

Act No. 210
Public Acts of 1994
Approved by the Governor
June 21, 1994
Filed with the Secretary of State
June 22, 1994

**STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1994**

Introduced by Senators Kelly O'Brien Berryman Smith Dingell Faust and Conroy

ENROLLED SENATE BILL No. 388

AN ACT to prohibit the unauthorized duplication of certain recordings to prohibit the sale rental distribution transportation and possession of these recordings to require certain labeling and to prescribe penalties and remedies

The People of the State of Michigan enact

Sec 1 As used in this act

(a) Owner means a person who owns the sounds fixed in a master recording on which sound is recorded and from which the transferred sounds are directly or indirectly derived or the person who owns the rights to record or authorize the recording of a live performance

(b) Person means an individual partnership corporation association limited liability company or other legal entity

(c) Recording means the tangible medium upon which sounds or images are recorded or otherwise stored Recording includes any original phonograph record disc wire tape audio or video cassette film or other medium now known or later developed on which sounds or images are or can be recorded or otherwise stored or any copy or reproduction that duplicates in whole or in part the original

Sec 2 (1) A person shall not directly or indirectly do any of the following

(a) Transfer a live performance onto a recording without the consent of the owner for commercial advantage or private financial gain

(b) Transfer the sounds on a recording onto another recording without the consent of the owner for commercial advantage or private financial gain This subdivision does not apply to either of the following

(i) A sound recording initially fixed after February 15 1972

(ii) A person engaged in radio or television broadcasting or cablecasting who transfers or causes to be transferred sounds intended for or in connection with a broadcast or cable transmission or related use

(c) Sell rent distribute transport or possess for the purpose of selling renting distributing or transporting or any combination thereof a recording with knowledge that the recording was manufactured in violation of subdivision (a) or (b)

(d) Sell rent distribute transport or possess for the purpose of selling renting distributing or transporting or any combination thereof a recording with knowledge that the recording is in violation of section 3

(2) Subsection (1)(a) and (b) shall not apply to recordings that are transferred solely for the personal use of the person transferring the recording and the person does not derive any compensation from the transfer

Sec 3 Each recording sold rented or distributed or possessed for the purpose of sale rental or distribution shall contain in a prominent place on its cover box jacket or label the true name and address of the manufacturer As used in this section manufacturer does not include the manufacturer of the cartridge or casing

Sec 4 (1) A person who violates this act by committing an offense involving less than 7 audiovisual recordings or less than 100 sound recordings during a 180 day period is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$25 000 00 or both

(2) A person who violates this act by committing a subsequent offense or an offense involving 7 or more audiovisual recordings or 100 or more sound recordings during a 180 day period is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$250 000 00 or both

Sec 5 If a person is convicted of an offense under this act the court shall order all recordings on which the conviction is based to be destroyed

Sec 6 All recordings and equipment used or attempted to be used in the manufacture of the recordings are subject to forfeiture in the same manner as provided in sections 4701 to 4709 of the revised judicature act of 1961 Act No 236 of the Public Acts of 1961 being sections 600 4701 to 600 4709 of the Michigan Compiled Laws except that the court shall order the following

(a) That all recordings forfeited be destroyed

(b) That any equipment forfeited be offered at no cost to a public elementary or secondary school an institution of higher education or a library

Sec 7 This act shall take effect January 1 1995

This act is ordered to take immediate effect

Secretary of the Senate

Co Clerk of the House of Representatives

Approved

Governor