

CHAPTER 185

CRIMINAL LAW AND PROCEDURE

SENATE BILL 09-036

BY SENATOR(S) Gibbs, Bacon, Boyd, Groff, Keller, King K., Kopp, Newell, Romer, Spence, Tochtrop, Veiga;
also REPRESENTATIVE(S) Scanlan, King S., Liston, McFadyen, Ryden, Todd, Carroll T.

AN ACT**CONCERNING THEFT OF SOUND RECORDINGS.**

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 THE FOLLOWING NEW SUBSECTIONS, 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 NUMBER OF NONCONFORMING RECORDED ARTICLES INVOLVED IN THE OFFENSE. PROOF OF THE SPECIFIC WHOLESALE VALUE OF EACH NONCONFORMING DEVICE SHALL NOT BE REQUIRED.

(1.3) "ARTICLE" MEANS A TANGIBLE MEDIUM ON WHICH SOUNDS, IMAGES, OR BOTH ARE RECORDED OR OTHERWISE STORED, INCLUDING AN ORIGINAL PHONOGRAPH RECORD, DISC, TAPE, AUDIO OR VIDEO CASSETTE, WIRE, FILM, MEMORY CARD, FLASH DRIVE, HARD DRIVE, DATA STORAGE DEVICE, OR OTHER MEDIUM NOW EXISTING OR DEVELOPED LATER ON WHICH SOUNDS, IMAGES, OR BOTH ARE OR CAN BE RECORDED OR OTHERWISE STORED, OR A COPY OR REPRODUCTION THAT

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

DUPLICATES, IN WHOLE OR IN PART, THE ORIGINAL.

(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 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.

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

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

18-4-604. Dealing in unlawfully packaged recorded articles. (1) A person who KNOWINGLY AND FOR COMMERCIAL ADVANTAGE OR PRIVATE FINANCIAL GAIN advertises, ~~or~~ offers for sale or resale, sells or resells, TRANSPORTS, or possesses for any of the purposes provided in this subsection (1) any ~~phonograph record, disc, wire, tape, film, or other~~ article on which sounds are recorded, the cover, box, jacket, or label of which does not clearly and conspicuously disclose the actual name and address of the manufacturer ~~and the name of the actual performer or group~~; commits dealing in unlawfully packaged recorded articles.

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

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

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

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

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

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

SECTION 4. Act subject to petition - effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 5, 2009, if adjournment sine die is on May 6, 2009); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: April 22, 2009