

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 834

Short Title: Counterfeit Recordings Amendments.

(Public)

Sponsors: Senators Plyler, Conder, Basnight, Ezzell, Staton; Daniel, Kaplan, Marvin, Murphy, Parnell, Royall, Sands, Sherron, Swain, Taft, Tally, Ward, and Winner.

Referred to: Judiciary I.

April 10, 1989

A BILL TO BE ENTITLED

AN ACT TO AMEND CHAPTER 14, ARTICLE 58 REGARDING COUNTERFEIT RECORDS, TAPES AND OTHER RECORDED DEVICES.

The General Assembly of North Carolina enacts:

Section 1. Article 58 of Chapter 14 of the General Statutes reads as rewritten:

"§ 14-432. ~~'Owner' defined.~~ Definitions.

As used in this Article, 'owner' means the person who owns the sounds fixed in any master phonograph record, master disc, master tape, master film or other device used for reproducing recorded sounds on phonograph records, discs, tapes, films or other articles on which sound is or can be recorded and from which the transferred sounds are directly or indirectly derived. ~~derived,~~ or the person who owns the rights to record or authorize the recording of a live performance; 'article' means the tangible medium upon which sounds or images are recorded or any original phonograph record, disc, tape, audio or video cassette, wire, film or other medium now known or later developed on which sounds or images are or can be recorded or otherwise stored, or any copy or reproduction which duplicates, in whole or in part, the original.

"§ 14-433. Recording of live concerts or recorded sounds and distribution, etc., of such recordings unlawful in certain circumstances.

(a) It shall be unlawful for any person to:

- (1) Knowingly transfer or cause to be transferred, directly or indirectly by any means, any sounds ~~at a live concert or any sounds~~—recorded on a phonograph record, disc, wire, tape, film or other article on which sounds are recorded, with the intent to sell or cause to be sold, or to

1 use or cause to be used for profit through public performance, such
2 article on which sounds are so transferred, without consent of the
3 owner, or

4 (2) Manufacture, ~~distribute or~~ distribute, wholesale or transport any article
5 for profit, or possess for such purposes with the knowledge that the
6 sounds are so transferred, without consent of the owner.

7 (3) Subdivisions (1) and (2) above shall apply only to sound recordings
8 that were initially fixed prior to February 15, 1972. Federal copyright
9 law, 17 U.S.C. § 101 et seq., preempts State protection for the acts
10 described in subdivisions (1) and (2) with respect to sound recordings
11 initially fixed on or after February 15, 1972.

12 (b) (1) Knowingly transfer or cause to be transferred, directly or
13 indirectly by any means, any sounds at a live concert, with the intent
14 to sell or cause to be sold, or to use or cause to be used for profit
15 through public performance, such article on which sounds are so
16 transferred, without consent of the owner, or

17 (2) Manufacture, distribute, transport or wholesale any such article for
18 profit, or possess for such purposes with the knowledge that the sounds
19 are so transferred, without consent of the owner.

20 (c) This section shall not apply to any person engaged in radio or television
21 broadcasting who transfers, or causes to be transferred, any such sounds other than from
22 the sound track of a motion picture intended for, or in connection with broadcast or
23 telecast transmission or related uses, or for archival purposes.

24 **"§ 14-434. Retailing, etc., of certain recorded devices unlawful.**

25 It shall be unlawful for any person to knowingly ~~retail~~ retail, advertise or offer for
26 sale or resale, sell or resell or cause the sale or resale, rent or cause to rent, or possess
27 for any of these purposes for the purpose of retailing ~~any article recorded device~~ that has
28 been produced, manufactured, distributed, or acquired at wholesale in violation of any
29 provision of this Chapter.

30 **"§ 14-435. Recorded devices to show true name and address of manufacturer.**

31 Ninety days after January 1, 1975, every ~~recorded device~~ article knowingly sold or
32 transferred or possessed for the purpose of sale ~~sale, advertising or offering for sale or~~
33 resale, renting or transporting or causing to be rented or transported by any
34 manufacturer, distributor, or wholesale or retail merchant shall contain on its packaging
35 the true name and address of the manufacturer. The term 'manufacturer' shall not
36 include the manufacturer of the cartridge or casing itself.

37 **"§ 14-436. Recorded devices; civil action for damages.**

38 Any owner of a ~~recorded device~~ an article as defined in this Chapter whose work is
39 allegedly the subject of a violation of G.S. 14-433 or 14-434, shall have a cause of
40 action in the courts of this State for all damages resulting therefrom, including actual,
41 compensatory and incidental damages.

42 **"§ 14-437. Violation of Article a misdemeanor—Article; penalties.**

43 (a) Every individual act manufacturer, distribution, sale or transfer of such recorded
44 devices ~~in contravention of the provisions of this Article shall constitute~~ constitute:

- 1 (1) A Class I felony, punishable by imprisonment for not more than five
2 years, a fine of not more than two hundred fifty thousand dollars
3 (\$250,000), or both, if the offense involves at least 1,000 unauthorized
4 sound recordings or more than 65 unauthorized audio visual recordings
5 during any 180-day period or is a second or subsequent conviction
6 under either subdivision (1) or (2) of this section;
7 (2) A Class J felony, punishable by imprisonment of not more than three
8 years, a fine of not more than two hundred fifty thousand dollars
9 (\$250,000), or both, if the offense involves more than 100 but less than
10 1,000 unauthorized sound recordings or more than 7 but less than 65
11 unauthorized audio visual recordings during any 180-day period; or
12 (3) A misdemeanor, punishable by not more than one year in jail, a fine of
13 not more than twenty-five thousand dollars (\$25,000), or both, for any
14 other violation of these sections.
15 (b) If a person is convicted of any violation under this Article, the court, in its
16 judgment of conviction, shall order the forfeiture and destruction or other disposition of:
17 (1) All infringing articles; and
18 (2) All implements, devices and equipment used or intended to be used in
19 the manufacture of the infringing articles."
20 Sec. 2. This act shall become effective November 1, 1989.