

SUBJECT: Outlawing music piracy on digital storage devices; providing restitution

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: *After recommitted:*
6 ayes — Oliveira, Shine, Collier, Romero, Villalba, Workman

1 nay — Stickland

WITNESSES: *April 17 public hearing:*
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 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.

Biometric identifiers. Business and Commerce Code, sec. 503.001 prohibits a person from capturing or selling a retina scan, fingerprint, hand or face geometric pattern, or voice recording without informed consent.

Some observers suggest the need to modernize the laws governing music piracy to adapt to the digital age, including explicitly prohibiting the sale of flash drives and hard drives containing pirated songs.

DIGEST:

CSHB 2483 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. CSHB 2483 would require courts convicting a person of an improper labeling offense to order restitution to the owner or lawful 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 sum wholesale value of the 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.

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.

Biometric identifiers. CSHB 2483 would exempt financial institutions and affiliates from prohibitions on the capture and sale of biometric identifiers, including voice recordings.

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

NOTES:

CSHB 2483 was reported by the House Committee on Business and Industry on April 24, placed on the general state calendar, recommitted to committee, and reported again on May 3 as a committee substitute.

A companion bill, SB 1343 by Hughes, was reported favorably by the House Committee on Business and Industry on May 8.