

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 1405

(Delegate Cardin)

Judiciary

Criminal Law - Prohibited Transfer of Recorded Sounds or Images - Restitution

This bill requires a court to order a person who violates prohibitions against the transfer of recorded sounds or images to make restitution to the “owner or lawful producer” of the master recorded article who has suffered injury resulting from the violation, or to the trade association representing the owner or lawful producer. The order of restitution must be based on an amount equal to the number of recorded articles or devices involved in the violation times the wholesale value of a corresponding lawfully manufactured and authorized recorded article and must include investigative costs relating to the violation.

Fiscal Summary

State Effect: None. It is assumed that an increase in orders of restitution in such cases could be handled with the existing budgeted resources of the District Court. Restitution collection responsibilities could be handled with the existing budgeted resources of the Division of Parole and Probation and/or the Central Collection Unit of the Comptroller’s Office.

Local Effect: None. It is assumed that an increase in orders of restitution in such cases could be handled with the existing budgeted resources of the circuit courts.

Small Business Effect: Potentially meaningful for an owner or lawful producer of recorded sounds or images, or a trade association representing an owner or producer.

Analysis

Current Law: Generally, a person may not knowingly transfer or cause to be transferred any recorded sounds or images to any other recorded article with the intent to sell or cause to be sold for profit or used to promote the sale of any product, without the consent of the owner or performer. A person may not knowingly deliver, offer for delivery, or possess for the purpose of delivery a recorded article on which sounds or images have been transferred or stored, unless the recorded article bears in a prominent place on its outside face or package: (1) the name and street address of the transferor; and (2) the name of the performer or group.

For a first violation, an offender is guilty of a misdemeanor and subject to maximum penalties of imprisonment for one year and/or a fine of \$2,500 for each individual act in violation of the prohibition. For a subsequent violation, an offender is guilty of a misdemeanor and subject to maximum penalties of imprisonment for three years and/or a fine of \$10,000 for each individual act in violation of the prohibition.

Chapter 165 of 2004 prohibits a person from knowingly operating an audiovisual recording function of a device in a motion picture theater, except in the lobby area, without the consent of the owner or lessee of the theater. The Act provides immunity from civil liability to an owner, lessee, agent, or employee of a motion picture theater who detains or causes the arrest of any person if there is probable cause to believe that the person committed a violation of the prohibition against audiovisual recording in the theater.

For a first violation, an offender is guilty of a misdemeanor and subject to maximum penalties of imprisonment for one year and/or a fine of \$2,500 for each individual act in violation of the prohibition. For a subsequent violation, an offender is guilty of a misdemeanor and subject to maximum penalties of imprisonment for three years and/or a fine of \$10,000 for each individual act in violation of the prohibition. The provisions of Chapter 165 are severable.

Cunningham v. State, 397 Md. 524, 919 A.2d 30 (2007) held that restitution was a permissible penalty for the defendant who possessed for distribution or delivery from the back of his van on a public street counterfeit compact discs and digital video discs.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Maryland District Court, Administrative Office of the Courts), Department of Public Safety and Correctional Services (Division of Parole and Probation), Department of Legislative Services

Fiscal Note History: First Reader - March 5, 2008
mam/jr

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