



239168

CHAMBER ACTION

<u>Senate</u>	.	<u>House</u>
Comm: RCS	.	
3/25/2008	.	
	.	
	.	

1 The Committee on Commerce (Oelrich) recommended the following
 2 **amendment:**

Senate Amendment (with title amendment)

5 Delete everything after the enacting clause
6 and insert:

7 Section 1. Paragraph (a) of subsection (3) and subsection
8 (6) of section 540.11, Florida Statutes, are amended to read:

9 540.11 Unauthorized copying of phonograph records, disk,
10 wire, tape, film, or other article on which sounds are
11 recorded.--

12 (3) (a) It is unlawful:

13 1. To sell or offer for sale or resale, advertise, cause
 14 the sale or resale of, rent, transport or cause to be rented or
 15 transported, or possess for any of these purposes any article
 16 with the knowledge, or with reasonable grounds to know, that the

Bill No. SB 1692



239168

17 | sounds thereon have been transferred without the consent of the
18 | owner.

19 | 2. To sell or offer for sale or resale, advertise, cause
20 | the sale or resale of, rent, transport or cause to be rented or
21 | transported, or possess for any of these purposes any article
22 | embodying any performance, whether live before an audience or
23 | transmitted by wire or through the air by radio or television,
24 | which was recorded without the consent of the performer.

25 | 3. Knowingly, for commercial advantage or private financial
26 | gain to sell or resell, offer for sale or resale, advertise,
27 | cause the sale or resale of, rent, transport or cause to be
28 | rented or transported, or possess for such purposes, any
29 | phonograph record, disk, wire, tape, film, or other article on
30 | which sounds are recorded, unless the outside cover, box, or
31 | jacket clearly and conspicuously discloses the actual name and
32 | address of the manufacturer thereof, and the name of the actual
33 | performer or group.

34 | (b)1. A person who violates paragraph (a) commits a felony
35 | of the third degree, punishable as provided in s. 775.082, by a
36 | fine of up to \$250,000, or both if the offense involves at least
37 | 1,000 unauthorized articles embodying sound or at least 65
38 | unauthorized audiovisual articles during any 180-day period or is
39 | a second or subsequent conviction under either this subparagraph
40 | or subparagraph 2. ~~of this subsection.~~

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



239168

47 3. A person who otherwise violates this subsection commits
48 a misdemeanor of the first degree, punishable as provided in s.
49 775.082, by a fine of up to \$25,000, or both.

50 4. The court shall order a person who violates paragraph
51 (a) to make restitution to an owner who suffered injury resulting
52 from the violation, or to a trade association representing such
53 owner, in accordance with s. 775.089. The amount of restitution
54 shall be based on the average wholesale value of authorized
55 articles corresponding to the number of unauthorized articles
56 involved in the offense, unless a greater value can be proven.
57 The order shall also include investigative costs relating to the
58 offense.

59 (6) This section does not apply:

60 (a) To any broadcaster who, in connection with, or as part
61 of, a radio, television, or cable broadcast transmission, or for
62 the purpose of archival preservation, transfers any such sounds
63 recorded on a sound recording.

64 (b) To any person who transfers such sounds in the home for
65 personal use and without compensation for such transfer.

66 (c) To any not-for-profit educational institution or any
67 federal or state governmental entity, if all the following
68 conditions exist:

69 1. The primary purpose of the institution or entity is the
70 advancement of the public's knowledge and the dissemination of
71 information.

72 2. Such purpose is clearly set forth in the institution's
73 or entity's charter, bylaws, certificate of incorporation, or
74 similar document.



239168

75 3. Prior to the transfer of the sounds, the institution or
76 entity has made a good faith effort to identify and locate the
77 owner or owners of the articles to be transferred.

78 4. Despite good faith efforts, the owner or owners have not
79 been located.

80 (d) To communication service providers as defined in s.
81 202.11(2), commercial mobile service providers, and providers of
82 information services, including, but not limited to, Internet
83 access service providers and hosting service providers, when they
84 provide only the transmission, storage, or caching of electronic
85 communications or messages of others or provide other related
86 telecommunications, commercial mobile radio service, or
87 information services used by others in violation of this section.
88 This exemption does not apply to providers of communication or
89 information services that personally violate this section or
90 knowingly facilitate the specific violation of this section by
91 others.

92 Section 2. This act shall take effect July 1, 2008.

93
94 ===== T I T L E A M E N D M E N T =====

95 And the title is amended as follows:

96 Delete everything before the enacting clause
97 and insert:

98 A bill to be entitled
99 An act relating to unauthorized copies of recordings;
100 amending s. 540.11, F.S.; requiring a court to order a
101 person who engages in the unauthorized sale, resale,
102 rental, or transportation of certain recorded articles to
103 make restitution to the owner who suffered injury
104 resulting from the violation or to the trade association



239168

105 | representing such owner; requiring that the amount of
106 | restitution be based on the average wholesale value of
107 | authorized articles corresponding to the number of
108 | unauthorized articles involved in the offense and
109 | investigative costs; revising the list of persons or
110 | entities that are exempt from the unauthorized sale,
111 | resale, rental, or transportation of recorded articles;
112 | providing an effective date.