

By: Huffman S.B. No. 1098
(Jackson, Gallego, Christian, Zedler, Rodriguez)

A BILL TO BE ENTITLED

1 AN ACT

2 relating to certain offenses involving unauthorized recordings.

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

4 SECTION 1. Subdivision (4), Section 641.001, Business &
5 Commerce Code, is amended to read as follows:

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

9 (A) an original phonograph record, disc, tape,
10 audio or video cassette, wire, film, memory card, flash drive, hard
11 drive, data storage device, or other medium now existing or later
12 developed; or

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

15 SECTION 2. Section 641.051, Business & Commerce Code, is
16 amended by adding Subsection (e) to read as follows:

17 (e) This section does not apply to a person who, while
18 engaged in radio or television broadcasting, transfers or causes to
19 be transferred a recording:

20 (1) for or in connection with a broadcast or telecast
21 transmission or for a related purpose; or

22 (2) for archival purposes.

23 SECTION 3. The heading to Section 641.054, Business &
24 Commerce Code, is amended to read as follows:

1 Sec. 641.054. IMPROPER LABELING.

2 SECTION 4. Subsection (b), Section 641.054, Business &
3 Commerce Code, is amended to read as follows:

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

5 (1) imprisonment for a term of not more than five
6 years, a fine of not less than \$500 and not more than ~~[to exceed]~~
7 \$250,000, or both imprisonment and the fine, if:

8 (A) the offense involves ~~[at least]~~ 65 or more
9 improperly labeled ~~[unauthorized]~~ recordings during a 180-day
10 period; or

11 (B) the defendant has been previously convicted
12 under this section;

13 (2) imprisonment for a term of not more than two years,
14 a fine of not less than \$250 and not more than ~~[to exceed]~~ \$250,000,
15 or both imprisonment and the fine, if the offense involves more than
16 seven but fewer than 65 improperly labeled ~~[unauthorized]~~
17 recordings 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 of not less than \$100 and not more than
20 ~~[to exceed]~~ \$25,000, or both confinement and the fine, if the
21 offense is not otherwise punishable under Subdivision (1) or (2).

22 SECTION 5. Section 641.055, Business & Commerce Code, is
23 amended to read as follows:

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

1 (1) all recordings on which the conviction is based;
2 [~~and~~]

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

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

9 SECTION 6. Article 42.037, Code of Criminal Procedure, is
10 amended by adding Subsections (t) and (u) to read as follows:

11 (t) If a person is convicted of an offense under Section
12 641.054, Business & Commerce Code, the court shall order the person
13 to make restitution to an owner or lawful producer of a master
14 recording that has suffered financial loss as a result of the
15 offense or to a trade association that represents that owner or
16 lawful producer. The amount of restitution ordered shall be:

17 (1) the greater of:

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

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

23 (2) the costs associated with investigating the
24 offense.

25 (u) For purposes of Subsection (t):

26 (1) the calculation of the aggregate wholesale value
27 is based on the average wholesale value of the lawfully

1 manufactured and authorized recordings; and
2 (2) the specific wholesale value of each nonconforming
3 recording is not relevant to the calculation.

4 SECTION 7. Subdivision (2), Article 59.01, Code of Criminal
5 Procedure, as amended by Chapters 153 (S.B. 2225), 1130 (H.B.
6 2086), and 1357 (S.B. 554), Acts of the 81st Legislature, Regular
7 Session, 2009, is reenacted and amended to read as follows:

8 (2) "Contraband" means property of any nature,
9 including real, personal, tangible, or intangible, that is:

10 (A) used in the commission of:

11 (i) any first or second degree felony under
12 the Penal Code;

13 (ii) any felony under Section 15.031(b),
14 20.05, 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 29, 30,
15 31, 32, 33, 33A, or 35, Penal Code;

16 (iii) any felony under The Securities Act
17 (Article 581-1 et seq., Vernon's Texas Civil Statutes); or

18 (iv) any offense under Chapter 49, Penal
19 Code, that is punishable as a felony of the third degree or state
20 jail felony, if the defendant has been previously convicted three
21 times of an offense under that chapter;

22 (B) used or intended to be used in the commission
23 of:

24 (i) any felony under Chapter 481, Health
25 and Safety Code (Texas Controlled Substances Act);

26 (ii) any felony under Chapter 483, Health
27 and Safety Code;

- 1 (iii) a felony under Chapter 153, Finance
2 Code;
- 3 (iv) any felony under Chapter 34, Penal
4 Code;
- 5 (v) a Class A misdemeanor under Subchapter
6 B, Chapter 365, Health and Safety Code, if the defendant has been
7 previously convicted twice of an offense under that subchapter;
- 8 (vi) any felony under Chapter 152, Finance
9 Code;
- 10 (vii) any felony under Chapter 32, Human
11 Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that
12 involves the state Medicaid program;
- 13 (viii) a Class B misdemeanor under Chapter
14 522, Business & Commerce Code;
- 15 (ix) a Class A misdemeanor under Section
16 306.051, Business & Commerce Code; ~~[or]~~
- 17 (x) any offense under Section 42.10, Penal
18 Code;
- 19 (xi) ~~[(x)]~~ any offense under Section
20 46.06(a)(1) or 46.14, Penal Code;
- 21 (xii) ~~[(x)]~~ any offense under Chapter 71,
22 Penal Code; or
- 23 (xiii) any felony under Chapter 641,
24 Business & Commerce Code;
- 25 (C) the proceeds gained from the commission of a
26 felony listed in Paragraph (A) or (B) of this subdivision, a
27 misdemeanor listed in Paragraph (B)(viii), (x), (xi), or (xii)

1 [~~(B)(viii) or (x)~~] of this subdivision, or a crime of violence;

2 (D) acquired with proceeds gained from the
3 commission of a felony listed in Paragraph (A) or (B) of this
4 subdivision, a misdemeanor listed in Paragraph (B)(viii), (x),
5 (xi), or (xii) [~~(B)(viii) or (x)~~] of this subdivision, or a crime of
6 violence; or

7 (E) used to facilitate or intended to be used to
8 facilitate the commission of a felony under Section 15.031 or
9 43.25, Penal Code.

10 SECTION 8. The change in law made by this Act applies only
11 to an offense committed on or after the effective date of this Act.
12 An offense committed before the effective date of this Act is
13 governed by the law in effect at the time the offense was committed.
14 For purposes of this section, an offense was committed before the
15 effective date of this Act if any element of the offense occurred
16 before that date.

17 SECTION 9. To the extent of any conflict, this Act prevails
18 over another Act of the 82nd Legislature, Regular Session, 2011,
19 relating to nonsubstantive additions to and corrections in enacted
20 codes.

21 SECTION 10. This Act takes effect September 1, 2011.