STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

SENATE BILL NO. ____ BY: TAYLOR

AS INTRODUCED

AN ACT RELATING TO CRIMES AND PUNISHMENTS; PROHIBITING REPRODUCTION, SALE, TRANSFER ADVERTISEMENT, RENTAL OR DISTRIBUTION OF CERTAIN RECORDINGS; PROHIBITING COUNTERFEIT LABEL AFFIXED TO CERTAIN RECORDINGS; STATING PENALTIES; PROVIDING FOR SECOND AND SUBSEQUENT OFFENSE; AUTHORIZING COURT TO DESTROY OR FORFEIT CERTAIN RECORDINGS; DIRECTING LAW ENFORCEMENT OFFICER TO CONFISCATE CERTAIN RECORDINGS; DIRECTING DISTRICT ATTORNEY TO DESTROY OR DISPOSE OF CERTAIN RECORDINGS UPON COURT ORDER; DEFINING TERMS; EXCLUDING PLAYER PIANO TAPES OR ROLLS; PROVIDING EXCEPTION TO CERTAIN BROADCAST, TELECAST TRANSMISSION OR RELATED USES; PROVIDING FOR CODIFICATION; AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1975 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. As used in this act:

1. "Sound recording" and "article" means a phonograph record, disc, tape, film, audio or video cassette, compact video disc, or

other material now known or later developed on which sounds or images are or can be recorded or otherwise stored;

2. "Owner" means the owner of the master sound recording and, with respect to Section 4 of this act, shall mean the owner of the rights to record or authorize the recording of any performance not yet fixed in a tangible medium of expression;

3. "Manufacturer" means the entity authorizing the duplication of the specific recording in question, but shall not include the manufacturer of the cartridge or casing which encloses the recording or the manufacturer of the recording medium;

4. "Counterfeit label" means an identifying label, markings serving the purpose of a label, or container that appears to be genuine but is not genuine;

5. "Audiovisual work" means a series of related images intended to be shown through the use of mechanical or electronic devices, together with accompanying sounds, if any; and

6. "Motion picture" means an audiovisual work consisting of a series of images which, when shown in succession, impart an impression of motion together with accompanying sounds, if any.

B. This act shall not apply to player piano tapes or rolls or the sound occasioned by the use thereof on player pianos, nor shall this act apply to any person engaged in radio, cable television, or television broadcasting who transfers, or causes to be transferred, any such sounds, other than from the sound track of a motion picture, intended for, or in connection with broadcast or telecast transmission or related uses, or for archival purposes.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1976 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. It shall be unlawful for any person to knowingly reproduce for sale any sound recording produced without the written consent of the owner of the original recording, provided, however, that this

section shall only apply to sound recordings initially fixed prior to February 15, 1972, and shall not apply to motion pictures or other audiovisual works.

B. A violation of this section involving less than one hundred articles shall constitute a misdemeanor, and shall, upon conviction, be punishable by a fine not to exceed Five Thousand Dollars ($5,000.00).

C. A violation of this section involving one hundred or more articles shall constitute a felony, and shall, upon conviction, be punishable by a fine not to exceed Fifty Thousand Dollars ($50,000.00), or by imprisonment in the State Penitentiary for a term not to exceed five (5) years, or both such fine and imprisonment.

D. A second or subsequent violation of this section shall constitute a felony and shall, upon conviction, be punishable by a fine not to exceed One Hundred Thousand Dollars ($100,000.00), or by imprisonment in the State Penitentiary for a term not less than two (2) years nor more than five (5) years, or both such fine and imprisonment.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1977 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. It shall be unlawful for any person to knowingly sell or offer for sale any sound recording that has been produced or reproduced in violation of the provisions of this act, knowing, or having reasonable grounds to know, that the sounds or images thereon have been produced or reproduced without the consent of the owner.

B. A violation of this section involving less than one hundred articles shall constitute a misdemeanor, and shall, upon conviction, be punishable by a fine not to exceed Five Thousand Dollars ($5,000.00).

C. A violation of this section involving one hundred or more articles shall constitute a felony, and shall, upon conviction, be punishable by a fine not to exceed Fifty Thousand Dollars ($50,000.00), or by imprisonment in the State Penitentiary for a term not more than five (5) years, or both such fine and imprisonment.

D. A second or subsequent violation of this section shall constitute a felony, and shall, upon conviction, be punishable by a fine not to exceed One Hundred Thousand Dollars ($100,000.00) or by imprisonment in the State Penitentiary for a term not less than two (2) years nor more than five (5) years, or both such fine and imprisonment.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1978 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. It shall be unlawful for any person to knowingly and without the written consent of the owner, transfer or cause to be transferred to any article or sound recording or otherwise reproduce for sale, any performance, whether live before an audience or transmitted by wire or through the air by radio or television, with the intent to sell or cause to be sold for profit or used to promote the sale of any article or product.

B. A violation of this section involving less than one hundred articles shall constitute a misdemeanor, and shall, upon conviction, be punishable by a fine not to exceed Five Thousand Dollars ($5,000.00).

C. A violation of this section involving one hundred or more articles shall constitute a felony, and shall, upon conviction, be punishable by a fine not to exceed Fifty Thousand Dollars ($50,000.00), or by imprisonment in the State Penitentiary for a term not more than five (5) years, or both such fine and imprisonment.

D. A second or subsequent violation of this section shall constitute a felony, and shall, upon conviction, be punishable by a fine not to exceed One Hundred Thousand Dollars ($100,000.00) or by imprisonment in the State Penitentiary for a term not less than two (2) years nor more than five (5) years, or both such fine and imprisonment.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1979 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. It shall be unlawful for any person to advertise, or offer for rental, sale, resale, distribution or circulation, or rent, sell, resell, distribute or circulate, or cause to be sold, resold, distributed or circulated, or possess for such purposes any article, which does not clearly and conspicuously display thereon in clearly readable print the actual true name of the manufacturer thereof.

B. A violation of this section involving less than seven (7) articles upon which motion pictures or other audiovisual works are recorded or less than one hundred other articles or sound recordings, shall constitute a misdemeanor, and shall, upon conviction, be punishable by a fine not to exceed Five Thousand Dollars ($5,000.00).

C. A violation of this section involving seven (7) or more articles upon which motion pictures or other audiovisual works are recorded or one hundred or more other articles or sound recordings, shall constitute a felony, and shall, upon conviction, be punishable by a fine not to exceed Fifty Thousand Dollars ($50,000.00), or by imprisonment in the State Penitentiary for a term not more than five (5) years, or both such fine and imprisonment.

D. A second or subsequent violation of this section shall constitute a felony, and shall, upon conviction, be punishable by a fine not to exceed One Hundred Thousand Dollars ($100,000.00) or by imprisonment in the State Penitentiary for a term not less than two

(2) years nor more than five (5) years, or both such fine and imprisonment.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1980 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. It shall be unlawful for any person to make, manufacture, sell, distribute, offer for sale, issue or place in circulation or knowingly have in his possession for purposes of commercial advantage or private financial gain, a counterfeit label affixed or designed to be affixed to a phonorecord, a copy of a motion picture or other audiovisual work, recording or article.

B. A violation of this section involving less than seven (7) articles upon which motion pictures or other audiovisual works are recorded or less than one hundred other articles or sound recordings, shall constitute a misdemeanor, and shall, upon conviction, be punishable by a fine not to exceed Five Thousand Dollars ($5,000.00).

C. A violation of this section involving seven (7) or more articles upon which motion pictures or other audiovisual works are recorded or one hundred or more other articles or sound recordings, shall constitute a felony, and shall, upon conviction, be punishable by a fine not to exceed Fifty Thousand Dollars ($50,000.00), or by imprisonment in the State Penitentiary for a term not more than five (5) years, or both such fine and imprisonment.

D. A second or subsequent violation of this section shall constitute a felony, and shall, upon conviction, be punishable by a fine not to exceed One Hundred Thousand Dollars ($100,000.00) or by imprisonment in the State Penitentiary for a term not less than two (2) years nor more than five (5) years, or both such fine or imprisonment.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1981 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. If a person is convicted of any violation of this act, the court in its judgment of conviction shall order the forfeiture and destruction or other disposition of any sound recording or article which does not conform to the requirements of this act and all implements, devices and equipment used or intended to be used in the manufacture of such sound recordings or articles. The court may enter an order preserving any such articles or items for use in other cases or pending the final determination of an appeal.

B. It shall be the duty of all law enforcement officers, upon discovery, to confiscate all recordings and articles that do not conform to the requirements of this act. The nonconforming recordings and articles shall be delivered to the district attorney of the county in which the confiscation was made, who shall, by court order, destroy or otherwise dispose of such recordings and articles. This section shall apply to any nonconforming recording or article, regardless of the knowledge or intent of the person in possession.

C. The penalties provided in this act are not exclusive and are in addition to any other penalties provided by law.

SECTION 8. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

43-1-551 NP