

1989

Session Law 89-181

Florida Senate & House of Representatives

Follow this and additional works at: <https://ir.law.fsu.edu/staff-analysis>



Part of the Legislation Commons

Recommended Citation

House of Representatives, Florida Senate &, "Session Law 89-181" (1989). *Staff Analysis*. 937.
<https://ir.law.fsu.edu/staff-analysis/937>

This Article is brought to you for free and open access by the Florida Legislative Documents at Scholarship Repository. It has been accepted for inclusion in Staff Analysis by an authorized administrator of Scholarship Repository. For more information, please contact efarrell@law.fsu.edu.

B
I
L
L

H
I
S
T
O
R
Y

H 221 GENERAL BILL/CS by Small Business & Economic Development; Canady and others (Identical CS/S 250)
Recordings/Unauthorized Use; provides definitions; prohibits certain acts re recorded sounds or performances; provides enhanced penalties for certain violations; provides exceptions. Amends 540.11. Effective Date: 10/01/89.

02/07/89 HOUSE Prefiled
02/08/89 HOUSE Referred to Small Business & Economic Development; Appropriations
02/17/89 HOUSE Subreferred to Subcommittee on Film Industry
02/20/89 HOUSE On subcommittee agenda—Small Business & Economic Development, 03/07/89, 8:30 am, 212-HOB
03/09/89 HOUSE Subcommittee Recommendation: Favorable; On Committee agenda—Small Business & Economic Development, 03/07/89, 9:30 am, 212-HOB—Temporarily passed
04/04/89 HOUSE Introduced, referred to Small Business & Economic Development; Appropriations -HJ 31; Subreferred to Subcommittee on Film Industry
04/10/89 HOUSE On Committee agenda—Small Business & Economic Development, 04/12/89, 3:30 pm, 212-HOB
04/12/89 HOUSE Preliminary Committee Action by Small Business & Economic Development: Favorable as a CS
04/19/89 HOUSE Comm. Report: CS by Small Business & Economic Development -HJ 249; CS read first time -HJ 248; Now in Appropriations -HJ 249
05/02/89 HOUSE Withdrawn from Appropriations -HJ 321; Placed on Calendar
05/09/89 HOUSE Placed on Special Order Calendar
05/10/89 HOUSE Read second time -HJ 452
05/11/89 HOUSE Read third time; CS passed; YEAS 108 NAYS 0 -HJ 464
05/16/89 SENATE In Messages
05/24/89 SENATE Received -SJ 414; Substituted for CS/SB 250; CS passed; YEAS 37 NAYS 0 -SJ 434
05/25/89 Ordered enrolled
06/13/89 Signed by Officers and presented to Governor
06/28/89 Approved by Governor; Chapter No. 89-181.

NOTES: Above bill history from Division of Legislative Information's *FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS*. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.

STORAGE NAME: h0221-f.sbe
DATE: June 6, 1989

**HOUSE OF REPRESENTATIVES
SMALL BUSINESS AND ECONOMIC DEVELOPMENT
FINAL STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: CS\HB 221

RELATING TO: Commercial Discrimination

SPONSOR(S): Representative Canady

EFFECTIVE DATE: October 1, 1989

DATE BECAME LAW: June 28, 1989

CHAPTER #: 89-181, Laws of Florida

COMPANION BILL(S): SB 250

OTHER COMMITTEES OF REFERENCE: (1) Appropriations (Withdrawn)

I. SUMMARY:

A. PRESENT SITUATION:

Section 540.11, F.S., states that it is unlawful for any person to knowingly and willfully transfer recorded sounds in any way without the consent of the owner. Similar provisions apply to live performances recorded without the consent of the performer. Violations of these provisions are a third degree felony punishable by imprisonment not to exceed five years and a fine not to exceed \$5,000. The term of imprisonment may double for habitual offenders.

In addition, it is unlawful to sell recordings which are known to be transferred without the consent of the owner (or performer in the case of live performances) or which do not clearly disclose on the package the actual name and address of the manufacturer and the name of the actual performer or group. Violations of these provisions are a second degree misdemeanor punishable by imprisonment not to exceed 60 days and a fine not to exceed \$500. Imprisonment may be increased up to one year for habitual offenders.

These provisions do not apply to individuals duplicating recordings for personal use or to broadcasters transferring recordings in connection with broadcast transmissions or for archival preservation.

B. EFFECT OF PROPOSED CHANGES:

This bill clarifies existing law by defining terms and including the transfer of recorded images as well as sounds. The transport or advertising of illegal recordings are included as violations

subject to penalties upon conviction. Currently, the sale of illegal recordings carries a lesser penalty than the transfer of recorded sounds; the bill provides the same penalty for both of these offenses.

The bill also establishes harsher penalties for violations of the act. The maximum penalty for conviction of an offense is a fine of not more than \$250,000 and imprisonment for not more than 5 years. Penalties are provided commensurate with the number of unauthorized recordings involved.

C. SECTION-BY-SECTION ANALYSIS:

The bill contains one section.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

No additional funds are required to implement this bill. However, the bill has other direct effects as outlined below.

2. Recurring or Annualized Continuation Effects:

Harsher penalties could increase the amount of time convicted persons remain imprisoned and raise revenues received from fines. Due to the present overcrowding of prisons, it would appear that longer terms of imprisonment would not be carried out.

3. Long Run Effects Other Than Normal Growth:

None.

4. Appropriations Consequences:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

None.

2. Recurring or Annualized Continuation Effects:

The terms of imprisonment of convicted persons in municipal or county jails could potentially increase as a result of this bill.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

This bill provides additional protections for the private sector against illegal bootlegging, potentially benefitting the private sector.

3. Effects on Competition, Private Enterprise, and Employment Markets:

The bill may reduce illegal and unfair competition for private enterprise.

D. FISCAL COMMENTS:

III. LONG RANGE CONSEQUENCES:

This bill is consistent with the state comprehensive plan as contained in Chapter 187, Florida Statutes.

IV. COMMENTS:

The bill improves Florida's image as a conducive environment for filmmaking and recording activities.

This issue is not specifically addressed in the Legislative Issues Conference document.

V. SIGNATURES:

SUBSTANTIVE COMMITTEE:

Prepared by:


Lee Ann Barton

Staff Director:


Jerry Price

REVISED: May 1, 1989

BILL NO. CS/SB 250

DATE: April 27, 1989

Page 1

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Wiehle</u>	<u>Smawley</u>	1. <u>JCI</u>	<u>FAV/CS</u>
2. <u>Rudolph</u>	<u>Liepshutz</u>	2. <u>JCR</u>	<u>Favorable</u>
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT:

Commercial Discrimination/
Unauthorized Use of
Recordings

BILL NO. AND SPONSOR:

CS/SB 250 by
Committee on Judiciary-Civil
and Senator Johnson

I. SUMMARY:

A. Present Situation:

Section 540.11, F.S., prohibits unauthorized copying or use of sound recordings. The section makes it unlawful to knowingly and willfully, and without the consent of the owner to:

1. copy any sound recording with the intent to sell the copy for a profit; or
2. copy any performance, whether live or transmitted by wire, radio, or television, with the intent to sell the copy for a profit or to use the copy to sell any copy of the performance.

Violation of either prohibition is a third degree felony.

The statute further makes it unlawful for any person to:

1. sell or offer for sale any copy of a sound recording which the seller knows or has reasonable grounds to know was made without the consent of the owner;
2. sell or offer for sale any recording of any performance recorded without the consent of the owner; or
3. sell, resell, or possess for such purposes, any sound recording unless the outside cover, box, or jacket clearly and conspicuously discloses the actual name and address of the manufacturer thereof, and the name of the actual performer or group.

Any violation of these prohibitions is a second degree misdemeanor.

Both illegal copies of recordings and the equipment used to make the copies are subject to seizure, forfeiture, and destruction.

Possession of either 5 or more illegal copies of an individual recording or 20 or more illegal copies of different recordings creates a rebuttable presumption that the copies are intended for illegal sale.

The section does not apply to broadcasters who make copies of recordings in connection with radio, television or cable broadcast, or for the purpose of archival preservation, or to individuals duplicating recordings for personal use.

B. Effect of Proposed Changes:

CS/SB 250 would make numerous changes to section 540.11, F.S., which would bring state law further into line with federal copyright law. In general, these revisions would address new developments in recording technology, which, previously, were not covered by the existing statute. Further, CS/SB 250 would enhance existing penalties modeled, in part, on the federal law applicable to copyright violations. In particular, fines would be substantially raised in recognition of the high profit potential that exists in unlawful recordings.

Specifically, CS/SB 250 would make it unlawful to:

1. knowingly and willfully, and without the consent of the owner, copy any sound recording with the intent to sell the copy or to use it or cause it to be used for a profit;
2. knowingly manufacture, distribute, wholesale, or transport within the state for commercial advantage or private financial gain, any copy of a recording with the knowledge that it was made without the consent of the owner; or
3. knowingly and willfully, and without the consent of the owner, copy any performance, whether live or transmitted by wire, radio, or television, with the intent to sell the copy, to use it or cause it to be used for profit through public performance, or to use it to promote the sale of any copy of the performance.

The bill would further make it unlawful for any person to:

1. sell or offer for sale or resale, advertise, rent, transport, or possess for any of these purposes any copy of a sound recording which the person knows or has reasonable grounds to know was made without the consent of the owner;
2. sell or offer for sale or resale, advertise, rent, transport, or possess for any of these purposes, any recording of any performance recorded without the consent of the owner; or
3. knowingly and for commercial advantage or private financial gain, sell or resell, offer for sale or resale, advertise, rent, transport, or possess for such purposes, any recording unless the outside cover, box, or jacket clearly and conspicuously discloses the actual name and address of the manufacturer thereof, and the name of the actual performer or group.

The bill would repeal the rebuttable presumption provision.

Any person who violated any of the prohibitions contained in the bill would be:

1. fined up to \$250,000, or imprisoned for not more than 5 years, or both if the offense involved at least 1,000 unauthorized recordings or at least 65 unauthorized audio-visual recordings in any 180-day period;
2. fined up to \$150,000, or imprisoned for not more than 5 years, or both if the offense involved more than 100 but less than 1,000 unauthorized recordings or more than 7 but less than 65 unauthorized audio-visual recordings during a 180-day period; and
3. fined up to \$25,000, or imprisoned for not more than 1 year, or both for all other violations.

The bill would add an exclusion to the coverage of the section for certain not-for-profit educational institutions and federal or state entities.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Indeterminable.

B. Government:

Indeterminable.

III. COMMENTS:

CS/SB 250 is supported by the Recording Industry of America, Inc., and the Motion Picture Association of America, as well as retailers, such as the Video Software Dealers Association (home video retailers) and the National Association of Recording Merchandisers (retailers of records and tapes). These associations all encourage bringing state laws up to date with both the new technology and the new wave of criminal activity made possible by that same technology.

IV. AMENDMENTS:

None.