

**First Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 09-0496.01 Michael Dohr

SENATE BILL 09-036

SENATE SPONSORSHIP

Gibbs,

HOUSE SPONSORSHIP

(None),

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 **CONCERNING THEFT OF SOUND RECORDINGS, AND MAKING AN**
102 **APPROPRIATION IN CONNECTION THEREWITH.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Makes dealing in unlawfully packaged recorded articles a class 6 felony if the offense involves more than 100 articles on which sound is recorded or if the defendant has previously been convicted of the offense.

Requires a law enforcement officer, upon discovery, to confiscate all recorded articles that constitute a theft of sound recordings offense and all equipment and components used to manufacture the recorded articles. Permits the confiscated recorded articles to be destroyed by court order

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

and the confiscated equipment and components to be donated to charity by court order.

Requires restitution to the owner or producer of a master sound recording, or the trade association representing the owner or producer, for an injury suffered as a result of the crime. Directs how the order of restitution is calculated.

Makes a 5-year statutory appropriation.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 18-4-601 (1), Colorado Revised Statutes, is amended, and the said 18-4-601 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

18-4-601. Definitions. As used in this part 6, unless the context otherwise requires:

(1) ~~"Copyright" means the ownership rights that accrue to an owner and relate solely to the common law copyright accruing to such owner. The term "copyright" does not include a federal copyright which inures to the benefit of owners pursuant to Public Law 92-140, as amended by Public Law 93-573, which became effective February 15, 1972. For the purposes of this part 6, no common law copyright shall exist for a period longer than fifty-six years after an original copyright accrues to an owner.~~ "AGGREGATE WHOLESALE VALUE" MEANS THE AVERAGE WHOLESALE VALUE OF LAWFULLY MANUFACTURED AND AUTHORIZED SOUND OR AUDIO VISUAL RECORDINGS CORRESPONDING TO THE NONCONFORMING RECORDED DEVICES INVOLVED IN THE OFFENSE. PROOF OF THE SPECIFIC WHOLESALE VALUE OF EACH NONCONFORMING DEVICE SHALL NOT BE REQUIRED.

(1.5) "COPYRIGHT" MEANS THE OWNERSHIP RIGHTS THAT ACCRUE TO AN OWNER AND RELATE SOLELY TO THE COMMON LAW COPYRIGHT ACCRUING TO SUCH OWNER. THE TERM "COPYRIGHT" DOES NOT INCLUDE

1 A FEDERAL COPYRIGHT WHICH INURES TO THE BENEFIT OF OWNERS
2 PURSUANT TO PUBLIC LAW 92-140, AS AMENDED BY PUBLIC LAW 93-573,
3 WHICH BECAME EFFECTIVE FEBRUARY 15, 1972. FOR THE PURPOSES OF
4 THIS PART 6, NO COMMON LAW COPYRIGHT SHALL EXIST FOR A PERIOD
5 LONGER THAN FIFTY-SIX YEARS AFTER AN ORIGINAL COPYRIGHT ACCRUES
6 TO AN OWNER.

7 **SECTION 2.** 18-4-604 (2), Colorado Revised Statutes, is
8 amended to read:

9 **18-4-604. Dealing in unlawfully packaged recorded articles.**

10 (2) Dealing in unlawfully packaged recorded articles is:

11 (a) A class 1 misdemeanor IF THE OFFENSE INVOLVES ONE
12 HUNDRED OR FEWER UNLAWFULLY PACKAGED RECORDED ARTICLES AND
13 IT IS THE PERSON'S FIRST CONVICTION OF A VIOLATION OF THIS PART 6; OR

14 (b) A CLASS 6 FELONY IF THE OFFENSE INVOLVES MORE THAN ONE
15 HUNDRED UNLAWFULLY PACKAGED RECORDED ARTICLES OR IF THE
16 PERSON HAS PREVIOUSLY BEEN CONVICTED OF A VIOLATION OF THIS PART
17 6.

18 **SECTION 3.** Part 6 of article 4 of title 18, Colorado Revised
19 Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW
20 SECTIONS to read:

21 **18-4-606. Confiscation and disposition of items.** (1) A LAW
22 ENFORCEMENT OFFICER SHALL, UPON DISCOVERY, CONFISCATE ALL
23 UNLAWFULLY TRANSFERRED OR RECORDED ARTICLES POSSESSED FOR THE
24 PURPOSES OF SELLING OR DISTRIBUTING IN VIOLATION OF THIS PART 6 AND
25 ALL EQUIPMENT AND COMPONENTS USED OR INTENDED TO BE USED TO
26 KNOWINGLY AND UNLAWFULLY TRANSFER, MANUFACTURE, OR RECORD
27 ARTICLES FOR THE PURPOSES OF SELLING OR DISTRIBUTING IN VIOLATION

1 OF THIS PART 6.

2 (2) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, RECORDED
3 ARTICLES AND EQUIPMENT AND COMPONENTS THAT ARE CONFISCATED
4 PURSUANT TO SUBSECTION (1) OF THIS SECTION ARE CONTRABAND AND
5 SHALL BE DELIVERED TO THE DISTRICT ATTORNEY IN THE COUNTY IN
6 WHICH THE CONFISCATION WAS MADE. THE DISTRICT ATTORNEY MAY
7 REQUEST A COURT ORDER FOR DESTRUCTION OF THE RECORDED ARTICLES
8 AND A COURT ORDER FOR DISTRIBUTION OF THE EQUIPMENT AND
9 COMPONENTS. THE COURT SHALL ORDER THE RECORDED ARTICLES TO BE
10 DESTROYED OR OTHERWISE DISPOSED OF IF THE COURT FINDS THAT THE
11 PERSON CLAIMING TITLE TO THE RECORDED ARTICLES POSSESSED THE
12 RECORDED ARTICLES FOR THE PURPOSES OF SELLING OR DISTRIBUTING IN
13 VIOLATION OF THIS PART 6. THE COURT SHALL ORDER THE EQUIPMENT
14 AND COMPONENTS DISTRIBUTED TO A CHARITABLE OR EDUCATIONAL
15 ORGANIZATION IF THE COURT FINDS THAT THE PERSON CLAIMING TITLE TO
16 THE EQUIPMENT POSSESSED THE EQUIPMENT TO RECORD NONCONFORMING
17 ARTICLES FOR THE PURPOSES OF SELLING OR DISTRIBUTING IN VIOLATION
18 OF THIS PART 6.

19 **18-4-607. Restitution.** NOTWITHSTANDING ANY OTHER
20 PROVISION OF LAW, UPON CONVICTION OF A VIOLATION OF THIS PART 6,
21 THE CONVICTED PERSON SHALL BE ORDERED TO MAKE RESTITUTION TO
22 THE OWNER OR LAWFUL PRODUCER OF THE MASTER SOUND OR AUDIO
23 VISUAL RECORDING, OR TO THE TRADE ASSOCIATION REPRESENTING THE
24 OWNER OR LAWFUL PRODUCER WHO SUFFERED INJURY RESULTING FROM
25 THE CRIME. THE ORDER OF RESTITUTION SHALL BE BASED ON THE
26 AGGREGATE WHOLESALE VALUE, AS ESTIMATED BY THE COURT, OF
27 LAWFULLY MANUFACTURED AND AUTHORIZED RECORDINGS

1 CORRESPONDING TO THE UNLAWFULLY RECORDED ARTICLES INVOLVED IN
2 THE OFFENSE UNLESS A GREATER VALUE CAN BE PROVEN. THE ORDER OF
3 RESTITUTION SHALL ALSO INCLUDE INVESTIGATIVE COSTS RELATING TO
4 THE OFFENSE.

5 **SECTION 4.** Article 18 of title 17, Colorado Revised Statutes, is
6 amended BY THE ADDITION OF A NEW SECTION to read:

7 **17-18-105. Appropriation to comply with section 2-2-703 - SB**
8 **09-#### - repeal.** (1) PURSUANT TO SECTION 2-2-703, C.R.S., THE
9 FOLLOWING STATUTORY APPROPRIATIONS, OR SO MUCH THEREOF AS MAY
10 BE NECESSARY, ARE MADE IN ORDER TO IMPLEMENT SENATE BILL 09-____,
11 ENACTED IN 2009:

12 (a) FOR THE FISCAL YEAR BEGINNING JULY 1, 2009, IN ADDITION
13 TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED FROM
14 THE CAPITAL CONSTRUCTION FUND CREATED IN SECTION 24-75-302,
15 C.R.S., TO THE CORRECTIONS EXPANSION RESERVE FUND CREATED IN
16 SECTION 17-1-116, THE SUM OF _____ DOLLARS (\$).

17 (b) (I) FOR THE FISCAL YEAR BEGINNING JULY 1, 2010, IN
18 ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY
19 APPROPRIATED, FROM THE CAPITAL CONSTRUCTION FUND CREATED IN
20 SECTION 24-75-302, C.R.S., TO THE CORRECTIONS EXPANSION RESERVE
21 FUND CREATED IN SECTION 17-1-116, THE SUM OF _____ DOLLARS (\$).

22 (II) FOR THE FISCAL YEAR BEGINNING JULY 1, 2010, IN ADDITION
23 TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED TO THE
24 DEPARTMENT, OUT OF ANY MONEYS IN THE GENERAL FUND NOT
25 OTHERWISE APPROPRIATED, THE SUM OF _____ DOLLARS (\$).

26 (c) (I) FOR THE FISCAL YEAR BEGINNING JULY 1, 2011, IN ADDITION
27 TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED, FROM

1 THE CAPITAL CONSTRUCTION FUND CREATED IN SECTION 24-75-302,
2 C.R.S., TO THE CORRECTIONS EXPANSION RESERVE FUND CREATED IN
3 SECTION 17-1-116, THE SUM OF _____ DOLLARS (\$).

4 (II) FOR THE FISCAL YEAR BEGINNING JULY 1, 2011, IN ADDITION
5 TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED TO THE
6 DEPARTMENT, OUT OF ANY MONEYS IN THE GENERAL FUND NOT
7 OTHERWISE APPROPRIATED, THE SUM OF _____ DOLLARS (\$).

8 (d) (I) FOR THE FISCAL YEAR BEGINNING JULY 1, 2012, IN
9 ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY
10 APPROPRIATED, FROM THE CAPITAL CONSTRUCTION FUND CREATED IN
11 SECTION 24-75-302, C.R.S., TO THE CORRECTIONS EXPANSION RESERVE
12 FUND CREATED IN SECTION 17-1-116, THE SUM OF _____ DOLLARS (\$).

13 (II) FOR THE FISCAL YEAR BEGINNING JULY 1, 2012, IN ADDITION
14 TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED TO THE
15 DEPARTMENT, OUT OF ANY MONEYS IN THE GENERAL FUND NOT
16 OTHERWISE APPROPRIATED, THE SUM OF _____ DOLLARS (\$).

17 (e) (I) FOR THE FISCAL YEAR BEGINNING JULY 1, 2013, IN ADDITION
18 TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED, FROM
19 THE CAPITAL CONSTRUCTION FUND CREATED IN SECTION 24-75-302,
20 C.R.S., TO THE CORRECTIONS EXPANSION RESERVE FUND CREATED IN
21 SECTION 17-1-116, THE SUM OF _____ DOLLARS (\$).

22 (II) FOR THE FISCAL YEAR BEGINNING JULY 1, 2013, IN ADDITION
23 TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED TO THE
24 DEPARTMENT, OUT OF ANY MONEYS IN THE GENERAL FUND NOT
25 OTHERWISE APPROPRIATED, THE SUM OF _____ DOLLARS (\$).

26 (2) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2014.

27 **SECTION 5.** The introductory portion to 24-75-302 (2) and

1 24-75-302 (2) (v), (2) (w), (2) (x), and (2) (y), Colorado Revised Statutes,
2 are amended, and the said 24-75-302 (2) is further amended BY THE
3 ADDITION OF A NEW PARAGRAPH, to read:

4 **24-75-302. Capital construction fund - capital assessment fees**
5 **- calculation.** (2) As of July 1, 1988, and July 1 of each year thereafter
6 through July 1, ~~2012~~ 2013, a sum as specified in this subsection (2) shall
7 accrue to the capital construction fund. The state treasurer and the
8 controller shall transfer such sum out of the general fund and into the
9 capital construction fund as moneys become available in the general fund
10 during the fiscal year beginning on said July 1. Transfers between funds
11 pursuant to this subsection (2) shall not be deemed to be appropriations
12 subject to the limitations of section 24-75-201.1. The amount that shall
13 accrue pursuant to this subsection (2) shall be as follows:

14 (v) On July 1, 2009, five hundred twenty-three thousand one
15 hundred sixty-four dollars pursuant to S.B. 06-206, enacted at the second
16 regular session of the sixty-fifth general assembly; plus five hundred
17 twenty-three thousand one hundred sixty-four dollars pursuant to S.B.
18 06-207, enacted at the second regular session of the sixty-fifth general
19 assembly; plus forty-three thousand five hundred ninety-seven dollars
20 pursuant to H.B. 06-1145, enacted at the second regular session of the
21 sixty-fifth general assembly; plus five hundred twenty-three thousand one
22 hundred sixty-four dollars pursuant to H.B. 06-1011, enacted at the
23 second regular session of the sixty-fifth general assembly; plus one
24 hundred fifty thousand one hundred ninety-eight dollars pursuant to S.B.
25 07-096, enacted at the first regular session of the sixty-sixth general
26 assembly; plus seventy-five thousand ninety-nine dollars pursuant to H.B.
27 07-1326, enacted at the first regular session of the sixty-sixth general

1 assembly; plus one hundred twenty-five thousand one hundred sixty-five
2 dollars pursuant to S.B. 08-239, enacted at the second regular session of
3 the sixty-sixth general assembly; plus twelve thousand five hundred
4 seventeen dollars pursuant to H.B. 08-1194, enacted at the second regular
5 session of the sixty-sixth general assembly; PLUS _____ DOLLARS
6 PURSUANT TO S.B. 09-_____, ENACTED IN 2009;

7 (w) On July 1, 2010, five hundred twenty-three thousand one
8 hundred sixty-four dollars pursuant to S.B. 06-206, enacted at the second
9 regular session of the sixty-fifth general assembly; plus five hundred
10 twenty-three thousand one hundred sixty-four dollars pursuant to S.B.
11 06-207, enacted at the second regular session of the sixty-fifth general
12 assembly; plus forty-three thousand five hundred ninety-seven dollars
13 pursuant to H.B. 06-1145, enacted at the second regular session of the
14 sixty-fifth general assembly; plus five hundred twenty-three thousand one
15 hundred sixty-four dollars pursuant to H.B. 06-1011, enacted at the
16 second regular session of the sixty-fifth general assembly; plus sixty-nine
17 thousand seven hundred fifty-five dollars pursuant to S.B. 06S-004,
18 enacted at the first extraordinary session of the sixty-fifth general
19 assembly; plus seven hundred fifty thousand nine hundred ninety dollars
20 pursuant to S.B. 07-096, enacted at the first regular session of the
21 sixty-sixth general assembly; plus one hundred twelve thousand six
22 hundred forty-nine dollars pursuant to H.B. 08-1115, enacted at the
23 second regular session of the sixty-sixth general assembly; plus one
24 hundred thirty-seven thousand six hundred eighty-two dollars pursuant to
25 S.B. 08-239, enacted at the second regular session of the sixty-sixth
26 general assembly; PLUS _____ DOLLARS PURSUANT TO S.B. 09-_____,
27 ENACTED IN 2009;

1 (x) On July 1, 2011, seven hundred fifty thousand nine hundred
2 ninety dollars pursuant to S.B. 07-096, enacted at the first regular session
3 of the sixty-sixth general assembly; plus three hundred seventy-five
4 thousand four hundred ninety-five dollars pursuant to S.B. 08-239,
5 enacted at the second regular session of the sixty-sixth general assembly;
6 PLUS _____ DOLLARS PURSUANT TO S.B. 09-_____, ENACTED IN 2009;

7 (y) On July 1, 2012, one hundred twelve thousand six hundred
8 forty-nine dollars pursuant to H.B. 08-1115, enacted at the second regular
9 session of the sixty-sixth general assembly; plus three hundred
10 seventy-five thousand four hundred ninety-five dollars pursuant to S.B.
11 08-239, enacted at the second regular session of the sixty-sixth general
12 assembly; PLUS _____ DOLLARS PURSUANT TO S.B. 09-_____, ENACTED
13 IN 2009;

14 (z) ON JULY 1, 2013, _____ DOLLARS PURSUANT TO S.B. 09-_____,
15 ENACTED IN 2009.

16 **SECTION 6. Act subject to petition - effective date.** This act
17 shall take effect at 12:01 a.m. on the day following the expiration of the
18 ninety-day period after final adjournment of the general assembly that is
19 allowed for submitting a referendum petition pursuant to article V,
20 section 1 (3) of the state constitution, (August 4, 2009, if adjournment
21 sine die is on May 6, 2009); except that, if a referendum petition is filed
22 against this act or an item, section, or part of this act within such period,
23 then the act, item, section, or part, if approved by the people, shall take
24 effect on the date of the official declaration of the vote thereon by
25 proclamation of the governor.