

By: Watson

S.B. No. 1660

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 not to exceed \$250,000, or both imprisonment and the  
24 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.

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

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

9 (1) the greater of:

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

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

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

17 (u) For purposes of Subsection (t)(1)(A):

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

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

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

1 SECTION 6. Article 59.01(2), Code of Criminal Procedure, as  
2 amended by Chapters 427 (S.B. 529) and 1357 (S.B. 1451), Acts of the  
3 83rd Legislature, Regular Session, 2013, is reenacted and amended  
4 to read as follows:

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

7 (A) used in the commission of:

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

10 (ii) any felony under Section 15.031(b),  
11 20.05, 21.11, 38.04, or Chapter 43, 20A, 29, 30, 31, 32, 33, 33A, or  
12 35, Penal Code;

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

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

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

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

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

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

27 (iv) any felony under Chapter 34, Penal

1 Code;

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

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

8 (vii) a Class B misdemeanor under Chapter  
9 522, Business & Commerce Code;

10 (viii) a Class A misdemeanor under Section  
11 306.051, Business & Commerce Code;

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

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

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

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

20 (xiii) ~~[(xiv)]~~ an offense under Section  
21 326.002, Business & Commerce Code; or

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

24 (C) the proceeds gained from the commission of a  
25 felony listed in Paragraph (A) or (B) of this subdivision, a  
26 misdemeanor listed in Paragraph (B)(vii), (ix), (x), or (xi) of  
27 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.