

BILL ANALYSIS

Senate Research Center

S.B. 1343
By: Hughes
State Affairs
7/6/2017
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The sale of fraudulent music product throughout the state forces legitimate music retailers to compete with music pirates that undercut their businesses by failing to pay for music, and failing to pay local, state, and federal taxes. Though Texas has a criminal statute designed to protect its music community and the general public against the crime of music piracy, these laws must be amended to address new trends in physical piracy and to ensure that victims are compensated for their losses.

Physical music piracy has historically involved the unauthorized manufacture and sale of single records on traditional media such as vinyl records, tapes, and compact discs (CDs). However, many music pirates now make use of digital media with far greater storage capacity, such as memory cards and computer hard-drives, to create a new breed of fraudulent music product containing hundreds if not thousands of unauthorized sound recordings that are sold to the public for remarkably low prices. Flea market vendors have recently been discovered in Texas selling memory cards and thumb drives stocked with 1,200 songs or more (the equivalent of 100 legitimate records) for as low as \$30 each. The unauthorized sale of such items displaces multiple legitimate sales, thereby damaging the businesses of the many artists, songwriters, record labels, retailers, and legal music distributors that call Texas home. Accordingly, Texas must update its piracy laws to ensure that the manufacture and distribution of digital storage devices filled with unauthorized music may be addressed under state law. Similar language currently exists in the state piracy laws of Tennessee, New York, Colorado, and California.

The absence of a provision specifically addressing the issue of restitution allows many perpetrators to resolve their cases without compensating the victims of the crime. Texas must amend its piracy statutes to make clear that restitution must be awarded in music piracy cases, and to provide guidance on exactly how restitution should be calculated. Such language currently exists in the music piracy laws of seven states: Pennsylvania, Illinois, Georgia, Tennessee, Colorado, Arizona, and California. Similar language must be added in Texas to strengthen its piracy laws and better protect the musical heritage of the state.

S.B. 1343 will:

- Clarify that music pirates dealing in hard-drives, flash drives, memory cards, and other digital storage devices filled with unauthorized sound recordings may not avoid criminal prosecution under state law.
- Promote judicial economy and consistency by providing judges with clear guidelines on how to calculate restitution awards in piracy cases.
- Streamline the forfeiture of contraband used in the commission of felony piracy cases.
- Provide law enforcement representatives and prosecutors with clear and efficient legal tools that may be used to protect the vibrant music industry of Texas. (Original Author's / Sponsor's Statement of Intent)

S.B. 1343 amends current law relating to the capture, use, or recording of certain items for commercial purposes, including the prosecution of criminal offenses regarding unauthorized recordings.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 503.001, Business & Commerce Code, by adding Subsection (e), to provide that this section (Capture or Use of Biometric Identifier) 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. Amends Section 641.001(4), Business & Commerce Code, to redefine "recording."

SECTION 3. Amends Section 641.054, Business & Commerce Code, as follows:

Sec. 641.054. New heading: IMPROPER LABELING. (a) Deletes existing text relating to the name of the performer or group not being disclosed on the outside cover, box, or jacket of the recording among the required elements of an offense.

(b) Provides that an offense under this section is punishable by:

(1) imprisonment for a certain term, a certain fine, or both imprisonment and the fine if the offense involves 65 or more improperly labeled, rather than unauthorized, recordings, or the commercial equivalent thereof, during a 180-day period; or the defendant has been previously convicted under this section;

(2) imprisonment for a certain term, a certain fine, or both imprisonment and the fine, if the offense involves more than seven but fewer than 65 improperly labeled, rather than unauthorized, recordings, or the commercial equivalent thereof, during a 180-day period; or

(3) confinement in the county jail for a certain term, a certain fine, or both confinement and the fine, if the offense is not otherwise punishable under Subdivision (1) or (2).

SECTION 4. Amends Article 42.037, Code of Criminal Procedure, by adding Subsections (t), (u), and (v), as follows:

(t) Requires the court, if a person is convicted of an offense under Section 641.054, Business & Commerce Code, to order the person to make restitution to an owner or lawful producer of a master recording that has suffered financial loss as a result of the offense or to a trade association that represents that owner or lawful producer. Requires that the amount of restitution ordered be the greater of two certain amounts and the costs associated with investigating the offense.

(u) Provides that for the purposes of Subsection (t)(1)(A) (relating to the amount of restitution being a certain aggregate wholesale value), the calculation of the aggregate wholesale value is based on the average wholesale value of the lawfully manufactured and authorized recordings; and the specific wholesale value of each nonconforming recording is not relevant to the calculation.

(v) Provides that for purposes of Subsection (t)(1)(B) (relating to the amount of restitution being the actual financial loss to certain persons or entities), the possession of a nonconforming recording intended for sale constitutes an actual financial loss to an owner or lawful producer equal to the actual value of the legitimate wholesale purchases displaced by the nonconforming recordings.

SECTION 5. (a) Makes application of this Act prospective, except as provided by Subsection (b).

(b) Provides that the change in law made by this Act to Section 503.001, Business & Commerce Code, applies only to a violation that occurs on or after the effective date of this Act. Provides that a violation that occurs before the effective date of this Act is governed by the law in effect on the date the violation occurred, and the former law is continued in effect for that purpose.

SECTION 6. Effective date: September 1, 2017.