

HOUSE BILL 1405

E2

8lr3083

By: **Delegate Cardin**

Introduced and read first time: February 8, 2008

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Prohibited Transfer of Recorded Sounds or Images –**
3 **Restitution**

4 FOR the purpose of requiring a court to order a person who violates the law
5 prohibiting the transfer of certain recorded sounds or images to make
6 restitution to the owner or lawful producer of a certain master recorded article
7 that has suffered injury resulting from the violation, or to the trade association
8 representing the owner or lawful producer; providing that the order of
9 restitution shall be based on an amount equal to the number of recorded articles
10 or devices involved in the violation times the wholesale value of a corresponding
11 lawfully manufactured and authorized recorded article and shall include
12 investigative costs relating to the violation; defining a certain term; and
13 generally relating to the transfer of recorded sounds or images.

14 BY repealing and reenacting, without amendments,
15 Article – Criminal Law
16 Section 7–306 through 7–310
17 Annotated Code of Maryland
18 (2002 Volume and 2007 Supplement)

19 BY adding to
20 Article – Criminal Law
21 Section 7–311
22 Annotated Code of Maryland
23 (2002 Volume and 2007 Supplement)

24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
25 MARYLAND, That the Laws of Maryland read as follows:

26 **Article – Criminal Law**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 7-306.

2 This part does not apply to:

3 (1) a radio or television broadcaster or cable radio or television
4 operator who transfers sounds or images:

5 (i) as part of or with a radio or television transmission; or

6 (ii) for archival preservation; or

7 (2) a person who transfers sounds or images in the person's home for
8 the person's personal use without consideration being derived by the person, or any
9 other, from the transfer.

10 7-307.

11 This part does not affect the rights of parties in private litigation.

12 7-308.

13 (a) (1) In this section the following words have the meanings indicated.

14 (2) "Deliver" means to sell, rent, distribute, or circulate.

15 (3) "Performance" includes a live performance and a performance that
16 is transmitted by wire, radio, or television.

17 (4) "Recorded article" means a phonograph record, disc, wire, tape,
18 film, videocassette, or other article on which sounds are recorded or otherwise stored.

19 (b) (1) This subsection applies only to sound recordings initially fixed
20 before February 15, 1972.

21 (2) Except as otherwise provided in this section, a person may not
22 knowingly transfer or cause to be transferred any sounds recorded on a recorded
23 article to any other recorded article:

24 (i) with the intent to sell or cause to be sold for profit or used to
25 promote the sale of any product; and

26 (ii) without the consent of the owner of the original fixation of
27 sounds embodied in the master recorded article.

28 (c) Except as otherwise provided in this section, a person may not knowingly
29 deliver, offer for delivery, possess for delivery, cause to be delivered, cause to be
30 offered for delivery, or cause to be possessed for delivery a recorded article or device:

1 (1) on which sounds have been transferred without the consent of the
2 owner of the original fixation of sounds embodied in the master recorded article; or

3 (2) embodying a performance without the consent of the performer.

4 (d) (1) Except as otherwise provided in this section, a person may not
5 knowingly transfer to or cause to be transferred to a recorded article on which sounds
6 or images have been transferred or stored any performance:

7 (i) with the intent to sell or cause to be sold for profit or used to
8 promote the sale of any product; and

9 (ii) without the consent of the performer.

10 (2) A person may not knowingly deliver, offer for delivery, or possess
11 for the purpose of delivery a recorded article on which sounds or images have been
12 transferred or stored, unless the recorded article bears in a prominent place on its
13 outside face or package:

14 (i) the actual name and street address of the transferor of the
15 sounds or images; and

16 (ii) the actual name of the performer or group.

17 (e) Except in the lobby area of a motion picture theater, a person may not
18 knowingly operate an audiovisual recording function of a device in a motion picture
19 theater without the consent of the owner or lessee of the theater.

20 7-309.

21 (a) For a first violation, a person who violates this part is guilty of a
22 misdemeanor and on conviction is subject to imprisonment not exceeding 1 year or a
23 fine not exceeding \$2,500 or both for each individual act in violation of this part.

24 (b) For each subsequent violation, a person who violates this part is guilty of
25 a misdemeanor and on conviction is subject to imprisonment not exceeding 3 years or
26 a fine not exceeding \$10,000 or both for each individual act in violation of this part.

27 7-310.

28 A recorded article produced in violation of this part and all equipment used to
29 produce the recorded article are subject to forfeiture and destruction by the
30 appropriate law enforcement unit.

31 **7-311.**

1 (A) IN THIS SECTION, "OWNER OR LAWFUL PRODUCER" MEANS A
2 PERSON THAT OWNS OR LAWFULLY PRODUCES A MASTER RECORDING, MASTER
3 DISC, MASTER TAPE, MASTER VIDEOTAPE, MASTER FILM, OR OTHER MASTER
4 RECORDED ARTICLE FROM WHICH SOUNDS OR VISUAL IMAGES ARE DERIVED IN
5 VIOLATION OF THIS PART.

6 (B) A COURT SHALL ORDER A PERSON WHO VIOLATES THIS PART TO
7 MAKE RESTITUTION TO THE OWNER OR LAWFUL PRODUCER THAT HAS
8 SUFFERED INJURY RESULTING FROM THE VIOLATION, OR TO THE TRADE
9 ASSOCIATION REPRESENTING THE OWNER OR LAWFUL PRODUCER.

10 (C) THE ORDER OF RESTITUTION DESCRIBED IN SUBSECTION (B) OF
11 THIS SECTION SHALL BE IN AN AMOUNT EQUAL TO THE NUMBER OF RECORDED
12 ARTICLES OR DEVICES INVOLVED IN THE VIOLATION TIMES THE WHOLESALE
13 VALUE OF A CORRESPONDING LAWFULLY MANUFACTURED AND AUTHORIZED
14 RECORDED ARTICLE AND SHALL INCLUDE INVESTIGATIVE COSTS RELATING TO
15 THE VIOLATION.

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
17 October 1, 2008.