

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

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 09-0496.01 Michael Dohr

SENATE BILL 09-036

SENATE SPONSORSHIP

Gibbs,

HOUSE SPONSORSHIP

Scanlan,

Senate Committees
Judiciary

House Committees
Judiciary

A BILL FOR AN ACT

101 **CONCERNING THEFT OF SOUND RECORDINGS.**

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 and the confiscated equipment and components to be donated to charity 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.*

HOUSE
Am ended 2nd Reading
March 30, 2009

SENATE
3rd Reading Unam ended
February 10, 2009

SENATE
Am ended 2nd Reading
February 9, 2009

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,
23 WIRE, FILM, MEMORY CARD, FLASH DRIVE, HARD DRIVE, DATA STORAGE

1 DEVICE, OR OTHER MEDIUM NOW EXISTING OR DEVELOPED LATER ON
2 WHICH SOUNDS, IMAGES, OR BOTH ARE OR CAN BE RECORDED OR
3 OTHERWISE STORED, OR A COPY OR REPRODUCTION THAT DUPLICATES, IN
4 WHOLE OR IN PART, THE ORIGINAL.

5 (1.5) "COPYRIGHT" MEANS THE OWNERSHIP RIGHTS THAT ACCRUE
6 TO AN OWNER AND RELATE SOLELY TO THE COMMON LAW COPYRIGHT
7 ACCRUING TO SUCH OWNER. THE TERM "COPYRIGHT" DOES NOT INCLUDE
8 A FEDERAL COPYRIGHT WHICH INURES TO THE BENEFIT OF OWNERS
9 PURSUANT TO PUBLIC LAW 92-140, AS AMENDED BY PUBLIC LAW 93-573,
10 WHICH BECAME EFFECTIVE FEBRUARY 15, 1972. FOR THE PURPOSES OF
11 THIS PART 6, NO COMMON LAW COPYRIGHT SHALL EXIST FOR A PERIOD
12 LONGER THAN FIFTY-SIX YEARS AFTER AN ORIGINAL COPYRIGHT ACCRUES
13 TO AN OWNER.

14 (1.7) "MANUFACTURER" MEANS THE PERSON WHO ACTUALLY
15 MAKES A RECORDING OR CAUSES A RECORDING TO BE MADE.
16 "MANUFACTURER" DOES NOT INCLUDE A PERSON WHO MANUFACTURES A
17 MEDIUM UPON WHICH SOUNDS OR IMAGES CAN BE RECORDED OR STORED,
18 OR WHO MANUFACTURES THE CARTRIDGE OR CASING ITSELF, UNLESS SUCH
19 PERSON ACTUALLY MAKES THE RECORDING OR CAUSES THE RECORDING TO
20 BE MADE.

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

23 **18-4-604. Dealing in unlawfully packaged recorded articles.**

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

1 article on which sounds are recorded, the cover, box, jacket, or label of
2 which does not clearly and conspicuously disclose the actual name and
3 address of the manufacturer and the name of the actual performer or
4 group, commits dealing in unlawfully packaged recorded articles.

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

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

13 **18-4-606. Confiscation and disposition of items.** (1) A LAW
14 ENFORCEMENT OFFICER SHALL, UPON DISCOVERY, CONFISCATE ALL
15 UNLAWFULLY LABELED, TRANSFERRED, OR RECORDED ARTICLES
16 POSSESSED FOR THE PURPOSES OF SELLING OR DISTRIBUTING IN VIOLATION
17 OF THIS PART 6 AND ALL EQUIPMENT AND COMPONENTS USED OR
18 INTENDED TO BE USED TO KNOWINGLY AND UNLAWFULLY TRANSFER,
19 MANUFACTURE, OR RECORD ARTICLES FOR THE PURPOSES OF SELLING OR
20 DISTRIBUTING IN VIOLATION OF THIS PART 6.

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

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

12 **18-4-607. Restitution.** NOTWITHSTANDING ANY OTHER
13 PROVISION OF LAW, UPON CONVICTION OF A VIOLATION OF THIS PART 6,
14 THE CONVICTED PERSON SHALL BE ORDERED TO MAKE RESTITUTION TO
15 THE OWNER OR LAWFUL PRODUCER OF THE MASTER SOUND OR AUDIO
16 VISUAL RECORDING, OR TO THE TRADE ASSOCIATION REPRESENTING THE
17 OWNER OR LAWFUL PRODUCER WHO SUFFERED INJURY RESULTING FROM
18 THE CRIME. THE ORDER OF RESTITUTION SHALL BE BASED ON THE
19 AGGREGATE WHOLESALE VALUE OF LAWFULLY MANUFACTURED AND
20 AUTHORIZED RECORDINGS CORRESPONDING TO THE NUMBER OF
21 NONCONFORMING RECORDED ARTICLES INVOLVED IN THE OFFENSE UNLESS
22 A GREATER VALUE CAN BE PROVEN. THE ORDER OF RESTITUTION SHALL
23 ALSO INCLUDE INVESTIGATIVE COSTS RELATING TO THE OFFENSE.

24 [REDACTED]
25 **SECTION 4. Act subject to petition - effective date.** This act
26 shall take effect at 12:01 a.m. on the day following the expiration of the
27 ninety-day period after final adjournment of the general assembly that is

1 allowed for submitting a referendum petition pursuant to article V,
2 section 1 (3) of the state constitution, (August 4, 2009, if adjournment
3 sine die is on May 6, 2009); except that, if a referendum petition is filed
4 against this act or an item, section, or part of this act within such period,
5 then the act, item, section, or part, if approved by the people, shall take
6 effect on the date of the official declaration of the vote thereon by
7 proclamation of the governor.