

Senate Bill 406

By: Senators Hamrick of the 30th, Mullis of the 53rd, Rogers of the 21st and Reed of the 35th

**AS PASSED**

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 3 of Chapter 8 of Title 16 of the Official Code of Georgia Annotated,  
2 relating to criminal reproduction and sale of recorded material, so as to increase penalties for  
3 reproducing, transferring, selling, distributing, or circulating certain recorded material; to  
4 provide for forfeiture of certain items; to provide for additional restitution as it relates to  
5 violations of Code Section 16-8-60, relating to reproduction of recorded material, transfer,  
6 sale, distribution, and circulation; to amend Chapter 9 of Title 42 of the Official Code of  
7 Georgia Annotated, relating to pardons and paroles, so as to repeal the "Uniform Act for  
8 Out-of-State Parolee Supervision," which was replaced by "The Interstate Compact for Adult  
9 Offender Supervision" that has become binding in this state; to provide for related matters;  
10 to repeal conflicting laws; and for other purposes.

11 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

12 **SECTION 1.**

13 Article 3 of Chapter 8 of Title 16 of the Official Code of Georgia Annotated, relating to  
14 criminal reproduction and sale of recorded material, is amended by revising Code Section  
15 16-8-60, relating to reproducing, transferring, selling, distributing, or circulating certain  
16 recorded material, as follows:

17 "16-8-60.

18 (a) It is unlawful for any person, firm, partnership, corporation, or association knowingly  
19 to:

20 (1) Transfer or cause to be transferred any sounds or visual images recorded on a  
21 phonograph record, disc, wire, tape, videotape, film, or other article on which sounds or  
22 visual images are recorded onto any other phonograph record, disc, wire, tape, videotape,  
23 film, or article without the consent of the person who owns the master phonograph  
24 record, master disc, master tape, master videotape, master film, or other device or article  
25 from which the sounds or visual images are derived; or

1 (2) Sell; distribute; circulate; offer for sale, distribution, or circulation; possess for the  
 2 purpose of sale, distribution, or circulation; cause to be sold, distributed, or circulated;  
 3 cause to be offered for sale, distribution, or circulation; or cause to be possessed for sale,  
 4 distribution, or circulation any article or device on which sounds or visual images have  
 5 been transferred, knowing it to have been made without the consent of the person who  
 6 owns the master phonograph record, master disc, master tape, master videotape, master  
 7 film, or other device or article from which the sounds or visual images are derived.

8 (b) It is unlawful for any person, firm, partnership, corporation, or association to sell;  
 9 distribute; circulate; offer for sale, distribution, or circulation; or possess for the purposes  
 10 of sale, distribution, or circulation any phonograph record, disc, wire, tape, videotape, film,  
 11 or other article on which sounds or visual images have been transferred unless such  
 12 phonograph record, disc, wire, tape, videotape, film, or other article bears the actual name  
 13 and address of the transferor of the sounds or visual images in a prominent place on its  
 14 outside face or package.

15 (c) This Code section ~~does~~ shall not apply to any person who transfers or causes to be  
 16 transferred any such sounds or visual images:

17 (1) Intended for or in connection with radio or television broadcast transmission or  
 18 related uses;

19 (2) For archival purposes; or

20 (3) Solely for the personal use of the person transferring or causing the transfer and  
 21 without any profit being derived by the person from the transfer.

22 (d) ~~Every person convicted of violating~~ Violation of this Code section is shall be guilty of  
 23 a felony and ~~is punishable upon conviction~~ shall be punished as follows:

24 (1) Upon the first conviction of violating this Code section, by a fine of not less than  
 25 \$500.00 nor more than \$25,000.00, or by imprisonment for not less than one year nor  
 26 more than two years, or both such fine and imprisonment;

27 (2) Upon the second or subsequent violations of conviction of violating this Code  
 28 section, shall be punishable upon conviction by a fine of not less than \$1,000.00 nor  
 29 more than \$100,000.00, or by imprisonment for not less than one year nor more than three  
 30 years and the judge may suspend, stay, or probate all but 48 hours of any term of  
 31 imprisonment, or both such fine and imprisonment; or

32 (3) Upon the third or subsequent conviction of violating this Code section, by a fine of  
 33 not less than \$2,000.00 nor more than \$250,000.00, by imprisonment for not less than  
 34 two nor more than five years and the judge may suspend, stay, or probate all but six days  
 35 of any term of imprisonment, or both such fine and imprisonment.

36 (e) This Code section shall neither enlarge nor diminish the right of parties to enter into  
 37 a private contract.

1 (f)(1) Any phonograph record, disc, wire, tape, videotape, film, or other article onto  
2 which sounds or visual images have been transferred shall be subject to forfeiture to the  
3 State of Georgia except that no property of any owner shall be forfeited under this  
4 paragraph, to the extent of the interest of such owner, by reason of an act or omission  
5 established by such owner to have been committed or omitted without knowledge or  
6 consent of such owner.

7 (2) The procedure for forfeiture and disposition of forfeited property under this  
8 subsection shall be as provided for under Code Section 16-13-49.

9 (g) For purposes of imposing restitution pursuant to Chapter 14 of Title 17 when a person  
10 is convicted pursuant to this Code section, the court shall consider damages to any owner  
11 or lawful producer of a master phonograph record, master disc, master tape, master  
12 videotape, master film, or other device or article from which sounds or visual images are  
13 derived. Restitution shall be based upon the aggregate wholesale value of lawfully  
14 manufactured and authorized recorded devices corresponding to the nonconforming  
15 recorded devices involved in the violation of this Code section and shall also include  
16 reasonable investigative costs related to the detection of the violation of this Code section."

17 **SECTION 2.**

18 Chapter 9 of Title 42 of the Official Code of Georgia Annotated, relating to pardons and  
19 paroles, is amended by repealing Article 3, relating to the "Uniform Act for Out-of-State  
20 Parolee Supervision" and designating said article as reserved.

21 **SECTION 3.**

22 All laws and parts of laws in conflict with this Act are repealed.