

By: Parker

H.B. No. 3784

A BILL TO BE ENTITLED

AN ACT

relating to prohibited practices regarding unauthorized recordings.

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

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

(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, memory card, flash drive, hard drive, data storage device, or other medium now existing or later developed; or

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

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

Sec. 641.054. IMPROPER LABELING.

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

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

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

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

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

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

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

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

25 (3) for an offense punishable as a felony, all
26 contraband that is used in the commission of the offense, as
27 provided by Chapter 59, Code of Criminal Procedure.

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

(t) If a person is convicted of an offense under Section 641.054, Business & Commerce Code, the court shall 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. The amount of restitution ordered shall 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) For purposes of Subsection (t)(1)(A):

(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.

(v) For purposes of Subsection (t)(1)(B), the possession of a nonconforming recording intended for sale constitutes an actual financial loss to an owner or lawful producer equal to the actual value of the legitimate wholesale purchases displaced by the nonconforming recordings.

SECTION 6. Article 59.01(2), Code of Criminal Procedure, as amended by Chapters 427 (S.B. 529) and 1357 (S.B. 1451), Acts of the 83rd Legislature, Regular Session, 2013, is reenacted and amended to read as follows:

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

(A) used in the commission of:

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

(ii) any felony under Section 15.031(b), 20.05, 21.11, 38.04, or Chapter 43, 20A, 29, 30, 31, 32, 33, 33A, or 35, Penal Code;

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

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

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

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

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

(iii) a felony under Chapter 151, Finance Code;

(iv) any felony under Chapter 34, Penal

Code;

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

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

(vii) a Class B misdemeanor under Chapter 522, Business & Commerce Code;

(viii) a Class A misdemeanor under Section 306.051, Business & Commerce Code;

(ix) any offense under Section 42.10, Penal Code;

(x) any offense under Section 46.06(a)(1) or 46.14, Penal Code;

(xi) any offense under Chapter 71, Penal Code;

(xii) any offense under Section 20.05, Penal Code; ~~or~~

(xiii) ~~[(xiv)]~~ an offense under Section 326.002, Business & Commerce Code; or

(xiv) any felony under Chapter 641, Business & Commerce Code;

(C) the proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(vii), (ix), (x), or (xi) of this subdivision, or a crime of violence;

1 (D) acquired with proceeds gained from the
2 commission of a felony listed in Paragraph (A) or (B) of this
3 subdivision, a misdemeanor listed in Paragraph (B)(vii), (ix), (x),
4 or (xi) of this subdivision, or a crime of violence;

5 (E) used to facilitate or intended to be used to
6 facilitate the commission of a felony under Section 15.031 or
7 43.25, Penal Code; or

8 (F) used to facilitate or intended to be used to
9 facilitate the commission of a felony under Section 20A.02 or
10 Chapter 43, Penal Code.

11 SECTION 7. 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 8. To the extent of any conflict, this Act prevails
19 over another Act of the 84th Legislature, Regular Session, 2015,
20 relating to nonsubstantive additions to and corrections in enacted
21 codes.

22 SECTION 9. This Act takes effect September 1, 2015.