

By Senator Baker

20-02541B-08

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1 A bill to be entitled

2 An act relating to unauthorized copies of recordings;  
3 amending s. 540.11, F.S.; requiring that a person who  
4 violates state law regarding the unauthorized sale,  
5 resale, rental, or transportation of certain articles on  
6 which sounds are recorded pay restitution to the owner or  
7 lawful producer of the master recording, master disc,  
8 master tape, master videotape, master film, or other  
9 device or article from which sounds or visual images were  
10 derived or to the trade association representing such  
11 owner or lawful producer who suffered injury resulting  
12 from the violation; requiring that the order of  
13 restitution be based on the aggregate wholesale value of  
14 lawfully manufactured and authorized recorded devices  
15 corresponding to the nonconforming recorded devices  
16 involved in the offense, including investigative costs  
17 relating to the offense; providing an effective date.  
18

19 Be It Enacted by the Legislature of the State of Florida:  
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21 Section 1. Subsection (3) of section 540.11, Florida  
22 Statutes, is amended to read:

23 540.11 Unauthorized copying of phonograph records, disk,  
24 wire, tape, film, or other article on which sounds are  
25 recorded.--

26 (3) (a) It is unlawful:

27 1. To sell or offer for sale or resale, advertise, cause  
28 the sale or resale of, rent, transport or cause to be rented or  
29 transported, or possess for any of these purposes any article

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30 | with the knowledge, or with reasonable grounds to know, that the  
31 | sounds thereon have been transferred without the consent of the  
32 | owner.

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

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

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

55 |       2. A person who violates paragraph (a) commits a felony of  
56 | the third degree, punishable as provided in s. 775.082, by a fine  
57 | of up to \$150,000, or both if the offense involves more than 100  
58 | but less than 1,000 unauthorized articles embodying sound or more

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59 | than 7 but less than 65 unauthorized audiovisual articles during  
60 | any 180-day period.

61 |         3. A person who otherwise violates this subsection commits  
62 | a misdemeanor of the first degree, punishable as provided in s.  
63 | 775.082, by a fine of up to \$25,000, or both.

64 |         4. A person who violates paragraph (a) shall be required to  
65 | make restitution to the owner or lawful producer of a master  
66 | recording, master disc, master tape, master videotape, master  
67 | film, or other device or article from which sounds or visual  
68 | images were derived who suffered injury resulting from the  
69 | violation or to the trade association representing such owner or  
70 | lawful producer. The order of restitution shall be based on the  
71 | aggregate wholesale value of lawfully manufactured and authorized  
72 | recorded devices corresponding to the nonconforming recorded  
73 | devices involved in the offense, and shall include investigative  
74 | costs relating to the offense.

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