

BILL ANALYSIS

S.B. 1098
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Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Texas has a 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. In 2010 alone, over three-quarters of a million illegal compact discs and counterfeit movies were seized in the state. Music piracy deprives aspiring musicians, production companies, and record labels of hard-earned-revenue and can result in the loss of important jobs in Texas.

S.B. 1098 strengthens the piracy laws in Texas by making clear that restitution is appropriate in music piracy cases and must be awarded to the victims of music piracy. This bill prohibits individuals from using hard drives, flash drives, memory cards, and other storage devices for unauthorized recordings.

S.B. 1098 promotes judicial economy and consistency by providing judges with clear guidelines on how to calculate restitution awards in music piracy cases. S.B. 1098 will provide law enforcement, prosecutors, and judges with proven legal tools to better protect Texas's music industry.

As proposed, S.B. 1098 amends current law relating to prohibited practices regarding unauthorized recordings.

RULEMAKING AUTHORITY

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

ANALYSIS

SECTION 1. Amends Section 641.001(4), Business & Commerce Code, to redefine "recording," to include a memory card, flash drive, hard drive, or data storage device.

SECTION 2. Amends the heading to Section 641.054, Business & Commerce Code, to read as follows:

Sec. 641.054. IMPROPER LABELING.

SECTION 3. Amends Section 641.054(b), Business & Commerce Code, as follows:

(b) Provides that an offense under this section is punishable by:

(1) 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 imprisonment and the fine, if:

(A) the offense involves 65 or more improperly labeled, rather than 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 of not less than \$250 and not more than \$250,000, or both imprisonment and the fine, if the offense involves more than seven but fewer than 65 improperly labeled, rather than 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 of not less than \$100 and not more than \$25,000, or both confinement and the fine, if the offense is not otherwise punishable under Subdivision (1) or (2).

SECTION 4. Amends Section 641.055, Business & Commerce Code, as follows:

Sec. 641.055. FORFEITURE. Requires the court in its judgment of conviction, if a person is convicted of an offense under this chapter, to order the forfeiture and destruction or other disposition of:

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

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

(3) for an offense punishable as a felony, all contraband, as that term is defined by Article 59.01, Code of Criminal Procedure, that is used in the commission of the offense.

Makes nonsubstantive changes.

SECTION 5. Amends Article 42.037, Code of Criminal Procedure, by adding Subsections (t) and (u), as follows:

(t) Requires the court, if a person is convicted of an offense under Section 641.054, Business & Commerce Code, to order the person to make restitution to an owner or lawful producer of a master recording that has suffered financial loss as a result of the offense or to a trade association that represents that owner or lawful producer. Requires the amount of restitution ordered to be:

(1) the greater of:

(A) the aggregate wholesale value of the lawfully manufactured and authorized recordings corresponding to the number of nonconforming recordings involved in the offense; or

(B) the actual financial loss to the owner, lawful producer, or trade association; and

(2) the costs associated with investigating the offense.

(u) Provides that for purposes of Subsection (t):

(1) the calculation of the aggregate wholesale value is based on the average wholesale value of the lawfully manufactured and authorized recordings; and

(2) the specific wholesale value of each nonconforming recording is not relevant to the calculation.

SECTION 6. Reenacts Article 59.01(2), Code of Criminal Procedure, as amended by Chapters 153 (S.B. 2225), 1130 (H.B. 2086), and 1357 (S.B. 554), Acts of the 81st Legislature, Regular Session, 2009, and amends it to redefine "contraband."

SECTION 7. Makes application of this Act prospective.

SECTION 8. Provides that, to the extent of any conflict, this Act prevails over another Act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in enacted codes.

EFFECTIVE DATE

September 1, 2011