

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

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 09-0496.01 Michael Dohr

SENATE BILL 09-036

SENATE SPONSORSHIP

Gibbs,

HOUSE SPONSORSHIP

Scanlan,

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.*

SENATE
3rd Reading Unamended
February 10, 2009

SENATE
Amended 2nd Reading
February 9, 2009

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.

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

2 **SECTION 1.** 18-4-601 (1), Colorado Revised Statutes, is
3 amended, and the said 18-4-601 is further amended BY THE ADDITION
4 OF THE FOLLOWING NEW SUBSECTIONS, to read:

5 **18-4-601. Definitions.** As used in this part 6, unless the context
6 otherwise requires:

7 (1) ~~"Copyright" means the ownership rights that accrue to an~~
8 ~~owner and relate solely to the common law copyright accruing to such~~
9 ~~owner. The term "copyright" does not include a federal copyright which~~
10 ~~inures to the benefit of owners pursuant to Public Law 92-140, as~~
11 ~~amended by Public Law 93-573, which became effective February 15,~~
12 ~~1972. For the purposes of this part 6, no common law copyright shall~~
13 ~~exist for a period longer than fifty-six years after an original copyright~~
14 ~~accrues to an owner.~~ "AGGREGATE WHOLESALE VALUE" MEANS THE
15 AVERAGE WHOLESALE VALUE OF LAWFULLY MANUFACTURED AND
16 AUTHORIZED SOUND OR AUDIO VISUAL RECORDINGS CORRESPONDING TO
17 THE NUMBER OF NONCONFORMING RECORDED ARTICLES INVOLVED IN THE
18 OFFENSE. PROOF OF THE SPECIFIC WHOLESALE VALUE OF EACH
19 NONCONFORMING DEVICE SHALL NOT BE REQUIRED.

20 (1.3) "ARTICLE" MEANS A TANGIBLE MEDIUM ON WHICH SOUNDS,
21 IMAGES, OR BOTH ARE RECORDED OR OTHERWISE STORED, INCLUDING AN
22 ORIGINAL PHONOGRAPH RECORD, DISC, TAPE, AUDIO OR VIDEO CASSETTE,

1 WIRE, FILM, MEMORY CARD, FLASH DRIVE, HARD DRIVE, DATA STORAGE
2 DEVICE, OR OTHER MEDIUM NOW EXISTING OR DEVELOPED LATER ON
3 WHICH SOUNDS, IMAGES, OR BOTH ARE OR CAN BE RECORDED OR
4 OTHERWISE STORED, OR A COPY OR REPRODUCTION THAT DUPLICATES, IN
5 WHOLE OR IN PART, THE ORIGINAL.

6 (1.5) "COPYRIGHT" MEANS THE OWNERSHIP RIGHTS THAT ACCRUE
7 TO AN OWNER AND RELATE SOLELY TO THE COMMON LAW COPYRIGHT
8 ACCRUING TO SUCH OWNER. THE TERM "COPYRIGHT" DOES NOT INCLUDE
9 A FEDERAL COPYRIGHT WHICH INURES TO THE BENEFIT OF OWNERS
10 PURSUANT TO PUBLIC LAW 92-140, AS AMENDED BY PUBLIC LAW 93-573,
11 WHICH BECAME EFFECTIVE FEBRUARY 15, 1972. FOR THE PURPOSES OF
12 THIS PART 6, NO COMMON LAW COPYRIGHT SHALL EXIST FOR A PERIOD
13 LONGER THAN FIFTY-SIX YEARS AFTER AN ORIGINAL COPYRIGHT ACCRUES
14 TO AN OWNER.

15 (1.7) "MANUFACTURER" MEANS THE PERSON WHO ACTUALLY
16 MAKES A RECORDING OR CAUSES A RECORDING TO BE MADE.
17 "MANUFACTURER" DOES NOT INCLUDE A PERSON WHO MANUFACTURES A
18 MEDIUM UPON WHICH SOUNDS OR IMAGES CAN BE RECORDED OR STORED,
19 OR WHO MANUFACTURES THE CARTRIDGE OR CASING ITSELF, UNLESS SUCH
20 PERSON ACTUALLY MAKES THE RECORDING OR CAUSES THE RECORDING TO
21 BE MADE.

22 **SECTION 2.** 18-4-604, Colorado Revised Statutes, is amended
23 to read:

24 **18-4-604. Dealing in unlawfully packaged recorded articles.**

25 (1) A person who KNOWINGLY AND FOR COMMERCIAL ADVANTAGE OR
26 PRIVATE FINANCIAL GAIN advertises, or offers for sale or resale, sells or
27 resells, TRANSPORTS, or possesses for any of the purposes provided in this

1 subsection (1) any phonograph record, disc, wire, tape, film, or other
2 article on which sounds are recorded, the cover, box, jacket, or label of
3 which does not clearly and conspicuously disclose the actual name and
4 address of the manufacturer and the name of the actual performer or
5 group, commits dealing in unlawfully packaged recorded articles.

6 (2) Dealing in unlawfully packaged recorded articles is a class 1
7 misdemeanor. IF THE OFFENSE INVOLVES ONE HUNDRED OR FEWER
8 UNLAWFULLY PACKAGED RECORDED ARTICLES, THE COURT SHALL ASSESS
9 A FINE OF AT LEAST FIVE HUNDRED DOLLARS. IF THE OFFENSE INVOLVES
10 MORE THAN ONE HUNDRED UNLAWFULLY PACKAGED RECORDED ARTICLES,
11 THE COURT SHALL ASSESS A FINE OF AT LEAST ONE THOUSAND DOLLARS.

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

15 **18-4-606. Confiscation and disposition of items.** (1) A LAW
16 ENFORCEMENT OFFICER SHALL, UPON DISCOVERY, CONFISCATE ALL
17 UNLAWFULLY LABELED, TRANSFERRED, OR RECORDED ARTICLES
18 POSSESSED FOR THE PURPOSES OF SELLING OR DISTRIBUTING IN VIOLATION
19 OF THIS PART 6 AND ALL EQUIPMENT AND COMPONENTS USED OR
20 INTENDED TO BE USED TO KNOWINGLY AND UNLAWFULLY TRANSFER,
21 MANUFACTURE, OR RECORD ARTICLES FOR THE PURPOSES OF SELLING OR
22 DISTRIBUTING IN VIOLATION OF THIS PART 6.

23 (2) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, RECORDED
24 ARTICLES AND EQUIPMENT AND COMPONENTS THAT ARE CONFISCATED
25 PURSUANT TO SUBSECTION (1) OF THIS SECTION ARE CONTRABAND AND
26 SHALL BE DELIVERED TO THE DISTRICT ATTORNEY IN THE COUNTY IN
27 WHICH THE CONFISCATION WAS MADE. THE DISTRICT ATTORNEY MAY

1 REQUEST A COURT ORDER FOR DESTRUCTION OF THE RECORDED ARTICLES
2 AND A COURT ORDER FOR DISTRIBUTION OF THE EQUIPMENT AND
3 COMPONENTS. THE COURT SHALL ORDER THE RECORDED ARTICLES TO BE
4 DESTROYED OR OTHERWISE DISPOSED OF IF THE COURT FINDS THAT THE
5 PERSON CLAIMING TITLE TO THE RECORDED ARTICLES POSSESSED THE
6 RECORDED ARTICLES FOR THE PURPOSES OF SELLING OR DISTRIBUTING IN
7 VIOLATION OF THIS PART 6. THE COURT SHALL ORDER THE EQUIPMENT
8 AND COMPONENTS DISTRIBUTED TO A CHARITABLE OR EDUCATIONAL
9 ORGANIZATION IF THE COURT FINDS THAT THE PERSON CLAIMING TITLE TO
10 THE EQUIPMENT POSSESSED THE EQUIPMENT TO RECORD NONCONFORMING
11 ARTICLES FOR THE PURPOSES OF SELLING OR DISTRIBUTING IN VIOLATION
12 OF THIS PART 6.

13 **18-4-607. Restitution.** NOTWITHSTANDING ANY OTHER
14 PROVISION OF LAW, UPON CONVICTION OF A VIOLATION OF THIS PART 6,
15 THE CONVICTED PERSON SHALL BE ORDERED TO MAKE RESTITUTION TO
16 THE OWNER OR LAWFUL PRODUCER OF THE MASTER SOUND OR AUDIO
17 VISUAL RECORDING, OR TO THE TRADE ASSOCIATION REPRESENTING THE
18 OWNER OR LAWFUL PRODUCER WHO SUFFERED INJURY RESULTING FROM
19 THE CRIME. THE ORDER OF RESTITUTION SHALL BE BASED ON THE
20 AGGREGATE WHOLESALE VALUE OF LAWFULLY MANUFACTURED AND
21 AUTHORIZED RECORDINGS CORRESPONDING TO THE NUMBER OF
22 NONCONFORMING RECORDED ARTICLES INVOLVED IN THE OFFENSE UNLESS
23 A GREATER VALUE CAN BE PROVEN. THE ORDER OF RESTITUTION SHALL
24 ALSO INCLUDE INVESTIGATIVE COSTS RELATING TO THE OFFENSE.

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

27 **17-18-105. Appropriation to comply with section 2-2-703 - SB**

1 **09-#### - repeal.** (1) PURSUANT TO SECTION 2-2-703, C.R.S., THE
2 FOLLOWING STATUTORY APPROPRIATIONS, OR SO MUCH THEREOF AS MAY
3 BE NECESSARY, ARE MADE IN ORDER TO IMPLEMENT SENATE BILL 09-____,
4 ENACTED IN 2009:

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

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

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

19 (c) (I) FOR THE FISCAL YEAR BEGINNING JULY 1, 2011, IN ADDITION
20 TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED, FROM
21 THE CAPITAL CONSTRUCTION FUND CREATED IN SECTION 24-75-302,
22 C.R.S., TO THE CORRECTIONS EXPANSION RESERVE FUND CREATED IN
23 SECTION 17-1-116, THE SUM OF _____ DOLLARS (\$).

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

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

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

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

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

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

20 **SECTION 5.** The introductory portion to 24-75-302 (2) and
21 24-75-302 (2) (v), (2) (w), (2) (x), and (2) (y), Colorado Revised Statutes,
22 are amended, and the said 24-75-302 (2) is further amended BY THE
23 ADDITION OF A NEW PARAGRAPH, to read:

24 **24-75-302. Capital construction fund - capital assessment fees**
25 **- calculation.** (2) As of July 1, 1988, and July 1 of each year thereafter
26 through July 1, ~~2012~~ 2013, a sum as specified in this subsection (2) shall
27 accrue to the capital construction fund. The state treasurer and the

1 controller shall transfer such sum out of the general fund and into the
2 capital construction fund as moneys become available in the general fund
3 during the fiscal year beginning on said July 1. Transfers between funds
4 pursuant to this subsection (2) shall not be deemed to be appropriations
5 subject to the limitations of section 24-75-201.1. The amount that shall
6 accrue pursuant to this subsection (2) shall be as follows:

7 (v) On July 1, 2009, 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 one
17 hundred fifty thousand one hundred ninety-eight dollars pursuant to S.B.
18 07-096, enacted at the first regular session of the sixty-sixth general
19 assembly; plus seventy-five thousand ninety-nine dollars pursuant to H.B.
20 07-1326, enacted at the first regular session of the sixty-sixth general
21 assembly; plus one hundred twenty-five thousand one hundred sixty-five
22 dollars pursuant to S.B. 08-239, enacted at the second regular session of
23 the sixty-sixth general assembly; plus twelve thousand five hundred
24 seventeen dollars pursuant to H.B. 08-1194, enacted at the second regular
25 session of the sixty-sixth general assembly; PLUS _____ DOLLARS
26 PURSUANT TO S.B. 09-____, ENACTED IN 2009;

27 (w) On July 1, 2010, five hundred twenty-three thousand one

1 hundred sixty-four dollars pursuant to S.B. 06-206, enacted at the second
2 regular session of the sixty-fifth general assembly; plus five hundred
3 twenty-three thousand one hundred sixty-four dollars pursuant to S.B.
4 06-207, enacted at the second regular session of the sixty-fifth general
5 assembly; plus forty-three thousand five hundred ninety-seven dollars
6 pursuant to H.B. 06-1145, enacted at the second regular session of the
7 sixty-fifth general assembly; plus five hundred twenty-three thousand one
8 hundred sixty-four dollars pursuant to H.B. 06-1011, enacted at the
9 second regular session of the sixty-fifth general assembly; plus sixty-nine
10 thousand seven hundred fifty-five dollars pursuant to S.B. 06S-004,
11 enacted at the first extraordinary session of the sixty-fifth general
12 assembly; plus seven hundred fifty thousand nine hundred ninety dollars
13 pursuant to S.B. 07-096, enacted at the first regular session of the
14 sixty-sixth general assembly; plus one hundred twelve thousand six
15 hundred forty-nine dollars pursuant to H.B. 08-1115, enacted at the
16 second regular session of the sixty-sixth general assembly; plus one
17 hundred thirty-seven thousand six hundred eighty-two dollars pursuant to
18 S.B. 08-239, enacted at the second regular session of the sixty-sixth
19 general assembly; PLUS _____ DOLLARS PURSUANT TO S.B. 09-____,
20 ENACTED IN 2009;

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

27 (y) On July 1, 2012, one hundred twelve thousand six hundred

1 forty-nine dollars pursuant to H.B. 08-1115, enacted at the second regular
2 session of the sixty-sixth general assembly; plus three hundred
3 seventy-five thousand four hundred ninety-five dollars pursuant to S.B.
4 08-239, enacted at the second regular session of the sixty-sixth general
5 assembly; PLUS _____ DOLLARS PURSUANT TO S.B. 09-____, ENACTED
6 IN 2009;

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

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