

State of Wisconsin



1999 Assembly Bill 614

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1999 WISCONSIN ACT 51

AN ACT *to repeal* 943.207 (3); *to renumber and amend* 943.207 (2); *to amend* 943.207 (title), 943.207 (1) and 973.075 (5) (intro.); and *to create* 943.206, 943.207 (1) (c), 943.207 (3m), 943.208, 943.209, 943.49, 973.075 (1) (e) and 973.075 (5m) of the statutes; **relating to:** unauthorized duplication of a recording, unauthorized recording of a performance, failure to disclose manufacturer of a recording, unauthorized use of a recording device in a movie theater and providing a penalty.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 943.206 of the statutes is created to read:
943.206 Definitions. In this section and ss. 943.207 to 943.209:

(1) "Manufacturer" means a person who transfers sounds to a recording.

(3) "Performance" means a recital, rendering or playing of a series of words or other sounds, either alone or in combination with images or physical activity.

(4) "Performance owner" means the performer or performers or the person to whom the performer or performers have transferred, through a contract, the right to sell recordings of a performance.

(5) "Recording" means a medium on or in which sounds or images or both are stored.

SECTION 2. 943.207 (title) of the statutes is amended to read:

943.207 (title) Transfer of recorded sounds for unlawful use; sale.

SECTION 3. 943.207 (1) of the statutes is amended to read:

943.207 (1) Whoever does any of the following may be penalized as provided in sub. (3) (3m):

(a) ~~Knowingly and wilfully~~ **Intentionally** transfers or causes to be transferred, without the consent of the owner, any sounds recorded on a phonograph record, disc, wire, tape, film or other article on which sounds are recorded first embodied in or on a recording before February 15, 1972, with intent to sell or cause to be sold, the article or rent the recording into or onto which such sounds are transferred for commercial advantage or private financial gain.

(b) Advertises, offers for sale or rent, sells any article ~~onto which, rents or possesses a recording with knowledge that sounds have been transferred as described in into or onto it in violation of par. (a), with the knowledge that the sounds thereon have been so transferred without the consent of the owner.~~

SECTION 4. 943.207 (1) (c) of the statutes is created to read:

943.207 (1) (c) Transports a recording within this state for commercial advantage or private financial gain with knowledge that sounds have been transferred into or onto the recording in violation of par. (a).

SECTION 5. 943.207 (2) of the statutes is renumbered 943.206 (2) and amended to read:

943.206 (2) ~~In this section "owner"~~ **"Owner"** means the person who owns ~~the original fixation of sounds~~

* Section 991.11, WISCONSIN STATUTES 1997-98: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

~~embodied in the master phonograph record, master disc, master tape, master film or other device used for reproducing recorded sounds on phonograph records, discs, tapes, films or other articles on which sound is recorded, and sounds in or on a recording~~ from which the transferred sounds are directly or indirectly derived.

SECTION 6. 943.207 (3) of the statutes is repealed.

SECTION 7. 943.207 (3m) of the statutes is created to read:

943.207 (3m) (a) Whoever violates this section is guilty of a Class A misdemeanor under any of the following circumstances:

1. If the person transfers sounds into or onto fewer than 1,000 recordings or advertises, offers for sale or rent, sells, rents, possesses or transports fewer than 1,000 recordings in violation of sub. (1) during a 180-day period, and the value of the recordings does not exceed \$2,500.

2. If the person transfers sounds on or to the Internet in violation of sub. (1), the transferred sounds are never replayed or are replayed by others from the Internet fewer than 1,000 times during a 180-day period, and the value of the transferred sounds does not exceed \$2,500.

(b) Whoever violates this section is guilty of a Class D felony under any of the following circumstances:

1. If the person transfers sounds into or onto fewer than 1,000 recordings or advertises, offers for sale or rent, sells, rents, possesses or transports fewer than 1,000 recordings in violation of sub. (1) during a 180-day period, and the value of the recordings exceeds \$2,500.

2. If the person transfers sounds on or to the Internet in violation of sub. (1), the transferred sounds are replayed by others from the Internet fewer than 1,000 times during a 180-day period, and the value of the transferred sounds involved in the violation exceeds \$2,500.

(c) Whoever violates this section is guilty of a Class C felony under any of the following circumstances:

1. If the person transfers sounds into or onto at least 1,000 recordings or advertises, offers for sale or rent, sells, rents, possesses or transports at least 1,000 recordings in violation of sub. (1) during a 180-day period.

2. If the person transfers sounds on or to the Internet in violation of sub. (1) and the transferred sounds are replayed by others from the Internet at least 1,000 times during a 180-day period.

3. If the violation occurs after the person has been convicted under this section.

SECTION 8. 943.208 of the statutes is created to read:

943.208 Recording performance without consent of performance owner. (1) Whoever does any of the following for commercial advantage or private financial gain may be penalized as provided in sub. (2):

(a) Creates a recording of a performance without consent of the performance owner and with intent to sell or rent the recording.

(b) Advertises, offers for sale or rent, sells, rents or transports a recording of a performance with knowledge that the sounds, images or both from the performance embodied in the recording were recorded without the consent of the performance owner.

(c) Possesses with intent to advertise, offer for sale or rent, sell, rent or transport a recording of a performance with knowledge that the sounds, images or both from the performance embodied in the recording were recorded without the consent of the performance owner.

(2) (a) Whoever violates sub. (1) is guilty of a Class A misdemeanor if the person creates, advertises, offers for sale or rent, sells, rents, transports or possesses fewer than 1,000 recordings embodying sound or fewer than 100 audiovisual recordings in violation of sub. (1) during a 180-day period, and the value of the recordings does not exceed \$2,500.

(b) Whoever violates sub. (1) is guilty of a Class D felony if the person creates, advertises, offers for sale or rent, sells, rents, transports or possesses fewer than 1,000 recordings embodying sound or fewer than 100 audiovisual recordings in violation of sub. (1) during a 180-day period, and the value of the recordings exceeds \$2,500.

(c) Whoever violates sub. (1) is guilty of a Class C felony if the person creates, advertises, offers for sale or rent, sells, rents, transports or possesses at least 1,000 recordings embodying sound or at least 100 audiovisual recordings in violation of sub. (1) during a 180-day period or if the violation occurs after the person has been convicted under this section.

(3) Under this section, the number of recordings that a person rents shall be the sum of the number of times in which each individual recording is rented.

SECTION 9. 943.209 of the statutes is created to read:

943.209 Failure to disclose manufacturer of recording. (1) Whoever does any of the following for commercial advantage or private financial gain may be penalized as provided in sub. (2):

(a) Knowingly advertises, offers for sale or rent, sells, rents or transports a recording that does not contain the name and address of the manufacturer in a prominent place on the cover, jacket or label of the recording.

(b) Possesses with intent to advertise, offer for sale or rent, sell, rent or transport a recording that does not contain the name and address of the manufacturer in a prominent place on the cover, jacket or label of the recording.

(2) (a) Whoever violates sub. (1) is guilty of a Class A misdemeanor if the person advertises, offers for sale or rent, sells, rents, transports or possesses fewer than 100 recordings in violation of sub. (1) during a 180-day period, and the value of the recordings does not exceed \$2,500.

(b) Whoever violates sub. (1) is guilty of a Class D felony if the person advertises, offers for sale or rent, sells, rents, transports or possesses fewer than 100

recordings in violation of sub. (1) during a 180-day period, and the value of the recordings exceeds \$2,500.

(c) Whoever violates sub. (1) is guilty of a Class C felony if the person advertises, offers for sale or rent, sells, rents, transports or possesses at least 100 recordings in violation of sub. (1) during a 180-day period or if the violation occurs after the person has been convicted under this section.

(3) Under this section, the number of recordings that a person rents shall be the sum of the number of times that each individual recording is rented.

SECTION 10. 943.49 of the statutes is created to read:

943.49 Unlawful use of recording device in motion picture theater. (1) **DEFINITIONS.** In this section:

(a) "Motion picture theater" means a site used for the exhibition of a motion picture to the public.

(b) "Recording" has the meaning given in s. 943.206 (5).

(c) "Recording device" means a camera, an audio or video recorder or any other device that may be used to record or transfer sounds or images.

(d) "Theater owner" means an owner or operator of a motion picture theater.

(2) **USE OF RECORDING DEVICE IN MOVIE THEATER.** (a) No person may operate a recording device in a motion picture theater without written consent from the theater owner or a person authorized by the theater owner to provide written consent.

(b) 1. Except as provided in subd. 2., a person who violates par. (a) is guilty of a Class A misdemeanor.

2. A person who violates par. (a) is guilty of a Class D felony if the violation occurs after the person has been convicted under this subsection.

(4) **DETENTION OF PERSON COMMITTING VIOLATION.** A theater owner, a theater owner's adult employe or a theater owner's security agent who has reasonable cause to believe that a person has violated this section in his or her presence may detain the person in a reasonable manner for a reasonable length of time to deliver the person to a peace officer or to his or her parent or guardian in the case of a minor. The detained person must be promptly informed of the purpose for the detention and be permitted to make phone calls, but he or she shall not be interrogated or searched against his or her will before the arrival of a peace officer who may conduct a lawful interrogation of the accused person. The theater owner, the theater owner's adult employe or the theater owner's security agent may release the detained person before the arrival of a peace officer or parent or guardian. Any theater owner, theater owner's adult employe or theater owner's security agent who acts in good faith in any act authorized under this section is immune from civil or criminal liability for those acts.

SECTION 11. 973.075 (1) (e) of the statutes is created to read:

973.075 (1) (e) Any recording, as defined in s. 943.206 (5), created, advertised, offered for sale or rent, sold, rented, transported or possessed in violation of ss. 943.207 to 943.209 or s. 943.49 and any electronic, mechanical or other device for making a recording or for manufacturing, reproducing, packaging or assembling a recording that was used to facilitate a violation of ss. 943.207 to 943.209 or s. 943.49, regardless of the knowledge or intent of the person from whom the recording or device is seized. If a device subject to forfeiture under this paragraph is encumbered by a bona fide perfected security interest that was perfected before the date of the commission of the current violation and the holder of the security interest neither had knowledge of nor consented to the commission of that violation, the holder of the security interest shall be paid from the proceeds of the forfeiture.

SECTION 12. 973.075 (5) (intro.) of the statutes is amended to read:

973.075 (5) (intro.) All forfeitures under ss. 973.075 to 973.077 shall be made with due provision for the rights of innocent persons under sub. (1) (b) 2m. and (d) and (e). ~~Any~~ Except as provided in sub. (5m), any property seized but not forfeited shall be returned to its rightful owner. Any person claiming the right to possession of property seized may apply for its return to the circuit court for the county in which the property was seized. The court shall order such notice as it deems adequate to be given the district attorney and all persons who have or may have an interest in the property and shall hold a hearing to hear all claims to its true ownership. If the right to possession is proved to the court's satisfaction, it shall order the property returned if:

SECTION 13. 973.075 (5m) of the statutes is created to read:

973.075 (5m) (a) In this subsection:

1. "Forfeiture action deadline" means the 30th day after the seizure of the property or, if the property was seized as a result of a criminal conviction, the 30th day after the date of the conviction.

2. "Prosecutor" means the district attorney or, in counties having a population of 500,000 or more, the district attorney or the corporation counsel.

3. "Victim" means the owner, as defined in s. 943.206 (2), of the sounds in a recording described in sub. (1) (e) or, if the recording is seized in connection with an investigation or prosecution of a violation of s. 943.208, the performance owner.

(b) If a recording involved in a violation of ss. 943.207 to 943.209 is forfeited, the sheriff of the county in which the recording was seized shall destroy it after the completion of all proceedings in which the recording might be required as evidence.

(c) If, by the forfeiture action deadline, a summons, complaint and affidavit have not been filed under s.

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973.076 (2) (a) with respect to property seized under sub. (1) (e), the prosecutor shall notify the victim, if known, by certified mail no later than 7 days after the forfeiture action deadline. The prosecutor shall then return the property to the person from whom it was seized no earlier than 60 days and no later than 90 days after the forfeiture action deadline unless one of the following applies:

1. A court has entered an order prohibiting the return of the property or requiring it to be conveyed to another person.
2. The property is needed as evidence in a criminal proceeding and is likely to be unavailable for use as evidence if returned to the person from whom it was seized.