

By: Hughes

S.B. No. 1343

A BILL TO BE ENTITLED

AN ACT

relating to the prosecution of criminal offenses 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. Section 641.054, Business & Commerce Code, is amended to read as follows:

Sec. 641.054. IMPROPER LABELING. (a) A person commits an offense if:

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

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

(B) causes the sale, resale, rental, or

1 transportation of a recording; or

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

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

6 [~~(A)~~] the actual name and address of the  
7 manufacturer[~~, and~~

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

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

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

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

16 (B) the defendant has been previously convicted  
17 under this section;

18 (2) imprisonment for a term of not more than two years,  
19 a fine not to exceed \$250,000, or both imprisonment and the fine, if  
20 the offense involves more than seven but fewer than 65 improperly  
21 labeled [unauthorized] recordings, or the commercial equivalent  
22 thereof, during a 180-day period; or

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

27 SECTION 3. Article [42.037](#), Code of Criminal Procedure, is

1 amended by adding Subsections (t), (u), and (v) to read as follows:

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

8 (1) the greater of:

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

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

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

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

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

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

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

27 SECTION 4. The change in law made by this Act applies only

1 to an offense committed on or after the effective date of this Act.  
2 An offense committed before the effective date of this Act is  
3 governed by the law in effect at the time the offense was committed.  
4 For purposes of this section, an offense was committed before the  
5 effective date of this Act if any element of the offense occurred  
6 before that date.

7 SECTION 5. This Act takes effect September 1, 2017.