

2C:21-21

LEGISLATIVE HISTORY CHECKLIST
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NJSA: 2C:21-21; 2A:111-52 to 2A:111-55

('New Jersey
Anti-Piracy Act')

LAWS OF: 1991

CHAPTER: 125

Bill No: A4232

Sponsor(s): Ford

Date Introduced: December 3, 1990

Committee: Assembly: Judiciary, Law, Public Safety & Defense

Senate: -----

Amended during passage: No Committee Substitute enacted

Date of Passage: Assembly: February 28, 1991

Senate: March 14, 1991

Date of Approval: April 25, 1991

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: Yes

Senate: No

Fiscal Note: No

Veto Message: No

Message on signing: No

Following were printed:

Reports: No

Hearings: No

KBG/SLJ

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, No. 4232

STATE OF NEW JERSEY

ADOPTED FEBRUARY 21, 1991

Sponsored by Assemblywoman FORD

1 AN ACT concerning the commercial trade in unlawful recorded
2 devices, supplementing Title 2C of the New Jersey Statutes
3 and repealing N.J.S.2A:111-52 through N.J.S.2A:111-55.

4

5 BE IT ENACTED *by the Senate and General Assembly of the*
6 *State of New Jersey:*

7 1. a. This act shall be known and may be cited as the "New
8 Jersey Anti-Piracy Act."

9 b. As used in this act:

10 (1) "Sound recording" means any phonograph record, disc,
11 tape, film, wire, cartridge, cassette, player piano roll or similar
12 material object from which sounds can be reproduced either
13 directly or with the aid of a machine.

14 (2) "Owner" means (a) the person who owns the sounds fixed in
15 any master sound recording on which the original sounds were
16 fixed and from which transferred recorded sounds are directly or
17 indirectly derived; or (b) the person who owns the rights to record
18 or authorize the recording of a live performance.

19 (3) "Audiovisual work" means any work that consists of a
20 series of related images which are intrinsically intended to be
21 shown by the use of machines or devices such as projectors,
22 viewers, or electronic equipment, together with accompanying
23 sounds, if any, regardless of the nature of the material object,
24 such as film or tape, in which the work is embodied.

25 c. A person commits an offense who:

26 (1) Knowingly transfers, without the consent of the owner, any
27 sounds recorded on a sound recording with intent to sell the sound
28 recording onto which the sounds are transferred or to use the
29 sound recording to promote the sale of any product, provided,
30 however, that this paragraph shall only apply to sound recordings
31 initially fixed prior to February 15, 1972.

32 (2) Knowingly transports, advertises, sells, resells, rents, or
33 offers for rental, sale or resale, any sound recording or
34 audiovisual work that the person knows has been produced in
35 violation of this act.

36 (3) Knowingly manufactures or transfers, directly or indirectly
37 by any means, or records or fixes a sound recording or audiovisual
38 work, with the intent to sell or distribute for commercial
39 advantage or private financial gain, a live
40 performance with the knowledge that the live performance has
41 been recorded or fixed without the consent of the owner of the

1 live performance.

2 (4) For commercial advantage or private financial gain,
3 knowingly advertises or offers for sale, resale or rental, or sells,
4 resells, rents or transports, a sound recording or audiovisual work
5 or possesses with intent to advertise, sell, resell, rent or
6 transport any sound recording or audiovisual work, the label,
7 cover, box or jacket of which does not clearly and conspicuously
8 disclose the true name and address of the manufacturer, and, in
9 the case of a sound recording, the name of the actual performer
10 or group.

11 d. Notwithstanding the provisions of subsection b. of
12 N.J.S.2C:43-3:

13 (1) Any offense set forth in this act which involves at least
14 1,000 unlawful sound recordings or at least 65 audiovisual works
15 within any 180 day period shall be punishable as a crime of the
16 third degree and a fine of up to \$250,000 may be imposed.

17 (2) Any offense which involves more than 100 but less than
18 1,000 unlawful sound recordings or more than 7 but less than 65
19 unlawful audiovisual works within any 180 day period shall be
20 punishable as a crime of the third degree and a fine of up to
21 \$150,000 may be imposed.

22 (3) Any offense punishable under the provisions of this act not
23 described in paragraphs (1) or (2) of this subsection shall be
24 punishable for the first offense as a crime of the fourth degree
25 and a fine of up to \$25,000 may be imposed. For a second and
26 subsequent offense pursuant to this paragraph, a person shall be
27 guilty of a crime of the third degree. A fine of up to \$50,000
28 may be imposed for a second offense pursuant to this paragraph
29 and a fine of up to \$100,000 for a third and subsequent offense
30 may be imposed.

31 e. All unlawful sound recordings and audiovisual works and any
32 equipment or components used in violation of the provisions of
33 this act shall be subject to forfeiture in accordance with the
34 procedures set forth in chapter 64 of Title 2C of the New Jersey
35 Statutes.

36 f. The provisions of this act shall not apply to:

37 (1) Any broadcaster who, in connection with or as part of a
38 radio or television broadcast transmission, or for the purposes of
39 archival preservation, transfers any sounds or images recorded on
40 a sound recording or audiovisual work;

41 (2) Any person who, in his own home, for his own personal use,
42 and without deriving any profit, transfers any sounds or images
43 recorded on a sound recording or audiovisual work.

44 2. N.J.S.2A:111-52 through N.J.S.2A:111-55 are repealed.

45 3. This act shall take effect on the 60th day after enactment.

46

47

CRIMINAL JUSTICE

48

49 Revises the criminal laws pertaining to piracy of sound recordings
50 and recorded devices.

ASSEMBLY, No. 4232
STATE OF NEW JERSEY

INTRODUCED DECEMBER 3, 1990

By Assemblywoman FORD

1 AN ACT concerning the commercial trade in unlawful recorded
2 devices, supplementing Title 2C of the New Jersey Statutes
3 and repealing N.J.S.2A:111-52 through N.J.S.2A:111-55.
4

5 BE IT ENACTED *by the Senate and General Assembly of the*
6 *State of New Jersey:*

7 1. a. This act shall be known and may be cited as the "New
8 Jersey Anti-Piracy Act".

9 b. As used in this act:

10 (1) "Sound recording" means any phonograph record, disc,
11 tape, film, wire, cartridge, cassette, player piano roll or similar
12 material object from which sounds can be reproduced either
13 directly or with the aid of a machine.

14 (2) "Owner" means (1) the person who owns the sounds fixed in
15 any master sound recording on which the original sounds were
16 fixed and from which transferred recorded sounds are directly or
17 indirectly derived; or (2) the person who owns the rights to record
18 or authorize the recording of a live performance.

19 (3) "Recorded device" means any phonograph record, audio or
20 video disc, audio or video tape, film, wire, cartridge, and audio or
21 video cassette, player piano roll or similar material object now
22 known or later developed on which sounds or images are or can be
23 recorded or otherwise stored, or any copy or reproduction which
24 duplicates, in whole or in part, the original.

25 c. A person commits an offense who:

26 (1) Knowingly transfers or causes to be transferred, without
27 the consent of the owner, any sounds recorded on a sound
28 recording with intent to sell or cause to be sold the recorded
29 device on to which the sounds are transferred or to use the
30 recorded device to promote the sale of any product, provided,
31 however, that this paragraph shall only apply to sound recordings
32 initially fixed prior to February 15, 1972.

33 (2) Knowingly transports, advertises, sells, resells, rents, or
34 offers for rental, sale or resale, or causes to be transported,
35 advertised, sold or rented that recorded device that the person
36 knows or reasonably should have known has been produced in
37 violation of this act.

38 (3) Knowingly manufactures, transfers or causes to be
39 manufactured or transferred, directly or indirectly by any means,
40 or records or fixes or causes to be recorded or fixed on any
41 recorded device, with the intent to sell or distribute for
42 commercial advantage or private financial gain, a live

1 performance with the knowledge that the live performance has
2 been recorded or fixed without the consent of the owner of the
3 live performance.

4 (4) For commercial advantage or private financial gain,
5 knowingly advertises or offers for sale, resale or rental, or sells,
6 resells, rents or transports, or causes to be sold, resold, rented or
7 transported, or possesses for any of these purposes any recorded
8 device, the label, cover, box or jacket of which does not clearly
9 and conspicuously disclose the true name and address of the
10 manufacturer, and, in the case of audio recorded devices, the
11 name of the actual performer or group.

12 d. Notwithstanding the provisions of subsection b. of
13 N.J.S.2C:43-3:

14 (1) Any offense set forth in this act which involves at least
15 1,000 unlawful audio recorded devices or at least 65 unlawful
16 audiovisual recorded devices manufactured, transferred, recorded
17 or fixed or caused to be manufactured, transferred, recorded or
18 fixed within any 180 day period shall be punishable as a crime of
19 the third degree and a fine of up to \$250,000 may be imposed.

20 (2) Any offense which involves more than 100 but less than
21 1,000 unlawful audio recorded devices or more than 7 but less
22 than 65 unlawful audiovisual recorded devices manufactured,
23 transferred, recorded or fixed or caused to be manufactured,
24 transferred, recorded or fixed within any 180 day period shall be
25 punishable as a crime of the third degree and a fine of up to
26 \$150,000 may be imposed.

27 (3) Any offense punishable under the provisions of this act not
28 described in paragraphs (1) or (2) of this subsection shall be
29 punishable for the first offense as a crime of the fourth degree
30 and a fine of up to \$25,000 may be imposed. For a second and
31 subsequent offense pursuant to this paragraph, a person shall be
32 guilty of a crime of the third degree. A fine of up to \$150,000
33 may be imposed for a second offense pursuant to this paragraph
34 and a fine of up to \$250,000 for a third and subsequent offense
35 may be imposed.

36 e. If a person is convicted of any offense in violation of any of
37 the provisions of this act, the court shall order the forfeiture and
38 destruction or other disposition of all infringing recorded devices
39 and of any equipment or components used in the production of the
40 recorded devices in accordance with the procedures set forth in
41 chapter 64 of Title 2C of the New Jersey Statutes.

42 f. The provisions of this act shall not apply to:

43 (1) Any broadcaster who, in connection with or as part of a
44 radio or television broadcast transmission, or for the purposes of
45 archival preservation, transfers any sounds recorded on a sound
46 recording;

47 (2) Any person who, in his own home, for his own personal use,
48 and without deriving any profit, transfers any sounds recorded on
49 a sound recording.

ASSEMBLY JUDICIARY, LAW AND PUBLIC SAFETY
COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, No. 4232

STATE OF NEW JERSEY

DATED: FEBRUARY 21, 1991

The Assembly Judiciary, Law and Public Safety Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 4232.

This substitute repeals the existing law concerning the unlawful making or distribution of sound recordings without the consent of the owner and shall be known as the "New Jersey Anti-Piracy Act." Due to technological advances, those statutes no longer afford adequate protection to sound recordings and latter developed recording media. Production costs have decreased markedly making illegal sound and audiovisual recordings within the reach of more persons by virtue of the decreased production costs and the new technologies available. This bill repeals the sections of law which are currently found in Title 2A and restructures and adds these provisions to the criminal code. The bill does the following:

1. Requires that recordings distributed in New Jersey display the name and address of the manufacturer for "truth in labeling" purposes. See paragraph (4) of subsection c.

2. Includes newly developed recording media as videocassettes within the reach of the provisions. See the definition of "audiovisual work".

3. Establishes criminal penalties, including fines which may be based on the amount of unlawful trade in which the defendant engaged. These fines are significantly higher than those which may be imposed for most crimes of the fourth or third degree where the stated maximum is \$7500. These fines are similar to those imposed for drug offenses. The prior offenses set forth in Title 2A were "misdemeanors" which are treated as the equivalent of fourth degree crimes under the provisions of the criminal code. This substitute retains the crime of the fourth degree classification for those offenses where the actor is not dealing in larger numbers of illegally recorded devices but increases the financial penalties. In the other instances the crimes will be classified as crimes of the third degree with higher fines permitted.

The substitute does not apply to broadcasters or persons who record in their home for personal use without profit.