

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. Section [641.055](#), Business & Commerce Code, is

1 amended to read as follows:

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

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

8                   (2) all devices and equipment used or intended to be  
9 used in the manufacture of the recordings on which the conviction is  
10 based; and

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

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

16                   (t) If a person is convicted of an offense under Section  
17 641.054, Business & Commerce Code, the court shall order the person  
18 to make restitution to an owner or lawful producer of a master  
19 recording that has suffered financial loss as a result of the  
20 offense or to a trade association that represents that owner or  
21 lawful producer. The amount of restitution ordered shall be:

22                           (1) the greater of:

23                                   (A) the aggregate wholesale value of the lawfully  
24 manufactured and authorized recordings corresponding to the number  
25 of nonconforming recordings involved in the offense; or

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

1           (2) the costs associated with investigating the  
2 offense.

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

4           (1) the calculation of the aggregate wholesale value  
5 is based on the average wholesale value of the lawfully  
6 manufactured and authorized recordings; and

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

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

14           SECTION 5. Article 59.01(2), Code of Criminal Procedure, is  
15 amended to read as follows:

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

18                   (A) used in the commission of:

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

21                           (ii) any felony under Section 15.031(b),  
22 20.05, 20.06, 21.11, 38.04, or Chapter 43, 20A, 29, 30, 31, 32, 33,  
23 33A, or 35, Penal Code;

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

26                           (iv) any offense under Chapter 49, Penal  
27 Code, that is punishable as a felony of the third degree or state

1 jail felony, if the defendant has been previously convicted three  
2 times of an offense under that chapter;

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

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

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

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

11 (iv) any felony under Chapter 34, Penal  
12 Code;

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

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

19 (vii) a Class B misdemeanor under Chapter  
20 522, Business & Commerce Code;

21 (viii) a Class A misdemeanor under Section  
22 306.051, Business & Commerce Code;

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

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

27 (xi) any offense under Chapter 71, Penal

1 Code;

2 (xii) any offense under Section 20.05 or  
3 20.06, Penal Code; ~~or~~

4 (xiii) an offense under Section 326.002,  
5 Business & Commerce Code; or

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

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

12 (D) acquired with proceeds gained from the  
13 commission of a felony listed in Paragraph (A) or (B) of this  
14 subdivision, a misdemeanor listed in Paragraph (B)(vii), (ix), (x),  
15 or (xi) of this subdivision, or a crime of violence;

16 (E) used to facilitate or intended to be used to  
17 facilitate the commission of a felony under Section 15.031 or  
18 43.25, Penal Code; or

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

22 SECTION 6. The change in law made by this Act applies only  
23 to an offense committed on or after the effective date of this Act.  
24 An offense committed before the effective date of this Act is  
25 governed by the law in effect at the time the offense was committed.  
26 For purposes of this section, an offense was committed before the  
27 effective date of this Act if any element of the offense occurred

1 before that date.

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