



# SENATE BILL No. 388

February 11, 1993, Introduced by Senators KELLY, O'BRIEN, BERRYMAN, SMITH, DINGELL, FAUST and CONROY and referred to the Committee on Judiciary.

A bill to prohibit the unauthorized duplication of certain recordings; to prohibit the sale, rent, distribution, transportation, and possession of these recordings; to prescribe the powers and duties of recording manufacturers, law enforcement officers, prosecuting attorneys, and other persons with respect to recordings; and to prescribe penalties and remedies.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1      Sec. 1. As used in this act:

2      (a) "Law enforcement officer" means any of the following:

3      (i) A sheriff or deputy sheriff.

4      (ii) A village marshal or township constable.

5      (iii) An officer of the police department of a city, vil-  
6 lage, or township.

7      (iv) An officer of the Michigan state police.

1 (b) "Owner" means a person who owns the sounds fixed in a  
2 master recording on which sound is recorded and from which the  
3 transferred sounds are directly or indirectly derived, or the  
4 person who owns the rights to record or authorize the recording  
5 of a live performance.

6 (c) "Person" means an individual, partnership, corporation,  
7 association, or other legal entity.

8 (d) "Recording" means the tangible medium upon which sounds  
9 or images are recorded or otherwise stored. Recording includes  
10 any original phonograph record, disc, wire, tape, audio or video  
11 cassette, film, or other medium now known or later developed on  
12 which sounds or images are or can be recorded or otherwise  
13 stored, or any copy or reproduction that duplicates, in whole or  
14 in part, the original.

15 Sec. 2. A person shall not directly or indirectly do any of  
16 the following:

17 (a) Transfer a live performance onto a recording without the  
18 consent of the owner for commercial advantage or private finan-  
19 cial gain.

20 (b) Transfer the sounds on a recording onto another record-  
21 ing without the consent of the owner for commercial advantage or  
22 private financial gain. This subdivision does not apply to  
23 either of the following:

24 (i) A sound recording initially fixed after February 15,  
25 1972.

26 (ii) A person engaged in radio or television broadcasting or  
27 cablecasting who transfers or causes to be transferred sounds

1 intended for, or in connection with, a broadcast or cable  
2 transmission or related use.

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

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

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

18 Sec. 4. (1) A person who violates this act by committing an  
19 offense involving less than 7 audiovisual recordings or less than  
20 100 sound recordings during a 180-day period is guilty of a mis-  
21 demeanor, punishable by imprisonment for not more than 1 year, or  
22 a fine of not more than \$25,000.00, or both.

23 (2) A person who violates this act by committing a subse-  
24 quent offense or an offense involving 7 or more audiovisual  
25 recordings or 100 or more sound recordings during a 180-day  
26 period is guilty of a felony, punishable by imprisonment for not

1 more than 5 years, or a fine of not more than \$250,000.00, or  
2 both.

3       Sec. 5. If a person is convicted for an offense under this  
4 act, the court shall order the forfeiture and destruction or  
5 other disposition of all recordings on which the conviction is  
6 based and all implements, devices, and equipment used or intended  
7 to be used in the manufacture of the recordings on which the con-  
8 viction is based.

9       Sec. 6. Upon discovery of a recording that is in violation  
10 of this act, a law enforcement officer shall confiscate the  
11 recording and deliver it to the prosecuting attorney for the  
12 county in which the confiscation is made. The prosecuting attor-  
13 ney, by court order, shall destroy or otherwise dispose of the  
14 recording. This section applies to any recording that is in vio-  
15 lation of this act regardless of the knowledge or intent of the  
16 person in possession of the recording.

17       Sec. 7. An owner whose work is allegedly the subject of a  
18 violation of this act has a cause of action for all damages  
19 resulting from the violation, including actual and punitive  
20 damages.