

# ASSEMBLY, No. 2513

## STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED MARCH 11, 2004

**Sponsored by:**

**Assemblyman NEIL M. COHEN**

**District 20 (Union)**

**Assemblyman PATRICK DIEGNAN, JR.**

**District 18 (Middlesex)**

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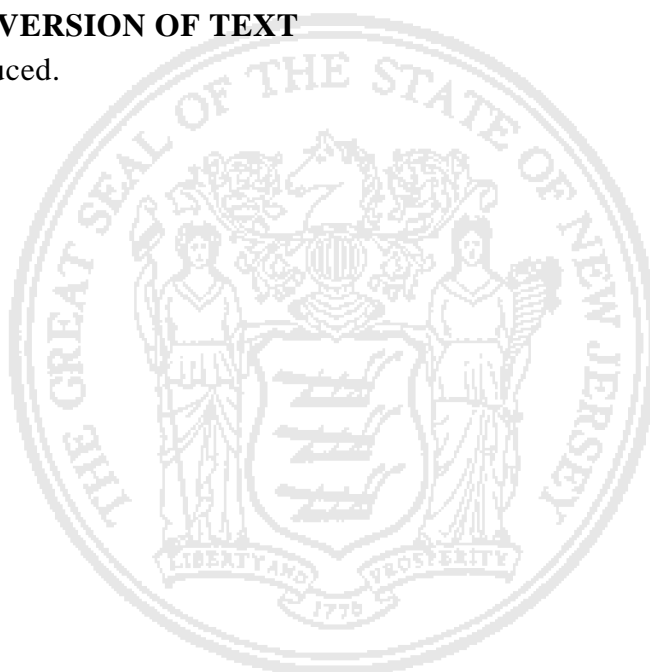
**Assemblymen Conners, Chivukula, Senators Gill, Adler and Baer**

**SYNOPSIS**

Amends "New Jersey Anti-Piracy Act" to include camcorder piracy of motion pictures.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 6/22/2004)**

1 AN ACT concerning motion picture piracy and amending P.L.1991,  
2 c.125.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. Section 1 of P.L.1991, c.125 (C.2C:21-21), is amended to read  
8 as follows:

9 1. a. This act shall be known and may be cited as the "New Jersey  
10 Anti-Piracy Act."

11 b. As used in this act:

12 (1) "Sound recording" means any phonograph record, disc, tape,  
13 film, wire, cartridge, cassette, player piano roll or similar material  
14 object from which sounds can be reproduced either directly or with the  
15 aid of a machine.

16 (2) "Owner" means (a) the person who owns the sounds fixed in  
17 any master sound recording on which the original sounds were fixed  
18 and from which transferred recorded sounds are directly or indirectly  
19 derived; or (b) the person who owns the rights to record or authorize  
20 the recording of a live performance.

21 (3) "Audiovisual work" means any work that consists of a series of  
22 related images which are intrinsically intended to be shown by the use  
23 of machines or devices such as projectors, viewers, or electronic  
24 equipment, together with accompanying sounds, if any, regardless of  
25 the nature of the material object, such as film or tape, in which the  
26 work is embodied. "Audiovisual work" includes but is not limited to  
27 a motion picture.

28 (4) "Audiovisual recording function" means the capability of a  
29 device to record or transmit a motion picture or any part thereof by  
30 means of any technology.

31 (5) "Facility" means any theater, screening room, indoor or  
32 outdoor screening venue, auditorium, ballroom or other premises  
33 where motion pictures are publicly exhibited but does not include a  
34 library or retail establishment.

35 c. A person commits an offense who:

36 (1) Knowingly transfers, without the consent of the owner, any  
37 sounds recorded on a sound recording with intent to sell the sound  
38 recording onto which the sounds are transferred or to use the sound  
39 recording to promote the sale of any product, provided, however, that  
40 this paragraph shall only apply to sound recordings initially fixed prior  
41 to February 15, 1972.

42 (2) Knowingly transports, advertises, sells, resells, rents, or offers  
43 for rental, sale or resale, any sound recording or audiovisual work that  
44 the person knows has been produced in violation of this act.

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 (3) Knowingly manufactures or transfers, directly or indirectly by  
2 any means, or records or fixes a sound recording or audiovisual work,  
3 with the intent to sell or distribute for commercial advantage or private  
4 financial gain, a live performance with the knowledge that the live  
5 performance has been recorded or fixed without the consent of the  
6 owner of the live performance.

7 (4) For commercial advantage or private financial gain, knowingly  
8 advertises or offers for sale, resale or rental, or sells, resells, rents or  
9 transports, a sound recording or audiovisual work or possesses with  
10 intent to advertise, sell, resell, rent or transport any sound recording  
11 or audiovisual work, the label, cover, box or jacket of which does not  
12 clearly and conspicuously disclose the true name and address of the  
13 manufacturer, and, in the case of a sound recording, the name of the  
14 actual performer or group.

15 (5) Knowingly operates an audiovisual recording function of a  
16 device in a facility while a motion picture is being exhibited, for the  
17 purpose of recording the motion picture, without the consent of both  
18 the licensor of the motion picture and the owner or lessee of the  
19 facility.

20 d. Notwithstanding the provisions of subsection b. of  
21 N.J.S.2C:43-3:

22 (1) Any offense set forth in this act which involves at least 1,000  
23 unlawful sound recordings or at least 65 audiovisual works within any  
24 180-day period shall be punishable as a crime of the third degree and  
25 a fine of up to \$250,000 may be imposed.

26 (2) Any offense which involves more than 100 but less than 1,000  
27 unlawful sound recordings or more than 7 but less than 65 unlawful  
28 audiovisual works within any 180-day period shall be punishable as a  
29 crime of the third degree and a fine of up to \$150,000 may be  
30 imposed.

31 (3) Any offense punishable under the provisions of this act not  
32 described in paragraphs (1) or (2) of this subsection shall be  
33 punishable for the first offense as a crime of the fourth degree and a  
34 fine of up to \$25,000 may be imposed. For a second and subsequent  
35 offense pursuant to this paragraph, a person shall be guilty of a crime  
36 of the third degree. A fine of up to \$50,000 may be imposed for a  
37 second offense pursuant to this paragraph and a fine of up to \$100,000  
38 for a third and subsequent offense may be imposed.

39 e. All unlawful sound recordings and audiovisual works and any  
40 equipment or components used in violation of the provisions of this act  
41 shall be subject to forfeiture in accordance with the procedures set  
42 forth in chapter 64 of Title 2C of the New Jersey Statutes.

43 f. The provisions of this act shall not apply to:

44 (1) Any broadcaster who, in connection with or as part of a radio  
45 or television broadcast transmission, or for the purposes of archival  
46 preservation, transfers any sounds or images recorded on a sound  
47 recording or audiovisual work;

1 (2) Any person who, in his own home, for his own personal use,  
2 and without deriving any profit, transfers any sounds or images  
3 recorded on a sound recording or audiovisual work.

4 (3) Any law enforcement officer who, while engaged in the official  
5 performance of his duties, transfers any sounds or images recorded on  
6 a sound recording or audiovisual work.

7 g. A law enforcement officer, an owner or lessee of a facility where  
8 a motion picture or a live performance is being exhibited, the  
9 authorized agent or employee of the owner or lessee, the licensor of  
10 the motion picture or the live performance or the authorized agent or  
11 employee of the licensor, who has probable cause for believing that a  
12 person has operated an audiovisual recording function of a device in  
13 violation of this section and that he can recover the recording by  
14 taking the person into custody, may, for the purpose of attempting to  
15 effect recovery thereof, take the person into custody and detain him in  
16 a reasonable manner for not more than a reasonable time, and the  
17 taking into custody by a law enforcement officer, owner, lessee,  
18 licensor, authorized agent or employee shall not render such person  
19 criminally or civilly liable in any manner or to any extent whatsoever.

20 Any law enforcement officer may arrest without warrant any person  
21 he has probable cause for believing has operated an audiovisual  
22 recording function of a device in violation of this section.

23 An owner or lessee of a facility, the authorized agent or employee  
24 of the owner or lessee, the licensor of the motion picture or the live  
25 performance or the authorized agent or employee of the licensor who  
26 causes the arrest of a person for operating an audiovisual recording  
27 function of a device in violation of this section, shall not be criminally  
28 or civilly liable in any manner or to any extent whatsoever where the  
29 owner, lessee, licensor, authorized agent or employee has probable  
30 cause for believing that the person arrested committed the offense.

31 (cf: P.L.1991,c.125,s.1)

32  
33 2. This act shall take effect immediately.  
34  
35

36 STATEMENT  
37

38 This bill expands the scope of the "New Jersey Anti-Piracy Act"  
39 (N.J.S.A.2C:21-21) by criminalizing camcorder piracy of motion  
40 pictures. Camcorder piracy involves persons who illegally record  
41 films, usually during pre-release screening events, then sell their master  
42 recording for illegal duplication, packaging and distribution to  
43 "bootleg" dealers across the country and overseas. Camcorder piracy  
44 has resulted in hundreds of millions of dollars in lost revenue to the  
45 United States film industry.

1       The bill makes it an offense under the "New Jersey Anti-Piracy Act"  
2 to knowingly operate an audiovisual recording function of a device in  
3 a facility while a motion picture is being exhibited, for the purpose of  
4 recording the motion picture, without the consent of both the licensor  
5 of the motion picture and the owner or lessee of the facility. The bill  
6 defines "audiovisual recording function" as "the capability of a device  
7 to record or transmit a motion picture or any part thereof by means of  
8 any technology."

9       Under the bill, a law enforcement officer, an owner or lessee of a  
10 facility where a motion picture or a live performance is being  
11 exhibited, the authorized agent or employee of the owner or lessee; the  
12 licensor of the motion picture or the live performance or the  
13 authorized agent or employee of the licensor, who has probable cause  
14 for believing that a person has unlawfully operated an audiovisual  
15 recording function of a device and that he can recover the recording  
16 by taking the person into custody, may, for the purpose of attempting  
17 to recover the recording, take the person into custody and detain him  
18 in a reasonable manner for not more than a reasonable time. The  
19 taking into custody by a law enforcement officer, theater owner or  
20 lessee, licensor, authorized agent or employee would not render such  
21 person criminally or civilly liable in any manner or to any extent  
22 whatsoever.

23       The bill provides that any law enforcement officer may arrest  
24 without warrant any person he has probable cause for believing has  
25 operated an audiovisual recording function of a device in violation of  
26 this section.

27       The bill also provides that a theater owner or lessee, the authorized  
28 agent or employee of the owner or lessee, the licensor of the motion  
29 picture or the live performance or the authorized agent or employee  
30 of the licensor who causes the arrest of a person for unlawfully  
31 operating an audiovisual recording function of a device, shall not be  
32 criminally or civilly liable in any manner or to any extent whatsoever  
33 where the owner, lessee, licensor, authorized agent or employee has  
34 probable cause for believing that the person arrested committed the  
35 offense.