

By the Committee on Criminal Justice; and Senators Flores, Diaz de la Portilla, Garcia, and Lynn

591-02050-12

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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; providing a definition; amending
10 s. 775.089, F.S.; providing that a crime victim
11 entitled to restitution may include a trade
12 association representing the owner or lawful producer
13 of a pirated recording in certain circumstances;
14 providing an effective date.

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

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

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

23 (3) (a) It is unlawful:

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

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

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

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

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

58 3. A person who otherwise violates this subsection commits

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59 a misdemeanor of the first degree, punishable as provided in s.
60 775.082, by a fine of up to \$25,000, or both.

61 4. A person who violates subparagraph (a)3. shall be
62 ordered to make restitution to any owner or lawful producer of a
63 master recording that has suffered injury resulting from the
64 crime or to the trade association representing such owner or
65 lawful producer. The order of restitution shall be based on the
66 aggregate wholesale value of lawfully manufactured and
67 authorized articles corresponding to the number of nonconforming
68 articles involved in the offense unless a greater value can be
69 proven. The order of restitution shall also include
70 investigative costs relating to the offense. As used in this
71 subparagraph, the term "trade association" means an organization
72 founded and funded by businesses that operate in a specific
73 industry to protect their collective interests. The restitution
74 obligation set forth in this subparagraph applies only to
75 physical articles and does not apply to electronic articles or
76 digital files that are distributed or made available online.

77 Section 2. Paragraph (c) of subsection (1) of section
78 775.089, Florida Statutes, is amended to read:

79 775.089 Restitution.—

80 (1)

81 (c) The term "victim" as used in this section and in any
82 provision of law relating to restitution means each person who
83 suffers property damage or loss, monetary expense, or physical
84 injury or death as a direct or indirect result of the
85 defendant's offense or criminal episode, and also includes the
86 victim's estate if the victim is deceased, ~~and~~ the victim's next
87 of kin if the victim is deceased as a result of the offense, and

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88 the victim's trade association if the offense is a violation of
89 s. 540.11(3)(a)3. involving physical articles and the victim has
90 granted the trade association written authorization to represent
91 the victim's interests in criminal legal proceedings and to
92 collect restitution on the victim's behalf.

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