

No. 1996-194

AN ACT

HB 2295

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

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

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

§ 4116. Copying; recording devices.

(a) [Definition.—As used in this section “owner” means the] *Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:*

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

“Owner.” The person who owns the 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 recorded and from which the transferred sounds are directly or indirectly derived.

“Recorded device.” Any phonograph record, disc, tape, film, videotape, video cassette or other tangible article, now known or later developed, upon which sounds or images or any combination of sounds and images are recorded.

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

(1) knowingly transfer or cause to be transferred, directly or indirectly by any means, 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 be used for profit through public performance, such article on which sounds are so transferred, without consent of the owner; or

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

(c) Exceptions.—

(1) Subsection (b) shall not apply to any person engaged in radio or television broadcasting who transfers, or causes to be transferred, any such sounds other than from the sound track of a motion picture intended for,

or in connection with broadcast or telecast transmission or related uses, or for archival purposes.

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

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

(d.1) *Manufacture, sale or rental of a recording of a live performance without consent of the owner.—*

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

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

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

(e) Name of manufacturer on recorded device packaging.—Every recorded device [sold] *manufactured, transported, rented, sold, offered for sale or rental*, or transferred or possessed for [the purpose of sale by any manufacturer, distributor, or wholesale or retail merchant] *such purpose or purposes by any person* shall contain on its packaging or label the true name of the manufacturer. [The term “manufacturer” shall not include the manufacturer of the cartridge or casing itself.]

(f) Confiscation of non-conforming recorded devices.—It shall be the duty of all law enforcement officers, upon discovery, to confiscate all recorded devices that do not conform to the provisions of subsection (e). The non-conforming recorded devices shall be delivered to the district attorney of the county in which the confiscation was made. *The officer confiscating the recorded devices shall provide to the person from whom the recorded devices were confiscated notice that the person may request a hearing concerning the confiscation and disposition of the devices. Thereafter, the district attorney [by] may seek a court order [may give the same to a*

charitable or educational organization.] *for destruction of the recorded devices.* The provisions of this section shall apply to any non-conforming recorded device, regardless of the requirement in subsection (d) of knowledge or intent [of a retail seller].

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

(g) Grading of offenses.—

(1) Any violation of the provisions of this section involving, within any 180-day period, at least 100 devices upon which motion pictures or portions thereof have been recorded or at least 1,000 devices containing sound recordings or portions thereof is a felony of the third degree. A second or subsequent conviction is a felony of the second degree if at the time of sentencing the defendant has been convicted of another violation of this section.

(2) Any other violation of the provisions of this section not described in paragraph (1) upon a first conviction is a misdemeanor of the first degree and upon a second or subsequent conviction is a felony of the third degree if at the time of sentencing the defendant has been convicted of another violation of this section.

(h) Rights of owners and producers to damages.—

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

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

(3) Upon conviction for any offense under this section, the offender may be sentenced to make restitution to any owner or lawful producer of a recorded device or any other person who suffered injury resulting from the crime. Notwithstanding any limitation in section 1106 (relating to restitution for injuries to person or property), the order of restitution may be based on the aggregate wholesale value of lawfully manufactured and authorized recorded devices corresponding to the non-conforming recorded devices involved in the offense. All other provisions of section 1106 not inconsistent with this provision shall apply to an order of restitution under this section.

(i) Forfeiture.—

(1) No property right shall exist in any property used or intended for use in the commission of a violation of this section or in any proceeds traceable to a violation of this section, and the same shall be deemed

contraband and forfeited in accordance with the provisions set forth in section 6501(d) (relating to scattering rubbish).

(2) Property and proceeds found in close proximity to illegally recorded devices shall be rebuttably presumed to be used or intended for use to facilitate a violation of this section.

(3) The provisions of this subsection shall not, in any way, limit the right of the Commonwealth to exercise any rights or remedies otherwise provided by law.

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

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

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

(b) Theater owner rights.—

(1) A peace officer, theater owner or an agent under contract with a theater owner who reasonably believes that an offense under the section has occurred or is occurring and who reasonably believes that a specific person has committed or is committing an offense under this section may detain the suspect in a reasonable manner for a reasonable time on or off the premises for any of the following purposes:

(i) To require the suspect to identify himself.

(ii) To verify such identification.

(iii) To determine whether the suspect has any recordings in violation of this section and, if so, to recover such recordings.

(iv) To inform a peace officer.

(v) To institute criminal proceedings against the suspect.

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

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

(1) the person detaining or causing the arrest had, at the time thereof, reasonably believed that the person detained or arrested had committed or attempted to commit in that person's presence an offense described in this section;

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

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

(4) the person detained or arrested was surrendered to law enforcement authorities within a reasonable time.

(d) Penalty.—A first violation of this section constitutes a misdemeanor of the first degree. A second or subsequent conviction is a felony of the third degree if at the time of sentencing the defendant has been convicted of another violation of this section.

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

“Motion picture theater.” A premises used for the exhibition or performance of motion pictures to the general public.

“Recording device.” A photographic or video camera, audio or video recorder or any other device now existing or later developed which may be used for recording or transferring sounds or images.

“Theater owner.” An owner or operator and the agent, employee, consignee, lessee or officer of an owner or operator of any motion picture theater.

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

APPROVED—The 20th day of December, A.D. 1996.

THOMAS J. RIDGE