

SENATE BILL REPORT

SB 5030

AS REPORTED BY COMMITTEE ON LAW & JUSTICE, FEBRUARY 4, 1991

Brief Description: Prohibiting the unauthorized reproduction or recording of material.

SPONSORS: Senators Nelson, Talmadge and Thorsness.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5030 be substituted therefor, and the substitute bill do pass.

Signed by Senators Nelson, Chairman; Thorsness, Vice Chairman; Erwin, Hayner, L. Kreidler, Madsen, Newhouse, Rasmussen, and A. Smith.

Staff: Susan Carlson (786-7418)

Hearing Dates: January 21, 1991; February 4, 1991

BACKGROUND:

Dramatic advances in sound recording technology have been followed by a corresponding increase in the activities of pirates, bootleggers, and counterfeiters. Their trade in unauthorized recordings results in a loss of income, royalties, and fees to musicians, retailers, and the recording industry. In addition, consumers who purchase unauthorized recordings may receive products that are inferior or defective.

Current law prohibits the reproduction and/or sale of unauthorized sound recordings. Violations are punishable by a fine up to \$1,000, imprisonment up to one year, and confiscation of illegal stock. The sale of a tape without the name and address of the recorder on its package is a misdemeanor punishable by a fine up to \$100. There is concern that these penalties are insufficient to deter violations and that the existing scope of offenses does not fully encompass the activities of pirates and counterfeiters.

SUMMARY:

Criminal offenses and sanctions are established for certain activities involving the unauthorized reproduction of recordings. A criminal offense is committed if a person knowingly reproduces for sale or transports within this state any unauthorized recording for commercial advantage or private financial gain. Advertising, selling or renting any unauthorized recording is also prohibited.

Unauthorized recordings of live performances may not be advertised, sold or transported for commercial advantage or

private financial gain. The recording of live performances without the consent of the owner with the intent to sell for commercial advantage or private financial gain is prohibited.

The penalties for violations range from a fine of \$25,000 up to \$250,000, and imprisonment for up to one, two or five years depending on the number of unauthorized recordings and the defendants prior convictions under this law. Upon conviction, the court must order the forfeiture of any items involved in the unauthorized recording.

Prosecutors have a duty to commence forfeiture proceedings as to any recorded materials not in conformance with this law, without regard to the lack of knowledge or intent by the possessor.

A recording that is intended only for broadcast by radio or television stations is exempt. The reproduction of records of a public body, the courts, or the Legislature is also exempt.

The crime of failure to disclose the origin of a recording is committed if, for commercial advantage or private financial gain, a person advertises, sells, or possesses a recording which does not have the true name and address of the manufacturer on the package. Violations are punishable by fines ranging from \$25,000 to \$250,000 and imprisonment for up to one, two, or five years, depending on the number of unauthorized recordings and the defendant's prior convictions under the law. Recordings for broadcast by radio or television stations are exempt.

EFFECT OF PROPOSED SUBSTITUTE:

The proposed substitute bill is the same as the original bill with the following exceptions:

The maximum imprisonment for each of the crimes is changed to ten years, five years, or one year, depending on the number of unauthorized recordings.

The prosecuting attorney is not required to institute forfeiture proceedings, but may do so. The owner of a recording may also institute forfeiture proceedings.

Various technical amendments to the bill were also made.

Appropriation: none

Revenue: none

Fiscal Note: none requested

TESTIMONY FOR:

The bill would be more effective against piracy, bootlegging, and counterfeiting activities than current law.

TESTIMONY AGAINST: None

TESTIFIED: PRO: Ralph Vaughan, Recording Industry Association of America; Dick Hemstad, Recording Industry Association of America