

1-1 By: Hughes S.B. No. 1343
 1-2 (In the Senate - Filed March 6, 2017; March 14, 2017, read
 1-3 first time and referred to Committee on State Affairs;
 1-4 April 11, 2017, reported favorably by the following vote: Yeas 9,
 1-5 Nays 0; April 11, 2017, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to the prosecution of criminal offenses regarding
 1-20 unauthorized recordings.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Section 641.001(4), Business & Commerce Code, is
 1-23 amended to read as follows:

1-24 (4) "Recording" means a tangible medium on which
 1-25 sounds, images, or both are recorded or otherwise stored,
 1-26 including:

1-27 (A) an original phonograph record, disc, tape,
 1-28 audio or video cassette, wire, film, memory card, flash drive, hard
 1-29 drive, data storage device, or other medium now existing or later
 1-30 developed; or

1-31 (B) a copy or reproduction that wholly or partly
 1-32 duplicates the original.

1-33 SECTION 2. Section 641.054, Business & Commerce Code, is
 1-34 amended to read as follows:

1-35 Sec. 641.054. IMPROPER LABELING. (a) A person commits an
 1-36 offense if:

1-37 (1) for commercial advantage or private financial
 1-38 gain, the person knowingly:

1-39 (A) advertises, offers for sale, sells, rents, or
 1-40 transports a recording;

1-41 (B) causes the sale, resale, rental, or
 1-42 transportation of a recording; or

1-43 (C) possesses a recording for a purpose described
 1-44 by Paragraph (A) or (B); and

1-45 (2) the outside cover, box, or jacket of the recording
 1-46 does not clearly and conspicuously disclose ~~+~~

1-47 ~~[(A)]~~ the actual name and address of the
 1-48 manufacturer ~~[, and~~

1-49 ~~[(B) the name of the performer or group].~~

1-50 (b) An offense under this section is punishable by:

1-51 (1) imprisonment for a term of not more than five
 1-52 years, a fine not to exceed \$250,000, or both imprisonment and the
 1-53 fine, if:

1-54 (A) the offense involves ~~[at least]~~ 65 or more
 1-55 improperly labeled [unauthorized] recordings, or the commercial
 1-56 equivalent thereof, during a 180-day period; or

1-57 (B) the defendant has been previously convicted
 1-58 under this section;

1-59 (2) imprisonment for a term of not more than two years,
 1-60 a fine not to exceed \$250,000, or both imprisonment and the fine, if
 1-61 the offense involves more than seven but fewer than 65 improperly

2-1 labeled [~~unauthorized~~] recordings, or the commercial equivalent
2-2 thereof, during a 180-day period; or

2-3 (3) confinement in the county jail for a term of not
2-4 more than one year, a fine not to exceed \$25,000, or both
2-5 confinement and the fine, if the offense is not otherwise
2-6 punishable under Subdivision (1) or (2).

2-7 SECTION 3. Section 641.055, Business & Commerce Code, is
2-8 amended to read as follows:

2-9 Sec. 641.055. FORFEITURE. If a person is convicted of an
2-10 offense under [~~a violation of~~] this chapter, the court in its
2-11 judgment of conviction shall order the forfeiture and destruction
2-12 or other disposition of:

2-13 (1) all recordings on which the conviction is based;
2-14 [~~and~~]

2-15 (2) all devices and equipment used or intended to be
2-16 used in the manufacture of the recordings on which the conviction is
2-17 based; and

2-18 (3) for an offense punishable as a felony, all
2-19 contraband that is used in the commission of the offense, as
2-20 provided by Chapter 59, Code of Criminal Procedure.

2-21 SECTION 4. Article 42.037, Code of Criminal Procedure, is
2-22 amended by adding Subsections (t), (u), and (v) to read as follows:

2-23 (t) If a person is convicted of an offense under Section
2-24 641.054, Business & Commerce Code, the court shall order the person
2-25 to make restitution to an owner or lawful producer of a master
2-26 recording that has suffered financial loss as a result of the
2-27 offense or to a trade association that represents that owner or
2-28 lawful producer. The amount of restitution ordered shall be:

2-29 (1) the greater of:

2-30 (A) the aggregate wholesale value of the lawfully
2-31 manufactured and authorized recordings corresponding to the number
2-32 of nonconforming recordings involved in the offense; or

2-33 (B) the actual financial loss to the owner,
2-34 lawful producer, or trade association; and

2-35 (2) the costs associated with investigating the
2-36 offense.

2-37 (u) For purposes of Subsection (t)(1)(A):

2-38 (1) the calculation of the aggregate wholesale value
2-39 is based on the average wholesale value of the lawfully
2-40 manufactured and authorized recordings; and

2-41 (2) the specific wholesale value of each nonconforming
2-42 recording is not relevant to the calculation.

2-43 (v) For purposes of Subsection (t)(1)(B), the possession of
2-44 a nonconforming recording intended for sale constitutes an actual
2-45 financial loss to an owner or lawful producer equal to the actual
2-46 value of the legitimate wholesale purchases displaced by the
2-47 nonconforming recordings.

2-48 SECTION 5. Article 59.01(2), Code of Criminal Procedure, is
2-49 amended to read as follows:

2-50 (2) "Contraband" means property of any nature,
2-51 including real, personal, tangible, or intangible, that is:

2-52 (A) used in the commission of:

2-53 (i) any first or second degree felony under
2-54 the Penal Code;

2-55 (ii) any felony under Section 15.031(b),
2-56 20.05, 20.06, 21.11, 38.04, or Chapter 43, 20A, 29, 30, 31, 32, 33,
2-57 33A, or 35, Penal Code;

2-58 (iii) any felony under The Securities Act
2-59 (Article 581-1 et seq., Vernon's Texas Civil Statutes); or

2-60 (iv) any offense under Chapter 49, Penal
2-61 Code, that is punishable as a felony of the third degree or state
2-62 jail felony, if the defendant has been previously convicted three
2-63 times of an offense under that chapter;

2-64 (B) used or intended to be used in the commission
2-65 of:

2-66 (i) any felony under Chapter 481, Health
2-67 and Safety Code (Texas Controlled Substances Act);

2-68 (ii) any felony under Chapter 483, Health
2-69 and Safety Code;

3-1 (iii) a felony under Chapter 151, Finance
3-2 Code;
3-3 (iv) any felony under Chapter 34, Penal
3-4 Code;
3-5 (v) a Class A misdemeanor under Subchapter
3-6 B, Chapter 365, Health and Safety Code, if the defendant has been
3-7 previously convicted twice of an offense under that subchapter;
3-8 (vi) any felony under Chapter 32, Human
3-9 Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that
3-10 involves the state Medicaid program;
3-11 (vii) a Class B misdemeanor under Chapter
3-12 522, Business & Commerce Code;
3-13 (viii) a Class A misdemeanor under Section
3-14 306.051, Business & Commerce Code;
3-15 (ix) any offense under Section 42.10, Penal
3-16 Code;
3-17 (x) any offense under Section 46.06(a)(1)
3-18 or 46.14, Penal Code;
3-19 (xi) any offense under Chapter 71, Penal
3-20 Code;
3-21 (xii) any offense under Section 20.05 or
3-22 20.06, Penal Code; ~~or~~
3-23 (xiii) an offense under Section 326.002,
3-24 Business & Commerce Code; or
3-25 (xiv) any felony under Chapter 641,
3-26 Business & Commerce Code;
3-27 (C) the proceeds gained from the commission of a
3-28 felony listed in Paragraph (A) or (B) of this subdivision, a
3-29 misdemeanor listed in Paragraph (B)(vii), (ix), (x), or (xi) of
3-30 this subdivision, or a crime of violence;
3-31 (D) acquired with proceeds gained from the
3-32 commission of a felony listed in Paragraph (A) or (B) of this
3-33 subdivision, a misdemeanor listed in Paragraph (B)(vii), (ix), (x),
3-34 or (xi) of this subdivision, or a crime of violence;
3-35 (E) used to facilitate or intended to be used to
3-36 facilitate the commission of a felony under Section 15.031 or
3-37 43.25, Penal Code; or
3-38 (F) used to facilitate or intended to be used to
3-39 facilitate the commission of a felony under Section 20A.02 or
3-40 Chapter 43, Penal Code.
3-41 SECTION 6. The change in law made by this Act applies only
3-42 to an offense committed on or after the effective date of this Act.
3-43 An offense committed before the effective date of this Act is
3-44 governed by the law in effect at the time the offense was committed.
3-45 For purposes of this section, an offense was committed before the
3-46 effective date of this Act if any element of the offense occurred
3-47 before that date.
3-48 SECTION 7. This Act takes effect September 1, 2017.

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