The term “motion picture theater” means a movie
43 theater, screening room, or other venue that is being utilized
44 primarily for the exhibition of a motion picture at the time of
45 the offense.

46 (d) The owner or lessee of a motion picture theater, or the
47 authorized agent or employee of the owner or lessee, who alerts
48 law enforcement authorities of an alleged violation of this
49 section shall not be liable in any civil action arising out of
50 measures taken by the owner, lessee, agent or employee in the
51 course of subsequently detaining a person that the owner,
52 lessee, agent or employee in good faith believed to have violate
53 this section while awaiting the arrival of law-enforcement
54 authorities, unless the plaintiff can show by clear and convinc-
55 ing evidence that such measures were manifestly unreasonable
56 or the period of detention was unreasonably long.

57 (e) This section does not prevent any lawfully authorized
58 investigative, law enforcement protective, or intelligence
59 gathering employee or agent, of the local, state or federal
60 government, from operating any audiovisual recording device
61 in a motion picture theater, as part of lawfully authorized
62 investigative, protective, law enforcement, or intelligence
63 gathering activities.

64 (f) Nothing in this section prevents prosecution, instead,
65 under any other provision of law providing for greater penalty.

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



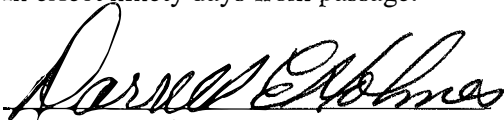
Chairman Senate Committee



Chairman House Committee

Originating in the House.

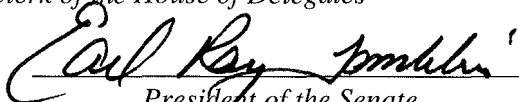
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Clerk of the Senate



Clerk of the House of Delegates

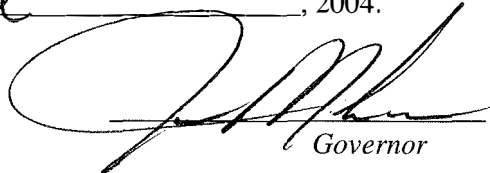


President of the Senate



Speaker of the House of Delegates

The within is approved this the 6th
day of April, 2004.



Governor

PRESENTED TO THE
GOVERNOR

Date 3/31/05

Time 9:15 am