

By: Huffman

S.B. No. 1098

A BILL TO BE ENTITLED

AN ACT

1
2 relating to prohibited practices regarding unauthorized
3 recordings.

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

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

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

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

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

16 SECTION 2. The heading to Section 641.054, Business &
17 Commerce Code, is amended to read as follows:

18 Sec. 641.054. IMPROPER LABELING.

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

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

22 (1) imprisonment for a term of not more than five
23 years, a fine of not less than \$500 and not more than [~~to exceed~~]
24 \$250,000, or both imprisonment and the fine, if:

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

4 (B) the defendant has been previously convicted
5 under this section;

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

11 (3) confinement in the county jail for a term of not
12 more than one year, a fine of not less than \$100 and not more than
13 [~~to exceed~~] \$25,000, or both confinement and the fine, if the
14 offense is not otherwise punishable under Subdivision (1) or (2).

15 SECTION 4. Section 641.055, Business & Commerce Code, is
16 amended to read as follows:

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

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

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

26 (3) for an offense punishable as a felony, all
27 contraband, as that term is defined by Article 59.01, Code of

1 Criminal Procedure, that is used in the commission of the offense.

2 SECTION 5. Article 42.037, Code of Criminal Procedure, is
3 amended by adding Subsections (t) and (u) to read as follows:

4 (t) If a person is convicted of an offense under Section
5 641.054, Business & Commerce Code, the court shall order the person
6 to make restitution to an owner or lawful producer of a master
7 recording that has suffered financial loss as a result of the
8 offense or to a trade association that represents that owner or
9 lawful producer. The amount of restitution ordered shall be:

10 (1) the greater of:

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

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

16 (2) the costs associated with investigating the
17 offense.

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

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

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

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

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

3 (A) used in the commission of:

4 (i) any first or second degree felony under
5 the Penal Code;

6 (ii) any felony under Section 15.031(b),
7 20.05, 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 29, 30,
8 31, 32, 33, 33A, or 35, Penal Code;

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

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

15 (B) used or intended to be used in the commission
16 of:

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

19 (ii) any felony under Chapter 483, Health
20 and Safety Code;

21 (iii) a felony under Chapter 153, Finance
22 Code;

23 (iv) any felony under Chapter 34, Penal
24 Code;

25 (v) a Class A misdemeanor under Subchapter
26 B, Chapter 365, Health and Safety Code, if the defendant has been
27 previously convicted twice of an offense under that subchapter;

1 (vi) any felony under Chapter 152, Finance
2 Code;

3 (vii) any felony under Chapter 32, Human
4 Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that
5 involves the state Medicaid program;

6 (viii) a Class B misdemeanor under Chapter
7 522, Business & Commerce Code;

8 (ix) a Class A misdemeanor under Section
9 306.051, Business & Commerce Code; ~~or~~

10 (x) any offense under Section 42.10, Penal
11 Code;

12 (xi) ~~[(x)]~~ any offense under Section
13 46.06(a)(1) or 46.14, Penal Code;

14 (xii) ~~[(x)]~~ any offense under Chapter 71,
15 Penal Code; or

16 (xiii) any felony under Chapter 641,
17 Business & Commerce Code;

18 (C) the proceeds gained from the commission of a
19 felony listed in Paragraph (A) or (B) of this subdivision, a
20 misdemeanor listed in Paragraph (B)(viii), (x), (xi), or (xii)
21 ~~[(B)(viii) or (x)]~~ of this subdivision, or a crime of violence;

22 (D) acquired with proceeds gained from the
23 commission of a felony listed in Paragraph (A) or (B) of this
24 subdivision, a misdemeanor listed in Paragraph (B)(viii), (x),
25 (xi), or (xii) ~~[(B)(viii) or (x)]~~ of this subdivision, or a crime of
26 violence; or

27 (E) used to facilitate or intended to be used to

1 facilitate the commission of a felony under Section 15.031 or
2 43.25, Penal Code.

3 SECTION 7. The change in law made by this Act applies only
4 to an offense committed on or after the effective date of this Act.
5 An offense committed before the effective date of this Act is
6 governed by the law in effect at the time the offense was committed.
7 For purposes of this section, an offense was committed before the
8 effective date of this Act if any element of the offense occurred
9 before that date.

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

14 SECTION 9. This Act takes effect September 1, 2011.