

By: Patrick

S.B. No. 1835

A BILL TO BE ENTITLED

AN ACT

relating to the offenses of unauthorized duplication, unauthorized recording, and improper labeling of recordings.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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:

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

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

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

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

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

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

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

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

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

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

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

27 (1) for commercial advantage or private financial

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 ~~[(2) a felony of the third degree if the person has~~

1 ~~been previously convicted two or more times of an offense under this~~
2 ~~section.~~

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

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

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

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

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

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

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

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

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

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

1 manufacturer ~~[, and~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (2) a trade association that represents an owner or

1 lawful producer described by Subdivision (1).

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

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

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

11 SECTION 2. The change in law made by this Act applies only
12 to an offense committed on or after the effective date of this Act.
13 An offense committed before the effective date of this Act is
14 governed by the law in effect at the time the offense was committed.
15 For purposes of this section, an offense was committed before the
16 effective date of this Act if any element of the offense occurred
17 before that date.

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