



Sen. John J. Cullerton

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09500SB0532sam001

LRB095 10832 RLC 32524 a

1 AMENDMENT TO SENATE BILL 532

2 AMENDMENT NO. _____. Amend Senate Bill 532 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Criminal Code of 1961 is amended by
5 changing Sections 16-7 and 16-8 as follows:

6 (720 ILCS 5/16-7) (from Ch. 38, par. 16-7)

7 Sec. 16-7. Unlawful use of recorded sounds or images.

8 (a) A person commits unlawful use of recorded sounds or
9 images when he:

10 (1) Intentionally, knowingly or recklessly transfers
11 or causes to be transferred without the consent of the
12 owner, any sounds or images recorded on any sound or audio
13 visual recording with the purpose of selling or causing to
14 be sold, or using or causing to be used for profit the
15 article to which such sounds or recordings of sound are
16 transferred.

1 (2) Intentionally, knowingly or recklessly sells,
2 offers for sale, advertises for sale, uses or causes to be
3 used for profit any such article described in subsection
4 16-7(a)(1) without consent of the owner.

5 (3) Intentionally, knowingly or recklessly offers or
6 makes available for a fee, rental or any other form of
7 compensation, directly or indirectly, any equipment or
8 machinery for the purpose of use by another to reproduce or
9 transfer, without the consent of the owner, any sounds or
10 images recorded on any sound or audio visual recording to
11 another sound or audio visual recording or for the purpose
12 of use by another to manufacture any sound or audio visual
13 recording in violation of Section 16-8.

14 (4) Intentionally, knowingly or recklessly transfers
15 or causes to be transferred without the consent of the
16 owner, any live performance with the purpose of selling or
17 causing to be sold, or using or causing to be used for
18 profit the sound or audio visual recording to which the
19 performance is transferred.

20 (b) As used in this Section and Section 16-8:

21 (1) "Person" means any individual, partnership,
22 corporation, association or other entity.

23 (2) "Owner" means the person who owns the master sound
24 recording on which sound is recorded and from which the
25 transferred recorded sounds are directly or indirectly
26 derived, or the person who owns the rights to record or

1 authorize the recording of a live performance.

2 (3) "Sound or audio visual recording" means any sound
3 or audio visual phonograph record, disc, pre-recorded
4 tape, film, wire, magnetic tape or other object, device or
5 medium, now known or hereafter invented, by which sounds or
6 images may be reproduced with or without the use of any
7 additional machine, equipment or device.

8 (4) "Master sound recording" means the original
9 physical object on which a given set of sounds were first
10 recorded and which the original object from which all
11 subsequent sound recordings embodying the same set of
12 sounds are directly or indirectly derived.

13 (5) "Unidentified sound or audio visual recording"
14 means a sound or audio visual recording without the actual
15 name and full and correct street address of the
16 manufacturer, and the name of the actual performers or
17 groups prominently and legibly printed on the outside cover
18 or jacket and on the label of such sound or audio visual
19 recording.

20 (6) "Manufacturer" means the person who actually makes
21 or causes to be made a sound or audio visual recording. The
22 term manufacturer does not include a person who
23 manufactures a medium upon which sounds or visual images
24 can be recorded or stored, or who manufactures the
25 cartridge or casing itself.

26 (c) Unlawful use of recorded sounds or images is a Class 4

1 felony; however:

2 (1) If the offense involves more than 100 but not
3 exceeding 1000 unidentified sound recordings or more than 7
4 but not exceeding 65 unidentified audio visual recordings
5 during any 180 day period the authorized fine is up to
6 \$100,000; and

7 (2) If the offense involves more than 1,000
8 unidentified sound recordings or more than 65 unidentified
9 audio visual recordings during any 180 day period the
10 authorized fine is up to \$250,000.

11 (d) This Section shall neither enlarge nor diminish the
12 rights of parties in private litigation.

13 (e) This Section does not apply to any person engaged in
14 the business of radio or television broadcasting who transfers,
15 or causes to be transferred, any sounds (other than from the
16 sound track of a motion picture) solely for the purpose of
17 broadcast transmission.

18 (f) If any provision or item of this Section or the
19 application thereof is held invalid, such invalidity shall not
20 affect other provisions, items or applications of this Section
21 which can be given effect without the invalid provisions, items
22 or applications and to this end the provisions of this Section
23 are hereby declared severable.

24 (g) Each and every individual manufacture, distribution or
25 sale or transfer for a consideration of such recorded devices
26 in contravention of this Section constitutes a separate

1 violation of this Section.

2 (h) Any sound or audio visual recordings containing
3 transferred sounds or a performance whose transfer was not
4 authorized by the owner of the master sound recording or
5 performance, in violation of this Section, or in the attempt to
6 commit such violation as defined in Section 8-2, or in a
7 solicitation to commit such offense as defined in Section 8-1,
8 may be confiscated and destroyed upon conclusion of the case or
9 cases to which they are relevant, except that the Court may
10 enter an order preserving them as evidence for use in other
11 cases or pending the final determination of an appeal.

12 (i) It is an affirmative defense to any charge of unlawful
13 use of recorded sounds or images that the recorded sounds or
14 images so used are public domain material. For purposes of this
15 Section, recorded sounds are deemed to be in the public domain
16 if the recorded sounds were copyrighted pursuant to the
17 copyright laws of the United States, as the same may be amended
18 from time to time, and the term of the copyright and any
19 extensions or renewals thereof has expired.

20 (Source: P.A. 86-1210.)

21 (720 ILCS 5/16-8) (from Ch. 38, par. 16-8)

22 Sec. 16-8. Unlawful use of unidentified sound or audio
23 visual recordings.

24 (a) A person commits unlawful use of unidentified sound or
25 audio visual recordings when he intentionally, knowingly,

1 recklessly or negligently for profit manufactures, advertises
2 or offers for sale, sells, distributes, transports, vends,
3 circulates, performs, leases, or possesses for such purposes,
4 ~~or otherwise deals in and with~~ unidentified sound or audio
5 visual recordings or causes the manufacture, advertisement or
6 offer for sale, sale, distribution, transportation, vending,
7 circulation, performance, lease, or possession for such
8 purposes, ~~or other dealing in and with~~ unidentified sound or
9 audio visual recordings.

10 (b) Unlawful use of unidentified sound or audio visual
11 recordings is a Class 4 felony; however:

12 (1) If the offense involves more than 100 but not
13 exceeding 1000 unidentified sound recordings or more than 7
14 but not exceeding 65 unidentified audio visual recordings
15 during any 180 day period the authorized fine is up to
16 \$100,000; and

17 (2) If the offense involves more than 1,000
18 unidentified sound recordings or more than 65 unidentified
19 audio visual recordings during any 180 day period the
20 authorized fine is up to \$250,000.

21 (c) Each and every individual manufacture, advertisement
22 or offer for sale, sale, distribution, transportation,
23 vending, circulation, performance, lease, or possession for
24 such purposes, ~~or other dealing in and with~~ an unidentified
25 sound or audio visual recording constitutes a separate
26 violation of this Section.

1 (c-5) Upon conviction of any violation of this Section, the
2 offender shall be sentenced to make restitution to any owner or
3 lawful producer of a master sound or audio visual recording, or
4 to the trade association representing such owner or lawful
5 producer, that has suffered injury resulting from the crime.
6 The order of restitution shall be based on the aggregate
7 wholesale value of lawfully manufactured and authorized sound
8 or audio visual recordings corresponding to the non-conforming
9 recorded devices involved in the offense, and shall include
10 investigative costs relating to the offense.

11 (d) If any provision or item of this Section or the
12 application thereof is held invalid, such invalidity shall not
13 affect other provisions, items or applications of this Section
14 which can be given effect without the invalid provisions, items
15 or applications and to this end the provisions of this Section
16 are hereby declared severable.

17 (e) Any unidentified sound or audio visual recording used
18 in violation of this Section, or in the attempt to commit such
19 violation as defined in Section 8-4, or in a conspiracy to
20 commit such violation as defined in Section 8-2, or in a
21 solicitation to commit such offense as defined in Section 8-1,
22 may be confiscated and destroyed upon conclusion of the case or
23 cases to which they are relevant, except that the Court may
24 enter an order preserving them as evidence for use in other
25 cases or pending the final determination of an appeal.

26 (Source: P.A. 86-1210.)".