

1-1 By: Huffman S.B. No. 1098
1-2 (In the Senate - Filed March 2, 2011; March 16, 2011, read
1-3 first time and referred to Committee on Jurisprudence;
1-4 March 30, 2011, reported favorably by the following vote: Yeas 7,
1-5 Nays 0; March 30, 2011, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to certain offenses involving unauthorized recordings.

1-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-10 SECTION 1. Subdivision (4), Section 641.001, Business &
1-11 Commerce Code, is amended to read as follows:

1-12 (4) "Recording" means a tangible medium on which
1-13 sounds, images, or both are recorded or otherwise stored,
1-14 including:

1-15 (A) an original phonograph record, disc, tape,
1-16 audio or video cassette, wire, film, memory card, flash drive, hard
1-17 drive, data storage device, or other medium now existing or later
1-18 developed; or

1-19 (B) a copy or reproduction that wholly or partly
1-20 duplicates the original.

1-21 SECTION 2. The heading to Section 641.054, Business &
1-22 Commerce Code, is amended to read as follows:

1-23 Sec. 641.054. IMPROPER LABELING.

1-24 SECTION 3. Subsection (b), Section 641.054, Business &
1-25 Commerce Code, is amended to read as follows:

1-26 (b) An offense under this section is punishable by:

1-27 (1) imprisonment for a term of not more than five
1-28 years, a fine of not less than \$500 and not more than ~~[to exceed]~~
1-29 \$250,000, or both imprisonment and the fine, if:

1-30 (A) the offense involves ~~[at least]~~ 65 or more
1-31 improperly labeled ~~[unauthorized]~~ recordings during a 180-day
1-32 period; or

1-33 (B) the defendant has been previously convicted
1-34 under this section;

1-35 (2) imprisonment for a term of not more than two years,
1-36 a fine of not less than \$250 and not more than ~~[to exceed]~~ \$250,000,
1-37 or both imprisonment and the fine, if the offense involves more than
1-38 seven but fewer than 65 improperly labeled ~~[unauthorized]~~
1-39 recordings during a 180-day period; or

1-40 (3) confinement in the county jail for a term of not
1-41 more than one year, a fine of not less than \$100 and not more than
1-42 [to exceed] \$25,000, or both confinement and the fine, if the
1-43 offense is not otherwise punishable under Subdivision (1) or (2).

1-44 SECTION 4. Section 641.055, Business & Commerce Code, is
1-45 amended to read as follows:

1-46 Sec. 641.055. FORFEITURE. If a person is convicted of an
1-47 offense under ~~[a violation of]~~ this chapter, the court in its
1-48 judgment of conviction shall order the forfeiture and destruction
1-49 or other disposition of:

1-50 (1) all recordings on which the conviction is based;
1-51 ~~[and]~~

1-52 (2) all devices and equipment used or intended to be
1-53 used in the manufacture of the recordings on which the conviction is
1-54 based; and

1-55 (3) for an offense punishable as a felony, all
1-56 contraband, as that term is defined by Article 59.01, Code of
1-57 Criminal Procedure, that is used in the commission of the offense.

1-58 SECTION 5. Article 42.037, Code of Criminal Procedure, is
1-59 amended by adding Subsections (t) and (u) to read as follows:

1-60 (t) If a person is convicted of an offense under Section
1-61 641.054, Business & Commerce Code, the court shall order the person
1-62 to make restitution to an owner or lawful producer of a master
1-63 recording that has suffered financial loss as a result of the
1-64 offense or to a trade association that represents that owner or

2-1 lawful producer. The amount of restitution ordered shall be:
2-2 (1) the greater of:
2-3 (A) the aggregate wholesale value of the lawfully
2-4 manufactured and authorized recordings corresponding to the number
2-5 of nonconforming recordings involved in the offense; or
2-6 (B) the actual financial loss to the owner,
2-7 lawful producer, or trade association; and
2-8 (2) the costs associated with investigating the
2-9 offense.
2-10 (u) For purposes of Subsection (t):
2-11 (1) the calculation of the aggregate wholesale value
2-12 is based on the average wholesale value of the lawfully
2-13 manufactured and authorized recordings; and
2-14 (2) the specific wholesale value of each nonconforming
2-15 recording is not relevant to the calculation.
2-16 SECTION 6. Subdivision (2), Article 59.01, Code of Criminal
2-17 Procedure, as amended by Chapters 153 (S.B. 2225), 1130 (H.B.
2-18 2086), and 1357 (S.B. 554), Acts of the 81st Legislature, Regular
2-19 Session, 2009, is reenacted and amended to read as follows:
2-20 (2) "Contraband" means property of any nature,
2-21 including real, personal, tangible, or intangible, that is:
2-22 (A) used in the commission of:
2-23 (i) any first or second degree felony under
2-24 the Penal Code;
2-25 (ii) any felony under Section 15.031(b),
2-26 20.05, 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 29, 30,
2-27 31, 32, 33, 33A, or 35, Penal Code;
2-28 (iii) any felony under The Securities Act
2-29 (Article 581-1 et seq., Vernon's Texas Civil Statutes); or
2-30 (iv) any offense under Chapter 49, Penal
2-31 Code, that is punishable as a felony of the third degree or state
2-32 jail felony, if the defendant has been previously convicted three
2-33 times of an offense under that chapter;
2-34 (B) used or intended to be used in the commission
2-35 of:
2-36 (i) any felony under Chapter 481, Health
2-37 and Safety Code (Texas Controlled Substances Act);
2-38 (ii) any felony under Chapter 483, Health
2-39 and Safety Code;
2-40 (iii) a felony under Chapter 153, Finance
2-41 Code;
2-42 (iv) any felony under Chapter 34, Penal
2-43 Code;
2-44 (v) a Class A misdemeanor under Subchapter
2-45 B, Chapter 365, Health and Safety Code, if the defendant has been
2-46 previously convicted twice of an offense under that subchapter;
2-47 (vi) any felony under Chapter 152, Finance
2-48 Code;
2-49 (vii) any felony under Chapter 32, Human
2-50 Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that
2-51 involves the state Medicaid program;
2-52 (viii) a Class B misdemeanor under Chapter
2-53 522, Business & Commerce Code;
2-54 (ix) a Class A misdemeanor under Section
2-55 306.051, Business & Commerce Code; ~~or~~
2-56 (x) any offense under Section 42.10, Penal
2-57 Code;
2-58 (xi) ~~[(*)]~~ any offense under Section
2-59 46.06(a)(1) or 46.14, Penal Code;
2-60 (xii) ~~[(*)]~~ any offense under Chapter 71,
2-61 Penal Code; or
2-62 (xiii) any felony under Chapter 641,
2-63 Business & Commerce Code;
2-64 (C) the proceeds gained from the commission of a
2-65 felony listed in Paragraph (A) or (B) of this subdivision, a
2-66 misdemeanor listed in Paragraph (B)(viii), (x), (xi), or (xii)
2-67 ~~[(B)(viii) or (*)]~~ of this subdivision, or a crime of violence;
2-68 (D) acquired with proceeds gained from the
2-69 commission of a felony listed in Paragraph (A) or (B) of this

3-1 subdivision, a misdemeanor listed in Paragraph (B)(viii), (x),
3-2 (xi), or (xii) [~~(B)(viii) or (x)~~] of this subdivision, or a crime of
3-3 violence; or

3-4 (E) used to facilitate or intended to be used to
3-5 facilitate the commission of a felony under Section 15.031 or
3-6 43.25, Penal Code.

3-7 SECTION 7. The change in law made by this Act applies only
3-8 to an offense committed on or after the effective date of this Act.
3-9 An offense committed before the effective date of this Act is
3-10 governed by the law in effect at the time the offense was committed.
3-11 For purposes of this section, an offense was committed before the
3-12 effective date of this Act if any element of the offense occurred
3-13 before that date.

3-14 SECTION 8. To the extent of any conflict, this Act prevails
3-15 over another Act of the 82nd Legislature, Regular Session, 2011,
3-16 relating to nonsubstantive additions to and corrections in enacted
3-17 codes.

3-18 SECTION 9. This Act takes effect September 1, 2011.

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