

By: Parker, Miller of Comal

H.B. No. 3784

Substitute the following for H.B. No. 3784:

By: Oliveira

C.S.H.B. No. 3784

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 during a 180-day
15 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 during a 180-day period; or

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

26 SECTION 3. Section 641.055, Business & Commerce Code, is
27 amended to read as follows:

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

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

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

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

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

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

21 (1) the greater of:

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

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

27 (2) the costs associated with investigating the

1 offense.

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

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

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

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

13 SECTION 5. Article [59.01](#)(2), Code of Criminal Procedure, as
14 amended by Chapters 427 (S.B. 529) and 1357 (S.B. 1451), Acts of the
15 83rd Legislature, Regular Session, 2013, is reenacted and amended
16 to read as follows:

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

19 (A) used in the commission of:

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

22 (ii) any felony under Section [15.031](#)(b),
23 [20.05](#), [21.11](#), [38.04](#), or Chapter 43, 20A, 29, 30, 31, 32, 33, 33A, or
24 35, Penal Code;

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

27 (iv) any offense under Chapter 49, Penal

Code, that is punishable as a felony of the third degree or state jail felony, if the defendant has been previously convicted three times of an offense under that chapter;

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

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

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

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

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

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

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

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

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

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

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

(xi) any offense under Chapter 71, Penal Code;

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

(xiii) ~~[(xiv)]~~ an offense under Section 326.002, Business & Commerce Code; or

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

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

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

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

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

SECTION 6. The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect at the time the offense was committed. For purposes of this section, an offense was committed before the

1 effective date of this Act if any element of the offense occurred
2 before that date.

3 SECTION 7. To the extent of any conflict, this Act prevails
4 over another Act of the 84th Legislature, Regular Session, 2015,
5 relating to nonsubstantive additions to and corrections in enacted
6 codes.

7 SECTION 8. This Act takes effect September 1, 2015.