

AN ACT

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

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

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

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

SECTION 2. 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 3. Section 641.054, Business & Commerce Code, is amended to read as follows:

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  
7 this 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.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 1343 passed the Senate on April 20, 2017, by the following vote: Yeas 30, Nays 1; and that the Senate concurred in House amendment on May 28, 2017, by the following vote: Yeas 30, Nays 1.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 1343 passed the House, with amendment, on May 18, 2017, by the following vote: Yeas 143, Nays 3, two present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor