

BILL ANALYSIS

S.B. 1835
By: Patrick, Dan
Criminal Jurisprudence
Committee Report (Amended)

BACKGROUND AND PURPOSE

Texas has a major problem with music piracy. Street vendors and retail locations sell fraudulent sound recordings openly throughout the state and are supplied by large-scale underground manufacturing and distribution operations. Over 133,000 illegal CDs were seized in Texas in 2007 alone. Music piracy is a serious economic crime that deprives artists and record labels of profits, resulting in losses of jobs in Texas and across the nation. Further, legitimate music retailers throughout the state are forced to compete with music pirates that undercut their businesses by failing to pay for music and failing to pay local, state, and federal taxes.

Though Texas has a state statute designed to protect the entertainment industry and the general public against music piracy crime, the absence of a provision specifically addressing the issue of restitution allows many perpetrators to resolve their cases without compensating the victims of the crime. Texas must amend its piracy statutes to make clear to judges that restitution must be awarded in music piracy cases, and to provide guidance on exactly how restitution should be calculated. Such language currently exists in the music piracy laws of five states: Pennsylvania, Illinois, Georgia, Arizona, and California. Similar language should be added in Texas to strengthen its piracy laws and better protect the musical heritage of the state.

S.B. 1835 amends current state law relating to the offenses of unauthorized duplication, unauthorized recording, and improper labeling of recordings.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

ANALYSIS

SECTION 1. Transfers Chapter 641, Business & Commerce Code, to Chapter 32, Penal Code, redesignates it as Subchapter E, Chapter 32, Penal Code, and amends it as follows:

SUBCHAPTER E. UNAUTHORIZED RECORDINGS

Sec. 32.71. DEFINITIONS. Redesignates Section 641.001, Business & Commerce Code, as Section 32.71, Penal Code. Defines "estimated wholesale value" and redefines "recording." Makes nonsubstantive changes.

Sec. 32.72. UNAUTHORIZED DUPLICATION OF CERTAIN RECORDINGS. Redesignates Section 641.051, Business & Commerce Code, as Section 32.72, Penal Code. (a) Makes no changes to this subsection.

(b) Makes no changes to this subsection.

(c) Provides that an offense under this section is punishable by imprisonment for a term of not more than five years, a fine of not less than \$500 and not more than \$250,000, rather than not to exceed \$250,000, or both imprisonment and the fine, if the offense involves 65 or more, rather than at least 1,000, unauthorized recordings during a 180-day period, or the defendant has been previously convicted under this section; imprisonment for a term of not more than two years,

a fine of not less than \$250 and not more than \$250,000, rather than not to exceed \$250,000, or both imprisonment and the fine, if the offense involves more than seven but fewer than 65 unauthorized, rather than more than 100 but fewer than 1,000, recordings during a 180-day period; or confinement in the county jail for a term of not more than one year, a fine of not less than \$100 and not more than \$25,000, rather than not to exceed \$25,000, or both confinement and the fine, if the offense is not otherwise punishable under Subdivision (1) or (2). Makes nonsubstantive and conforming changes.

(d) Makes no changes to this subsection.

Sec. 32.73. **UNAUTHORIZED RECORDING OF LIVE PERFORMANCE.** Redesignates Section 641.052, Business & Commerce Code, as Section 32.73, Penal Code. (a) Makes no changes to this subsection.

(b) Provides that an offense under this section is punishable by imprisonment for a term of not more than five years, a fine of not less than \$500 and not more than \$250,000, rather than a fine not to exceed \$250,000, or both imprisonment and fine, if the offense involves 65 or more unauthorized recordings during a 180-day period, rather than at least 1,000 unauthorized recordings embodying sound or at least 65 unauthorized audiovisual recordings during a 180-day period; or the defendant has been previously convicted under this section; imprisonment for a term of not more than two years, a fine of not less than \$250 and not more than \$250,000, rather than to exceed \$250,000, or both imprisonment and the fine, if the offense involves more than seven, rather than 100, but fewer than 65, rather than 1,000, unauthorized recordings during a 180-day period, rather than unauthorized recordings embodying sound or more than seven but fewer than 65 unauthorized audiovisual recordings during a 180-day period; or confinement in the county jail for a term of not more than one year, a fine of not less than \$100 and not more than \$25,000, rather than to exceed \$25,000, or both confinement and the fine, if the offense is not otherwise punishable under this Subsection. Makes nonsubstantive and conforming changes.

(c) and (d) Makes no changes to these subsections.

Sec. 32.74. **UNAUTHORIZED OPERATION OF RECORDING DEVICE IN MOTION PICTURE THEATER.** Redesignates Section 641.053, Business & Commerce Code, as Section 32.74, Penal Code. (a) Makes no changes to this subsection.

(b)-(f) Makes no changes to these subsections.

Sec. 32.75. New heading: **IMPROPER LABELING.** (a) Redesignates Section 641.054, Business & Commerce Code, as Section 32.75, Penal Code. Provides that a person commits an offense if the outside cover, box, label, or jacket of the recording does not clearly and conspicuously disclose the actual name and address of the manufacturer, rather than the actual name and address of the manufacturer and the name of the performer or group. Makes nonsubstantive changes.

(b) Provides that an offense under this section is punishable by certain ways, including imprisonment for a term of not more than five years, a fine of not less than \$500 and not more than \$250,000, or both, if the offense involves 65 or more improperly labeled, rather than unauthorized, recordings during a 180-day period or the defendant has been previously convicted under this section. Makes conforming changes.

Sec. 32.76. **FORFEITURE.** Redesignates Section 641.055, Business & Commerce Code, as Section 32.76, Penal Code. Requires the court, if a person is convicted of an offense under this subchapter, in its judgment of conviction to order the forfeiture and destruction or other disposition of all recordings on which the conviction is based, and all devices and equipment used or intended to be used in the manufacture of the recordings on which the conviction is based. Deletes existing text requiring the court, if a person is

convicted of a violation of this chapter, in its judgment of conviction to order the forfeiture and destruction or other disposition of all recordings on which the conviction is based, and all devices and equipment used or intended to be used in the manufacture of the recordings on which the conviction is based.

Sec. 32.77. RESTITUTION. (a) Requires the court, if a person is convicted of an offense under this subchapter, to order the person to make restitution to an owner or lawful producer of a master recording that has suffered injury as a result of the offense, or a trade association that represents an owner or lawful producer of a master recording that has suffered a financial loss as a result of the offense.

(b) Requires that the amount of restitution ordered be the greater of the actual wholesale value of the recordings involved in the offense; the estimated wholesale value of the recordings involved in the offense if the recordings had been legally manufactured and recorded; or the actual loss to the owner, lawful producer, or trade association.

(c) Prohibits the court from requiring proof of the specific wholesale value of each of the unlawful recordings to determine the estimated wholesale value.

Deletes existing Section 641.056, providing that Sections 641.051, 641.052, and 641.054 do not affect the rights and remedies of a party in private litigation. Deletes existing Section 641.057, providing that a penalty provided by this chapter is in addition to any other penalty provided under other law.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2009.

EFFECTIVE DATE

September 1, 2009.

EXPLANATION OF AMENDMENTS

Committee Amendment 1. Amends the bill to add language to define "Artist", "Live Entertainment Event" and "Promoter" and to provide a subsection that creates a fiduciary responsibility between Promoters and Artists for performances at Live Entertainment Events that flows through any recording revenue and event proceeds, and a requirement that both parties get mutual permission before producing a recording of the event.