

By: Parker

H.B. No. 2483

Substitute the following for H.B. No. 2483:

By: Stickland

C.S.H.B. No. 2483

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the capture, use, or recording of certain items for
3 commercial purposes, including the prosecution of criminal
4 offenses regarding unauthorized recordings.

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

6 SECTION 1. Section 503.001, Business & Commerce Code, is
7 amended by adding Subsection (e) to read as follows:

8 (e) This section does not apply to a financial institution
9 or an affiliate of a financial institution, as those terms are
10 defined by 15 U.S.C. Section 6809.

11 SECTION 2. Section 641.001(4), Business & Commerce Code, is
12 amended to read as follows:

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

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

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

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

24 Sec. 641.054. IMPROPER LABELING. (a) A person commits an

1 offense if:

2 (1) for commercial advantage or private financial
3 gain, the person knowingly:

4 (A) advertises, offers for sale, sells, rents, or
5 transports a recording;

6 (B) causes the sale, resale, rental, or
7 transportation of a recording; or

8 (C) possesses a recording for a purpose described
9 by Paragraph (A) or (B); and

10 (2) the outside cover, box, or jacket of the recording
11 does not clearly and conspicuously disclose[+]

12 [~~(A)~~] the actual name and address of the
13 manufacturer[~~, and~~

14 [~~(B) the name of the performer or group~~].

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

16 (1) imprisonment for a term of not more than five
17 years, a fine not to exceed \$250,000, or both imprisonment and the
18 fine, if:

19 (A) the offense involves [~~at least~~] 65 or more
20 improperly labeled [unauthorized] recordings, or the commercial
21 equivalent thereof, during a 180-day period; or

22 (B) the defendant has been previously convicted
23 under this section;

24 (2) imprisonment for a term of not more than two years,
25 a fine not to exceed \$250,000, or both imprisonment and the fine, if
26 the offense involves more than seven but fewer than 65 improperly
27 labeled [unauthorized] recordings, or the commercial equivalent

1 thereof, during a 180-day period; or

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

6 SECTION 4. Article 42.037, Code of Criminal Procedure, is
7 amended by adding Subsections (t), (u), and (v) to read as follows:

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

14 (1) the greater of:

15 (A) the aggregate wholesale value of the lawfully
16 manufactured and authorized recordings corresponding to the number
17 of nonconforming recordings involved in the offense; or

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

20 (2) the costs associated with investigating the
21 offense.

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

23 (1) the calculation of the aggregate wholesale value
24 is based on the average wholesale value of the lawfully
25 manufactured and authorized recordings; and

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

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

6 SECTION 5. (a) Except as provided by Subsection (b) of this
7 section, the changes in law made by this Act apply only to an
8 offense committed on or after the effective date of this Act. An
9 offense committed before the effective date of this Act is governed
10 by the law in effect on the date the offense was committed, and the
11 former law is continued in effect for that purpose. For purposes of
12 this subsection, an offense was committed before the effective date
13 of this Act if any element of the offense occurred before that date.

14 (b) The change in law made by this Act to Section 503.001,
15 Business & Commerce Code, applies only to a violation that occurs on
16 or after the effective date of this Act. A violation that occurs
17 before the effective date of this Act is governed by the law in
18 effect on the date the violation occurred, and the former law is
19 continued in effect for that purpose.

20 SECTION 6. This Act takes effect September 1, 2017.