

Amend **CSSB 1835** (Senate committee printing) by striking all
below the enacting clause and substituting the following:

SECTION 1. Chapter 641, Business & Commerce Code, is transferred to Chapter 32, Penal Code, redesignated as Subchapter E, Chapter 32, Penal Code, and amended to read as follows:

SUBCHAPTER E [~~CHAPTER 641~~]. UNAUTHORIZED RECORDINGS

[~~SUBCHAPTER A. GENERAL PROVISIONS~~]

Sec. 32.71 [~~641.001~~]. DEFINITIONS. In this subchapter [~~chapter~~]:

(1) "Fix" means to embody in a recording or other tangible medium of expression, by or under the authority of the author, so that the matter embodied is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration.

(2) "Live performance" means a recitation, rendering, or playing of a series, in an audible sequence, of:

(A) images;

(B) musical, spoken, or other sounds; or

(C) a combination of images and sounds.

(3) "Owner" means a person who owns the sounds fixed in a master phonograph record, master disc, master tape, master film, or other recording:

(A) on which sound is recorded; and

(B) from which the transferred recorded sounds are directly or indirectly derived.

(4) "Recording" means a tangible medium on which sounds, images, or both are recorded or otherwise stored, including:

(A) an original phonograph record, disc, tape, audio or video cassette, wire, film, electronic storage device, or other medium now existing or later developed; or

(B) a copy or reproduction that wholly or partly duplicates the original.

[~~SUBCHAPTER B. PROHIBITED PRACTICES, PENALTIES~~]

Sec. 32.72 [~~641.051~~]. UNAUTHORIZED DUPLICATION OF CERTAIN RECORDINGS. (a) This section applies only to a recording that was initially fixed before February 15, 1972.

(b) A person commits an offense if the person:

(1) knowingly reproduces for sale or causes to be

transferred any recording with intent to sell the recording or cause the recording to be sold or use a recording or cause the recording to be used for commercial advantage or private financial gain through public performance without the consent of the owner;

(2) with the knowledge that the sounds on a recording have been reproduced or transferred without the consent of the owner, transports the recording within this state for commercial advantage or private financial gain; or

(3) with the knowledge that a recording has been reproduced or transferred without the consent of the owner:

(A) advertises, offers for sale, sells, or rents the recording;

(B) causes the sale, resale, or rental of the recording; or

(C) possesses the recording for a purpose described by Paragraph (A) or (B).

(c) ~~[An offense under this section is punishable by:~~

~~[(1) imprisonment for a term of not more than five years, a fine not to exceed \$250,000, or both, if:~~

~~[(A) the offense involves at least 1,000 unauthorized recordings during a 180-day period; or~~

~~[(B) the defendant has been previously convicted under this section;~~

~~[(2) imprisonment for a term of not more than two years, a fine not to exceed \$250,000, or both, if the offense involves more than 100 but fewer than 1,000 unauthorized recordings during a 180-day period; or~~

~~[(3) confinement in the county jail for a term of not more than one year, a fine not to exceed \$25,000, or both, if the offense is not otherwise punishable under Subdivision (1) or (2).~~

~~[(d)]~~ This section does not apply to any fees due to the American Society of Composers, Authors and Publishers.

Sec. 32.73 ~~[641.052]~~. UNAUTHORIZED RECORDING OF LIVE PERFORMANCE. (a) A person commits an offense if the person, with the knowledge that a live performance has been recorded or fixed without the consent of the owner:

(1) for commercial advantage or private financial

gain, advertises, offers for sale, sells, rents, or transports, causes the sale, resale, rental, or transportation of, or possesses for one or more of these purposes a recording containing sounds of the live performance; or

(2) with the intent to sell for commercial advantage or private financial gain, records or fixes the live performance, or causes the live performance to be recorded or fixed on a recording.

(b) ~~[An offense under this section is punishable by:~~

~~[(1) imprisonment for a term of not more than five years, a fine not to exceed \$250,000, or both, if:~~

~~[(A) the offense involves at least 1,000 unauthorized recordings embodying sound or at least 65 unauthorized audiovisual recordings during a 180-day period; or~~

~~[(B) the defendant has been previously convicted under this section;~~

~~[(2) imprisonment for a term of not more than two years, a fine not to exceed \$250,000, or both, if the offense involves more than 100 but fewer than 1,000 unauthorized recordings embodying sound or more than seven but fewer than 65 unauthorized audiovisual recordings during a 180-day period; or~~

~~[(3) confinement in the county jail for a term of not more than one year, a fine not to exceed \$25,000, or both, if the offense is not otherwise punishable under Subdivision (1) or (2).~~

~~[(c)]~~ In the absence of a written agreement or law to the contrary, the performer or performers of a live performance are presumed to own the rights to record or fix those sounds.

(c) ~~[(d)]~~ For purposes of this section, a person authorized to maintain custody and control over business records that reflect whether the owner of a live performance consented to having the live performance recorded or fixed is a proper witness in a proceeding regarding the issue of consent. A witness called under this subsection is subject to the rules of evidence relating to the competency of a witness to testify and the relevance and admissibility of the testimony offered.

Sec. 32.74 ~~[641.053]~~. UNAUTHORIZED OPERATION OF RECORDING DEVICE IN MOTION PICTURE THEATER. (a) In this section:

(1) "Audiovisual recording function" means the capability of a device to record or transmit a motion picture or any part of a motion picture by means of any technology now known or later developed.

(2) "Motion picture theater" means a movie theater, screening room, or other place primarily used to exhibit a motion picture.

(b) A person commits an offense if, without the consent of the owner of the theater, the person, with the intent to record a motion picture, knowingly operates the audiovisual recording function of any device in a motion picture theater while the motion picture is being exhibited.

(c) ~~[An offense under this section is a Class A misdemeanor, except that the offense is:~~

~~[(1) a state jail felony if the person has been previously convicted one time of an offense under this section; or~~

~~[(2) a felony of the third degree if the person has been previously convicted two or more times of an offense under this section.~~

~~[(d)]~~ It is a defense to prosecution under this section that the audiovisual recording function of the device was operated solely for official law enforcement purposes.

(d) ~~[(e)]~~ If conduct constituting an offense under this section also constitutes an offense under another law, the actor may be prosecuted under this section, the other law, or both.

(e) ~~[(f)]~~ A person who reasonably believes that another has knowingly operated the audiovisual recording function of a device in a motion picture theater in violation of this section is privileged to detain that other person in a reasonable manner and for a reasonable time to allow for the arrival of law enforcement authorities.

Sec. 32.75 ~~[641.054]~~. IMPROPER LABELING. ~~[(a)]~~ A person commits an offense if:

(1) for commercial advantage or private financial gain, the person knowingly:

(A) advertises, offers for sale, sells, rents, or transports a recording;

(B) causes the sale, resale, rental, or transportation of a recording; or

(C) possesses a recording for a purpose described by Paragraph (A) or (B); and

(2) the outside cover, box, label, or jacket of the recording does not clearly and conspicuously disclose[+]

[~~(A)~~] the actual name and address of the manufacturer[~~+~~and

[~~(B)~~ the name of the performer or group].

[~~(b)~~ An offense under this section is punishable by:

[~~(1)~~ imprisonment for a term of not more than five years, a fine not to exceed \$250,000, or both, if:

[~~(A)~~ the offense involves at least 65 unauthorized recordings during a 180-day period; or

[~~(B)~~ the defendant has been previously convicted under this section;

[~~(2)~~ imprisonment for a term of not more than two years, a fine not to exceed \$250,000, or both, if the offense involves more than seven but fewer than 65 unauthorized recordings during a 180-day period; or

[~~(3)~~ confinement in the county jail for a term of not more than one year, a fine not to exceed \$25,000, or both, if the offense is not otherwise punishable under Subdivision (1) or (2).]

Sec. 32.76. PENALTIES. (a) Except as provided by Subsection (b), an offense under this subchapter is:

(1) a Class C misdemeanor if the value of pecuniary loss to the owner of or lawful producer of the recording is less than \$50;

(2) a Class B misdemeanor if the value of pecuniary loss to the owner of or lawful producer of the recording is \$50 or more but less than \$500;

(3) a Class A misdemeanor if the value of pecuniary loss to the owner of or lawful producer of the recording is \$500 or more but less than \$1,500;

(4) a state jail felony if the value of pecuniary loss to the owner of or lawful producer of the recording is \$1,500 or more but less than \$20,000; or

(5) a felony of the third degree if the value of pecuniary loss to the owner of or lawful producer of the recording is \$20,000 or more.

(b) The punishment prescribed for an offense that is punishable under Subsection (a)(1), (2), (3), or (4) is increased to the next highest category of offense if the defendant has one or more times been previously convicted of or received a grant of deferred adjudication community supervision for an offense under this subchapter.

Sec. 32.77 ~~[641.055]~~. FORFEITURE. If a person is convicted of an offense under ~~[a violation of]~~ this subchapter ~~[chapter]~~, the court in its judgment of conviction shall order the forfeiture and destruction or other disposition of:

(1) all recordings on which the conviction is based; and

(2) all devices and equipment used or intended to be used in the manufacture of the recordings on which the conviction is based.

Sec. 32.78. RESTITUTION. (a) If a person is convicted of an offense under this subchapter, the court shall order the person to make restitution to:

(1) an owner or lawful producer of a master recording who has suffered pecuniary loss as a result of the offense; or

(2) a trade association that represents an owner or lawful producer described by Subdivision (1).

(b) The court shall base the amount of restitution on the value of the recordings involved in the offense, as determined under Section 32.02.

~~[Sec. 641.056. PRIVATE RIGHTS AND REMEDIES NOT AFFECTED. Sections 641.051, 641.052, and 641.054 do not affect the rights and remedies of a party in private litigation.]~~

~~[Sec. 641.057. PENALTIES CUMULATIVE. A penalty provided by this chapter is in addition to any other penalty provided under other law.]~~

SECTION 2. The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is

governed by the law in effect at the time the offense was committed. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 3. This Act takes effect September 1, 2009.