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HOUSE BILL 512

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Edward C. Sandoval

AN ACT

**RELATING TO CRIMINAL OFFENSES; CHANGING THE THRESHOLD FOR
VIOLATIONS OF THE UNAUTHORIZED RECORDING ACT RELATED TO
UNAUTHORIZED SOUND AND AUDIOVISUAL RECORDINGS.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. Section 30-16B-3 NMSA 1978 (being Laws 1991,
Chapter 112, Section 3) is amended to read:**

**"30-16B-3. UNAUTHORIZED RECORDING-- PROHIBITED ACT--
PENALTIES. --**

A. It is unlawful for any person to:

**(1) knowingly transfer 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 without the consent of the
owner;**

underscored material = new
[bracketed material] = delete

1 (2) transport within this state for commercial
2 advantage or private financial gain a recording with the
3 knowledge that the sounds have been transferred without the
4 consent of the owner; or

5 (3) advertise or offer for sale, sell, rent or
6 cause the sale, resale or rental of or possess for one or more
7 of these purposes any recording that the person knows has been
8 transferred without the consent of the owner.

9 B. Any person violating the provisions of
10 Subsection A of this section:

11 (1) when the offense involves [~~one hundred~~]
12 seven or more unauthorized recordings embodying sound or seven
13 or more audiovisual recordings [~~during a one hundred eighty day~~
14 ~~period~~], is guilty of a fourth degree felony and shall be
15 sentenced pursuant to the provisions of Section 31-18-15 NMSA
16 1978; and

17 (2) when the offense involves [~~less~~] fewer
18 than [~~one hundred~~] seven unauthorized recordings embodying
19 sound or [~~less~~] fewer than seven audiovisual recordings [~~during~~
20 ~~a one hundred eighty day period~~], is guilty of a misdemeanor
21 and shall be sentenced pursuant to the provisions of Section
22 31-19-1 NMSA 1978. "

23 Section 2. Section 30-16B-4 NMSA 1978 (being Laws 1991,
24 Chapter 112, Section 4) is amended to read:

25 "30-16B-4. REQUIRED LABELING--PENALTIES. --

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1 A. It is unlawful for any person for commercial
2 advantage or private financial gain to advertise, offer for
3 sale or resale, sell, resell, lease or possess for any of these
4 purposes any recording that the person knows does not contain
5 the true name of the manufacturer in a prominent place on the
6 cover, jacket or label of the recording.

7 B. Any person violating the provisions of
8 Subsection A of this section:

9 (1) when the offense involves [~~one hundred~~
10 seven or more unauthorized recordings embodying sound or seven
11 or more audiovisual recordings [~~during a one hundred eighty day~~
12 ~~period~~], is guilty of a fourth degree felony and shall be
13 sentenced pursuant to the provisions of Section 31-18-15 NMSA
14 1978; and

15 (2) when the offense involves [~~less~~] fewer
16 than [~~one hundred~~] seven unauthorized recordings embodying
17 sound or [~~less~~] fewer than seven audiovisual recordings [~~during~~
18 ~~a one hundred eighty day period~~], is guilty of a misdemeanor
19 and shall be sentenced pursuant to the provisions of Section
20 31-19-1 NMSA 1978. "

21 Section 3. Section 30-16B-5 NMSA 1978 (being Laws 1991,
22 Chapter 112, Section 5) is amended to read:

23 "30-16B-5. UNAUTHORIZED RECORDING OF LIVE PERFORMANCES--
24 PENALTIES. --

25 A. It is unlawful for any person for commercial
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[bracketed material] = delete

1 advantage or private financial gain to advertise, offer for
2 sale, sell, rent, transport, cause the sale, resale, rental or
3 transportation of or possess for one or more of these purposes
4 a recording of a live performance that has been recorded or
5 fixed without the consent of the owner.

6 B. Any person violating the provisions of
7 Subsection A of this section:

8 (1) when the offense involves [~~one hundred~~
9 seven or more unauthorized recordings embodying sound or seven
10 or more audiovisual recordings [~~during a one hundred eighty day~~
11 ~~period~~], is guilty of a fourth degree felony and shall be
12 sentenced pursuant to the provisions of Section 31-18-15 NMSA
13 1978; and

14 (2) when the offense involves [~~less~~] fewer
15 than [~~one hundred~~] seven unauthorized recordings embodying
16 sound or [~~less~~] fewer than seven audiovisual recordings [~~during~~
17 ~~a one hundred eighty day period~~], is guilty of a misdemeanor
18 and shall be sentenced pursuant to the provisions of Section
19 31-19-1 NMSA 1978.

20 C. In the absence of a written agreement or law to
21 the contrary, the performer of a live performance is presumed
22 to own the rights to record or fix those sounds.

23 D. For the purposes of this section, a person who
24 is authorized to maintain custody and control over business
25 records that reflect whether the owner of the live performance

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1 consented to having the live performance recorded or fixed is a
2 competent witness in a proceeding regarding the issue of
3 consent. "

4 Section 4. EFFECTIVE DATE. --The effective date of the
5 provisions of this act is July 1, 2003.

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