

HOUSE BILL 1521

By Harwell

AN ACT to amend Tennessee Code Annotated, Title 39,
Chapter 14, Part 1, relative to theft.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 39-14-115, is amended by deleting the section in its entirety and by substituting instead the following:

(a)

(1) A person commits the offense of criminal simulation who, with intent to defraud or harm another:

(A) Makes or alters an object, in whole or in part, so that it appears to have value because of age, antiquity, rarity, source, or authorship that it does not have;

(B) Possesses an object so made or altered, with intent to sell, pass, or otherwise utter it; or

(C) Authenticates or certifies an object so made or altered as genuine or as different from what it is.

(2) A person commits the offense of criminal simulation who, with knowledge of its character, possesses:

(1) Any machinery, plates, or other contrivances designed to produce instruments reporting to be credit or debit cards of an issuer who had not consented to the preparation of such cards; or

(2) Any instrument, apparatus, or contrivance designed, adapted or used for commission of any theft of property or services by fraudulent means.

(b) Criminal simulation is punishable as theft pursuant to § 39-14-105, but in no event shall criminal simulation be less than a Class E felony.

SECTION 2. Tennessee Code Annotated, Section 39-14-139, is amended by deleting the section in its entirety and by substituting instead the following:

(a) As used in this section:

(1) "Aggregate wholesale value" means the average wholesale value of lawfully manufactured and authorized recordings corresponding to the number of non-conforming recordings involved in the offense. Proof of the specific wholesale value of each non-conforming recording shall not be required;

(2) "Fixed" means embodied in a recording or other tangible medium of expression, by or under the authority of the author, so that the matter embodied is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration;

(3) "Live performance" means a recitation, rendering, or playing of a series of images, musical, spoken, or other sounds, or a combination of images and sounds, in an audible sequence;

(4) "Manufacturer" means the person who actually makes the recording or causes the recording to be made. The term manufacturer does not include a person who manufactures a medium upon which sounds or images can be recorded or stored, or who manufactures the cartridge or casing itself, unless such person actually makes the recording or causes the recording to be made;

(5) "Owner" means a person who owns the sounds fixed in a master phonograph record, master disc, master tape, master film, or other recording on which sound is or can be recorded and from which the transferred recorded sounds are directly or indirectly derived; and

(6) "Recording" means a tangible medium on which sounds, images, or both are recorded or otherwise stored, including an original phonograph record, disc, tape, audio or video cassette, wire, film, memory card, flash drive, hard-drive, data storage device, or other medium now existing or developed later on which sounds, images, or both are or can be recorded or otherwise stored, or a copy or reproduction that duplicates, in whole or in part, the original.

(b)(1) It is unlawful for any person to:

(A) Knowingly reproduce for sale or cause to be transferred any recording with intent to sell it or cause it to be sold or use it or cause it to be used for commercial advantage or private financial gain through public performance without the consent of the owner;

(B) Transport within this state, for commercial advantage or private financial gain, a recording with the knowledge that the sounds thereon have been reproduced or transferred without the consent of the owner; or

(C) Advertise, offer for sale, sell, or rent, cause the sale, resale, or rental of, or possess for one or more of these purposes any recording that the person knows has been reproduced or transferred without the consent of the owner.

(2) This subsection (b) does not apply to audiovisual recordings and applies only to sound recordings that were initially fixed before February 15, 1972.

(c)(1) It is unlawful for any person to:

(A) For commercial advantage or private financial gain advertise, offer for sale, sell, rent, transport, cause the sale, resale, rental, or

transportation of, or possess for one (1) or more of these purposes a recording containing sounds of a live performance with the knowledge that the live performance has been recorded or fixed without the consent of the owner; or

(B) With the intent to sell for commercial advantage or private financial gain, record or fix or cause to be recorded or fixed on a recording a live performance with the knowledge that the live performance has been recorded or fixed without the consent of the owner.

(2) In the absence of a written agreement or law to the contrary, the performer or performers of a live performance may be presumed to own the rights to record or fix those sounds.

(d) It is unlawful for any person to, for commercial advantage or private financial gain, knowingly advertise, offer for sale, sell, rent, or transport, cause the sale, resale, rental, or transportation of, or possess for any of these purposes a recording if the outside cover, box, jacket, or label of the recording does not clearly and conspicuously disclose the actual name and address of the manufacturer.

(e) Any violation of this section constitutes a:

(1) Class D felony, accompanied by a fine of no less than one thousand dollars (\$1,000), if:

(A) The violation involves one hundred (100) or more recordings during a one hundred eighty-day period; or

(B) The defendant has been previously convicted under this section;

(2) Class E felony, accompanied by a fine of no less than five hundred dollars (\$500), if the violation involves more than fifty (50) but less than one hundred (100) recordings during a one hundred eighty-day period; or

(3) Class A misdemeanor, accompanied by a fine of no less than two hundred dollars (\$200), for any other offense.

(f) If a person is convicted of a violation of this section, the court may order the person to make restitution to any owner or lawful producer of a master recording that has suffered injury resulting from the crime, or to the trade association representing such owner or lawful producer. An order of restitution may be based on the aggregate wholesale value of lawfully manufactured and authorized recordings corresponding to the number of non-conforming recordings involved in the offense unless a greater value can be proven. An order of restitution may also include investigative costs relating to the offense.

(g) All recordings involved in the offense, implements, devices, and equipment used or intended to be used in the manufacture of recordings on which the offense is based, proceeds and any and all contraband associated with the offense are subject to forfeiture and destruction or other disposition pursuant to § 39-11-703.

(h) The penalties provided by this section are in addition to any other penalties provided under any other law. This section does not affect the rights and remedies of a party in private litigation.

SECTION 3. Tennessee Code Annotated, Section 39-14-140, is amended by deleting the section in its entirety and by substituting instead the following:

Any electronic or communications equipment, and any other such devices used, sold, transferred or possessed to violate this part are considered contraband subject to

seizure and forfeiture under the same procedures used for the forfeiture of conveyances pursuant to title 40, chapter 33.

SECTION 4. This act shall take effect July 1, 2009, the public welfare requiring it.