

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

S

2

SENATE BILL 1123
Judiciary I Committee Substitute Adopted 8/27/02

Short Title: Criminal Unauthorized Recordings.

(Public)

Sponsors:

Referred to:

May 29, 2002

1 A BILL TO BE ENTITLED
2 AN ACT MODIFYING THE FELONY AND MISDEMEANOR OFFENSES
3 RELATED TO CONDUCTING CERTAIN UNAUTHORIZED SOUND AND
4 VIDEO RECORDINGS.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 14-432 reads as rewritten:

7 "§ 14-432. Definitions.

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

19 (1) An "article" means the tangible medium upon which sounds or images
20 are recorded or otherwise stored, including any original phonograph
21 record, disc, tape, audio or video cassette, wire, film, or other medium
22 now known or later developed on which sounds or images or both can
23 be recorded or otherwise stored, or any copy or reproduction which
24 duplicates, in whole or in part, the original.

25 (2) "Fixed" means that the work has been recorded in a tangible medium
26 of expression, by or under the authority of the author, and its
27 embodiment is sufficiently permanent or stable to permit it to be
28 perceived, reproduced, or otherwise communicated for a period of
29 more than transitory duration. A work consisting of sounds, images, or

1 both, that are being transmitted, is "fixed" for the purposes of this
2 section if a fixation of the work is being made simultaneously with its
3 transmission.

4 (3) "Owner" means the person who owns the sounds fixed in any master
5 phonograph record, master disc, master tape, master film, or other
6 device used for reproducing recorded sounds on phonograph records,
7 discs, tapes, films, or other articles on which sound is or can be
8 recorded and from which the transferred sounds are directly or
9 indirectly derived, or the person who owns the rights to record or
10 authorize the recording of a live performance."

11 **SECTION 2.** G.S. 14-433 reads as rewritten:

12 **"§ 14-433. Recording of live ~~concerts~~ performances or recorded sounds and**
13 **distribution, etc., of such recordings unlawful in certain circumstances.**

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

15 (1) Knowingly transfer or cause to be transferred, directly or indirectly by
16 any means, any sounds recorded on a phonograph record, disc, wire,
17 tape, film or other article on which sounds are recorded, with the intent
18 to sell or cause to be sold, or to use or cause to be used for profit
19 through public performance, such article on which sounds are so
20 transferred, without consent of the ~~owner,~~owner.

21 (2) Manufacture, distribute, wholesale or transport any article for profit, or
22 possess for such purposes with the knowledge that the sounds recorded
23 on the article were transferred in violation of subdivision (a)(1) of this
24 section. ~~are so transferred, without consent of the owner,~~

25 (a1) It shall be unlawful for any person to:

26 ~~(3)~~(1) Knowingly transfer or cause to be transferred, directly or indirectly by
27 any means, any sounds at a live ~~concert,~~ performance, with the intent
28 to sell or cause to be sold, or to use or cause to be used for profit
29 through public performance, such article on which sounds are so
30 transferred, without consent of the ~~owner,~~owner.

31 ~~(4)~~(2) Manufacture, distribute, transport or wholesale any such article for
32 profit, or possess for such purposes with the knowledge that the sounds
33 recorded on the article were transferred in violation of subdivision
34 (a1)(1) of this section. ~~are so transferred, without consent of the owner.~~

35 (b) Subdivisions (a)(1) and (a)(2) of this section shall apply only to sound
36 recordings that were initially fixed prior to February 15, 1972. Federal copyright law, 17
37 U.S.C. § 101 et seq., preempts State prosecution of the acts described in subdivisions
38 (a)(1) and (a)(2) with respect to sound recordings initially fixed on or after February 15,
39 1972.

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

44 **SECTION 3.** G.S. 14-435 reads as rewritten:

1 **"§ 14-435. Recorded devices to show true name and address of manufacturer.**

2 ~~Ninety days after January 1, 1975, every article knowingly sold or transferred or~~
3 ~~possessed for the purpose of sale, advertising or offering for sale or resale, renting or~~
4 ~~transporting or causing to be rented or transported by any manufacturer, distributor, or~~
5 ~~wholesale or retail merchant shall contain on its packaging the true name and address of~~
6 ~~the manufacturer. The term "manufacturer" shall not include the manufacturer of the~~
7 ~~cartridge or casing itself.~~

8 (a) A person is guilty of failure to disclose the origin of an article when, for
9 commercial advantage or private financial gain, the person knowingly advertises or
10 offers for sale or resale, or sells or resells, or causes the rental, sale or resale, or rents, or
11 manufactures, or possesses for these purposes, any article, the packaging, cover, box,
12 jacket, or label of which does not clearly and conspicuously disclose the actual true
13 name and address of the manufacturer thereof and the name of the actual author, artist,
14 performer, producer, programmer, or group.

15 (b) This section does not require the original manufacturer or authorized
16 licensees of software producers to disclose the contributing authors or programmers. As
17 used in this section, the term "manufacturer" shall not include the manufacturer of the
18 article's packaging, cover, box, jacket, or label itself."

19 **SECTION 4.** G.S. 14-436 reads as rewritten:

20 **"§ 14-436. Recorded devices; civil action for damages.**

21 Any owner of an article as defined in this ~~Chapter~~ Article whose work is allegedly
22 the subject of a violation of G.S. 14-433 or ~~14-434~~, G.S. 14-434, shall have a cause of
23 action in the courts of this State for all damages resulting therefrom, including actual,
24 compensatory and incidental damages."

25 **SECTION 5.** G. S. 14-437(a) reads as rewritten:

26 "(a) Every individual act in contravention of the provisions of this Article shall
27 constitute a Class 1 misdemeanor, except that the offense is a Class I felony, with a
28 maximum fine of one hundred fifty thousand dollars (\$150,000), if (i) the offense
29 involves at least 100 unauthorized articles during any 180-day period, or (ii) is a second
30 or subsequent conviction for an act in violation of this Article.

31 ~~(1) A Class I felony, which may include a fine of not more than one~~
32 ~~hundred fifty thousand dollars (\$150,000), if the offense involves at~~
33 ~~least 1,000 unauthorized sound recordings or at least 100 unauthorized~~
34 ~~audio visual recordings during any 180-day period or is a second or~~
35 ~~subsequent conviction under either subdivision (1) or (2) of this~~
36 ~~section;~~

37 ~~(2) A Class 1 misdemeanor, if the offense involves more than 100 but less~~
38 ~~than 1,000 unauthorized sound recordings or more than 10 but less~~
39 ~~than 100 unauthorized audio visual recordings during any 180 day~~
40 ~~period;~~

41 ~~(3) A Class 2 misdemeanor, for any other violation of these sections."~~

42 **SECTION 6.** This act becomes effective December 1, 2002, and applies to
43 offenses committed on or after that date.