

HOUSE BILL REPORT

HB 1064

*As Reported By House Committee on:
Judiciary*

Title: An act relating to the protection of recording rights.

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

Sponsor(s): Representatives Appelwick, Padden, Ludwig, R. Meyers, Belcher, Paris, Miller and Orr.

Brief History:

Reported by House Committee on:
Judiciary, February 6, 1991, DPS.

**HOUSE COMMITTEE ON
JUDICIARY**

Majority Report: *That Substitute House Bill No. 1064 be substituted therefor, and the substitute bill do pass.*
Signed by 17 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Padden, Ranking Minority Member; Paris, Assistant Ranking Minority Member; Broback; Forner; Hargrove; Inslee; R. Meyers; Mielke; H. Myers; Riley; Scott; D. Sommers; Tate; Vance; and Wineberry.

Staff: Bill Perry (786-7123).

Background: In 1971, the Legislature prohibited retailers from selling audio or video recordings without labelling that identifies the recorder. The offense is punishable by a fine of up to \$100. In 1974, the Legislature enacted a law prohibiting the unauthorized sale, or reproduction for sale, of sound recordings. The penalties provided include confiscation of illegal material, a fine of up to \$1,000, and imprisonment for up to one year. Neither of these laws has been amended since enactment.

A number of federal laws also apply to record piracy, and civil remedies are also available for injured parties.

In recent years, dramatic changes have occurred in audio and visual recording techniques and capabilities. During the same period, the sale of bootleg recordings, and other related pirating or counterfeiting operations have become a large problem for the recording industry.

Summary of Substitute Bill: The statutes on unauthorized commercial reproduction of recordings are substantially rewritten. Definitions of recording techniques and products are updated. Increased penalties are provided for each of the new offenses that replace the previous prohibitions. In addition, forfeiture procedures are provided for confiscating contraband recordings.

Felony crimes are created for the following offenses:

- o The unauthorized commercial reproduction, or the sale, transport or use of reproductions, of recordings made before February 15, 1972, the date federal law gave copyright protection to sound recordings.
- o The unauthorized recording of a live performance or the sale, advertisement for sale, or transport of an unauthorized recording of a live performance. Absent a written agreement, the performer of a live performance is presumed to own the rights to record the performance.
- o The failure to disclose the origin of a recording when selling a recording with knowledge that it does not display the true name and address of the manufacturer in a prominent place.

Escalating penalties are provided for each of the three offenses based on repeat convictions and the number of violations within a 180-day period. The maximum penalty for the most serious kind of each offense is a fine of \$250,000 and 10 years in prison. Middle range violations carry the same maximum fine, but a maximum prison term of five years. The lowest range of violations carries a maximum penalty of \$25,000 and imprisonment of one year.

Prosecutors are given the authority to pursue forfeiture proceedings against any contraband material without regard to culpable knowledge or intent on the part of a possessor of the material.

Radio and television broadcasts and recordings of public proceedings are exempted from the act.

Substitute Bill Compared to Original Bill: The substitute bill consolidates all related provisions in one chapter. It provides an explicit exception for the receipt of radio or television broadcasts and adjusts the imprisonment penalties to correspond to other crimes in the criminal code's classifications.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: Current statutes are out-of-date and completely inadequate. The fines available are no deterrent at all to a multimillion dollar illegal activity.

Testimony Against: None.

Witnesses: Richard Hemstad and Ralph Vaughn, Recording Industry Association of America (in favor).