

SUBJECT: Outlawing unauthorized recordings on digital storage devices

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 6 ayes — Oliveira, Shine, Collier, Romero, Villalba, Workman
1 nay — Stickland

SENATE VOTE: On final passage, April 20 — 30-1 (Huffines)

WITNESSES: *On House companion bill, HB 2483:*
For — Luis Linares, Recording Industry Association of America;
(*Registered, but did not testify*: Jerry Valdez, Recording Industry
Association of America)

Against — None

BACKGROUND: **Unauthorized recording.** Under Business and Commerce Code, sec. 641.051, a person commits an offense if the person knowingly reproduces, sells, transports, advertises, or possesses for sale any recording for financial gain without the consent of the owner. This offense is punishable by:

- imprisonment for up to five years and/or a fine up to \$250,000 for an offense involving at least 1,000 recordings over 180 days or for a previous conviction;
- imprisonment for up to two years and/or a fine up to \$250,000 for an offense involving more than 100 but fewer than 1,000 recordings over 180 days; or
- confinement in county jail for up to a year and/or a fine up to \$25,000 for an offense that is not punishable under either of the above conditions.

"Recording" is defined by sec. 641.001 to mean a tangible medium on which sounds, images, or both are recorded, including a phonograph record, disc, tape, audio or video cassette, wire, film, or other medium.

Labeling. Under Business and Commerce Code, sec. 641.054, a person commits an offense if the person, for commercial advantage or private financial gain, knowingly advertises, sells, or possesses for sale a recording that does not clearly disclose the name and address of the manufacturer and the name of the performer or group. This offense is punishable by:

- imprisonment for up to five years and/or a fine up to \$250,000 for an offense involving at least 65 recordings over 180 days or for a previous conviction;
- imprisonment for up to two years and/or a fine up to \$250,000 for an offense involving more than seven but fewer than 65 recordings over 180 days; or
- confinement in county jail for up to a year and/or a fine up to \$25,000 for an offense that is not punishable under either of the above conditions.

DIGEST: SB 1343 would modify the Business and Commerce Code to outlaw the sale of unauthorized recordings on digital storage devices and set guidelines for restitution in improper labeling cases.

Unauthorized recording. The bill would amend the definition of "recording" in Business and Commerce Code, sec. 641.001 to include a memory card, flash drive, hard drive, or data storage device on which sounds, images, or both were recorded.

Labeling. SB 1343 would require courts convicting a person of an improper labeling offense to order restitution to the owner, lawful producer, or trade association representing the owner or producer of a master recording who had suffered financial loss as a result of the offense. Restitution ordered would have to be the greater of:

- the aggregate wholesale value of the authorized recordings corresponding to the number of unauthorized recordings; or
- the actual financial loss to the owner, producer, or trade association.

Restitution also would have to include the costs associated with investigating the offense. Possession of an unauthorized recording intended for sale would constitute an actual financial loss equal to the legitimate wholesale value of the purchases displaced.

The bill also would remove failure to clearly disclose the name of the performer or group on the cover of a recording from the offense of improper labeling.

The bill would take effect September 1, 2017, and would apply only to an offense committed on or after that date.

**SUPPORTERS
SAY:**

SB 1343 would provide a necessary modernization of laws governing unauthorized recordings, including music piracy, to adapt to the digital age. Current law is unclear about the legality of selling unauthorized recordings on digital devices, but this method is a growing problem in Texas. Flea market vendors in this state recently have been discovered selling flash drives with thousands of pirated songs, profiting from stolen material while not paying local, state, or federal taxes.

The bill would require courts to order a person convicted of the offense of improper labeling to make restitution to the lawful owner or producer. Music piracy is a serious crime that deprives artists and record labels of their earned profits and results in lost jobs. It is an economic crime that constitutes an actual financial loss, and injured parties should be able to recover for their losses.

The bill's restitution standards would not be overly punitive, as the theft of copyrighted material is still theft. In addition, current statute clearly provides that parties must possess stolen material for the purpose of selling it to have committed an offense, so the bill would be narrowly tailored to apply to penalties for the criminal resale of copyrighted material.

OPPONENTS

The bill's guidelines for restitution for improper labeling would be overly

SAY: punitive for the relatively low-impact crime of music piracy. In addition to a \$250,000 fine and five years in jail for the sale of a flash drive with as few as 65 unauthorized songs on it, the bill would require courts to order restitution. Federal law already allows injured parties to sue for copyright infringement under 17 U.S.C. ch. 5, and the bill's additional punishment would be unnecessary.

NOTES: A companion bill, HB 2483 by Parker, was placed on the General State Calendar for May 8.