

By Senator Flores

38-00498-12

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1 A bill to be entitled

2 An act relating to unauthorized copying of recordings;
3 amending s. 540.11, F.S.; requiring restitution by
4 persons who knowingly commit certain violations
5 relating to recordings for commercial advantage or
6 private financial gain; authorizing recovery by a
7 trade association representing the owner or lawful
8 producer of a recording; providing for calculation of
9 a restitution amount; amending s. 775.089, F.S.;
10 providing that a crime victim entitled to restitution
11 may include a trade association representing the owner
12 or lawful producer of a pirated recording in certain
13 circumstances; providing an effective date.

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15 Be It Enacted by the Legislature of the State of Florida:

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17 Section 1. Subsection (3) of section 540.11, Florida
18 Statutes, is amended to read:

19 540.11 Unauthorized copying of phonograph records, disk,
20 wire, tape, film, or other article on which sounds are
21 recorded.—

22 (3) (a) It is unlawful:

23 1. To sell or offer for sale or resale, advertise, cause
24 the sale or resale of, rent, transport or cause to be rented or
25 transported, or possess for any of these purposes any article
26 with the knowledge, or with reasonable grounds to know, that the
27 sounds thereon have been transferred without the consent of the
28 owner.

29 2. To sell or offer for sale or resale, advertise, cause

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30 the sale or resale of, rent, transport or cause to be rented or
31 transported, or possess for any of these purposes any article
32 embodying any performance, whether live before an audience or
33 transmitted by wire or through the air by radio or television,
34 recorded without the consent of the performer.

35 3. Knowingly, for commercial advantage or private financial
36 gain to sell or resell, offer for sale or resale, advertise,
37 cause the sale or resale of, rent, transport or cause to be
38 rented or transported, or possess for such purposes, any
39 phonograph record, disk, wire, tape, film, or other article on
40 which sounds are recorded, unless the outside cover, box, or
41 jacket clearly and conspicuously discloses the actual name and
42 address of the manufacturer thereof, and the name of the actual
43 performer or group.

44 (b)1. A person who violates paragraph (a) commits a felony
45 of the third degree, punishable as provided in s. 775.082, by a
46 fine of up to \$250,000, or both if the offense involves at least
47 1,000 unauthorized articles embodying sound or at least 65
48 unauthorized audiovisual articles during any 180-day period or
49 is a second or subsequent conviction under either this
50 subparagraph or subparagraph 2. of this subsection.

51 2. A person who violates paragraph (a) commits a felony of
52 the third degree, punishable as provided in s. 775.082, by a
53 fine of up to \$150,000, or both if the offense involves more
54 than 100 but less than 1,000 unauthorized articles embodying
55 sound or more than 7 but less than 65 unauthorized audiovisual
56 articles during any 180-day period.

57 3. A person who otherwise violates this subsection commits
58 a misdemeanor of the first degree, punishable as provided in s.

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59 775.082, by a fine of up to \$25,000, or both.

60 4. A person who violates subparagraph (a)3. shall be
61 ordered to make restitution to any owner or lawful producer of a
62 master recording that has suffered injury resulting from the
63 crime, or to the trade association representing such owner or
64 lawful producer. The order of restitution shall be based on the
65 aggregate wholesale value of lawfully manufactured and
66 authorized recordings corresponding to the number of
67 nonconforming recordings involved in the offense unless a
68 greater value can be proven. The order of restitution shall also
69 include investigative costs relating to the offense.

70 Section 2. Paragraph (c) of subsection (1) of section
71 775.089, Florida Statutes, is amended to read:

72 775.089 Restitution.—

73 (1)

74 (c) The term "victim" as used in this section and in any
75 provision of law relating to restitution means each person who
76 suffers property damage or loss, monetary expense, or physical
77 injury or death as a direct or indirect result of the
78 defendant's offense or criminal episode, and also includes the
79 victim's estate if the victim is deceased, ~~and~~ the victim's next
80 of kin if the victim is deceased as a result of the offense, and
81 the victim's trade association if the offense is a violation of
82 s. 540.11(3)(a)3. and the victim has granted the trade
83 association written authorization to represent the victim's
84 interests in criminal legal proceedings and to collect
85 restitution on the victim's behalf.

86 Section 3. This act shall take effect October 1, 2012.