

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 2295 Session of
1996

INTRODUCED BY GANNON, MICOZZIE, ADOLPH, LAWLESS, TRELLO,
CHADWICK AND BIRMELIN, JANUARY 2, 1996

REFERRED TO COMMITTEE ON JUDICIARY, JANUARY 2, 1996

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, further providing for copying and
3 recording devices; and providing for unlawful operation of a
4 recording device in a motion picture theater.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Section 4116 of Title 18 of the Pennsylvania
8 Consolidated Statutes is amended to read:

9 § 4116. Copying; recording devices.

10 (a) [Definition.--As used in this section "owner" means the]
11 Definitions.--As used in this section, the following words and
12 phrases shall have the meanings given to them in this
13 subsection:

14 "Manufacturer." The person or entity which authorized or
15 caused the recording or transfer of sounds, images or a
16 combination of sounds and images to the recorded device in
17 issue. The term shall not include the manufacturer of the
18 cartridge or casing itself.

1 "Owner." The person who owns the master phonograph record,
2 master disc, master tape, master film or other device used for
3 reproducing recorded sounds on phonograph records, discs, tapes,
4 films or other articles on which sound is recorded and from
5 which the transferred sounds are directly or indirectly derived.

6 "Recorded device." Any phonograph record, disc, tape, film,
7 video tape, video cassette or other tangible article, now known
8 or later developed, upon which sounds or images or any
9 combination of sounds and images are recorded.

10 (b) Unauthorized transfer of sounds on recording devices.--
11 It shall be unlawful for any person to:

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

19 (2) manufacture, distribute or wholesale any article
20 with the knowledge that the sounds are so transferred,
21 without consent of the owner.

22 (c) Exceptions.--

23 (1) Subsection (b) shall not apply to any person engaged
24 in radio or television broadcasting who transfers, or causes
25 to be transferred, any such sounds other than from the sound
26 track of a motion picture intended for, or in connection with
27 broadcast or telecast transmission or related uses, or for
28 archival purposes.

29 (2) Subsection (b) shall not apply to motion pictures or
30 to sound recordings fixed on or after February 15, 1972.

1 (d) [Retail] Manufacture, sale or rental of illegal
2 recording or recorded devices.--[It shall be unlawful for any
3 person to knowingly retail or possess for the purpose of
4 retailing any recorded device that has been produced,
5 manufactured, distributed, or acquired at wholesale in violation
6 of any provision of this section.] It shall be unlawful for any
7 person to knowingly manufacture, transport, sell, resell, rent,
8 advertise or offer for sale, resale or rental, or cause the
9 manufacture, sale, resale or rental, or possess for such purpose
10 or purposes any recorded device in violation of this section.

11 (d.1) Manufacture, sale or rental of a recording of a live
12 performance without consent of the owner.--

13 (1) It shall be unlawful for any person to knowingly
14 manufacture, transport, sell, resell, rent, advertise or
15 offer for sale, resale, or rental, or cause the manufacture,
16 sale, resale, or rental or possess for such purpose or
17 purposes any recording of a live performance with the
18 knowledge that the live performance has been recorded without
19 the consent of the owner.

20 (2) In the absence of a written agreement or law to the
21 contrary, the performer or performers of a live performance
22 are presumed to own the rights to record those sounds.

23 (3) For purposes of this section, a person who is
24 authorized to maintain custody and control over business
25 records that reflect whether or not the owner of the live
26 performance consented to having the live performance recorded
27 is a competent witness in a proceeding regarding the issue of
28 consent.

29 (e) Name of manufacturer on recorded device packaging.--
30 Every recorded device [sold] manufactured, transported, rented,

1 sold, offered for sale or rental, or transferred or possessed
2 for [the purpose of sale by any manufacturer, distributor, or
3 wholesale or retail merchant] such purpose or purposes by any
4 person shall contain on its packaging or label the true name of
5 the manufacturer. [The term "manufacturer" shall not include the
6 manufacturer of the cartridge or casing itself.]

7 (f) Confiscation of non-conforming recorded devices.--It
8 shall be the duty of all law enforcement officers, upon
9 discovery, to confiscate all recorded devices that do not
10 conform to the provisions of subsection (e). The non-conforming
11 recorded devices shall be delivered to the district attorney of
12 the county in which the confiscation was made. The officer
13 confiscating the recorded devices shall provide to the person
14 from whom the recorded devices were confiscated notice that the
15 person may request a hearing concerning the confiscation and
16 disposition of the devices. Thereafter, the district attorney
17 [by] shall seek a court order [may give the same to a charitable
18 or educational organization.] for destruction or other lawful
19 disposition of the recorded devices. The provisions of this
20 section shall apply to any non-conforming recorded device,
21 regardless of the requirement in subsection (d) of knowledge or
22 intent [of a retail seller].

23 [(g) Separation and grading of offenses.--Every individual
24 manufacture, distribution, or sale or transfer at wholesale of
25 such recorded devices in contravention of the provisions of this
26 section constitutes a separate offense. An offense under this
27 section is a misdemeanor of the first degree.]

28 (g) Grading of offenses.--

29 (1) Any violation of the provisions of this section
30 involving, within any 180-day period, at least 100 devices

1 upon which motion pictures or portions thereof have been
2 recorded or at least 1,000 devices containing sound
3 recordings or portions thereof is a felony of the third
4 degree. A second or subsequent conviction is a felony of the
5 second degree.

6 (2) Any other violation of the provisions of this
7 section not described in paragraph (1) upon a first
8 conviction is a misdemeanor of the first degree and upon a
9 second or subsequent conviction is a felony of the third
10 degree.

11 (h) Rights of owners and producers to damages.--

12 (1) Any owner of a recorded device whose work is
13 allegedly the subject of a violation of the provisions of
14 subsection (b), (d) or (e) shall have a cause of action for
15 all damages resultant therefrom, including actual and
16 punitive damages.

17 (2) Any lawful producer of a recorded device whose
18 product is allegedly the subject of a violation of the
19 provisions of subsection (b), (d) or (e) shall have a cause
20 of action for all damages resultant therefrom, including
21 actual and punitive damages.

22 (3) Upon conviction for any offense under this section,
23 the offender may be sentenced to make restitution to any
24 owner or lawful producer of a recorded device or any other
25 person who suffered injury resulting from the crime.
26 Notwithstanding any limitation in section 1106 (relating to
27 restitution for injuries to person or property), the order of
28 restitution may be based on the aggregate wholesale value of
29 lawfully manufactured and authorized recorded devices
30 corresponding to the nonconforming recorded devices involved

1 in the offense. All other provisions of section 1106 not
2 inconsistent with this provision shall apply to an order of
3 restitution under this section.

4 Section 2. Title 18 is amended by adding a section to read:

5 § 4116.1. Unlawful operation of recording device in motion
6 picture theater.

7 (a) Offense.--A person commits the offense of unauthorized
8 operation of a recording device in a motion picture theater if
9 the person operates a recording device in the theater without
10 written authority or permission from the motion picture theater
11 owner.

12 (b) Theater owner rights.--

13 (1) A theater owner may detain a person for a reasonable
14 time for the purpose of conducting an investigation in a
15 reasonable manner whenever the theater owner has probable
16 cause to believe the person to be detained is attempting to
17 operate a recording device within the premises of a motion
18 picture theater without the authority of the owners of the
19 theater.

20 (2) During the period of detention any items which a
21 theater owner has probable cause to believe are unlawful
22 recordings, and which are in plain view may be examined by
23 the theater owner for the purposes of ascertaining the
24 ownership thereof.

25 (3) A theater owner having probable cause to believe the
26 person detained was attempting to operate a recording device
27 within the premises of a motion picture theater without the
28 authority of the theater owner may request the person
29 detained to voluntarily surrender the recording. Should the
30 person detained refuse to surrender the recording of which

1 there is probable cause to believe has been recorded or
2 attempted to be recorded on the premises, a reasonable search
3 may be conducted by those authorized to make the detention in
4 order to recover the recording. Upon surrender or discovery
5 of an unlawful recording the person detained may also be
6 requested, but may not be required, to provide adequate proof
7 of his or her true identity.

8 (4) If any person admitted to a theater in which a
9 motion picture is to be or is being exhibited, refuses or
10 fails to give or surrender possession or to cease operation
11 of any recording device that the person has brought into or
12 attempts to bring into that theater, then a theater owner
13 shall have the right to refuse further admission to that
14 person or request that the person leave the premises.

15 (c) Liability.--A theater owner or an employee or agent of a
16 theater owner who detains or causes the arrest of a person in or
17 immediately adjacent to a motion picture theater shall not be
18 held civilly or criminally liable in any proceeding arising out
19 of such detention or arrest, if:

20 (1) the person detaining or causing the arrest had, at
21 the time thereof, probable cause to believe that the person
22 detained or arrested had committed or attempted to commit in
23 that person's presence, an offense described in this section;

24 (2) the manner of the detention or arrest was
25 reasonable;

26 (3) law enforcement authorities were notified within a
27 reasonable time; and

28 (4) the person detained or arrested was released within
29 a reasonable time of the detention or arrest, or was
30 surrendered to law enforcement authorities within a

1 reasonable time.

2 (d) Penalty.--A first violation of this section constitutes
3 a felony of the third degree. A second or subsequent conviction
4 is a felony of the second degree.

5 (e) Definitions.--As used in this section, the following
6 words and phrases shall have the meanings given to them in this
7 subsection:

8 "Motion picture theater." A premises used for the exhibition
9 or performance of motion pictures to the general public.

10 "Recording device." A photographic or video camera, audio or
11 video recorder or any other device now existing or later
12 developed which may be used for recording sounds or images.

13 "Theater owner." An owner or operator and the agent,
14 employee, consignee, lessee or officer of an owner or operator
15 of any motion picture theater.

16 Section 3. This act shall take effect in 60 days.