

By the Committee on Commerce; and Senators Baker, Crist and Lynn

577-05724-08

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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 a court to order a
4 person who engages in the unauthorized sale, resale,
5 rental, or transportation of certain recorded articles to
6 make restitution to the owner who suffered injury
7 resulting from the violation or to the trade association
8 representing such owner; requiring that the amount of
9 restitution be based on the average wholesale value of
10 authorized articles corresponding to the number of
11 unauthorized articles involved in the offense and
12 investigative costs; revising the list of persons or
13 entities that are exempt from the unauthorized sale,
14 resale, rental, or transportation of recorded articles;
15 providing an effective date.

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

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19 Section 1. Subsections (3) and (6) of section 540.11,
20 Florida Statutes, are amended to read:

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

24 (3) (a) It is unlawful:

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

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30 owner.

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

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

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

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

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

62 4. The court shall order a person who violates paragraph
63 (a) to make restitution to an owner who suffered injury resulting
64 from the violation, or to a trade association representing such
65 owner, in accordance with s. 775.089. The amount of restitution
66 shall be based on the average wholesale value of authorized
67 articles corresponding to the number of unauthorized articles
68 involved in the offense, unless a greater value can be proven.
69 The order shall also include investigative costs relating to the
70 offense.

71 (6) This section does not apply:

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

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

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

81 1. The primary purpose of the institution or entity is the
82 advancement of the public's knowledge and the dissemination of
83 information.

84 2. Such purpose is clearly set forth in the institution's
85 or entity's charter, bylaws, certificate of incorporation, or
86 similar document.

87 3. Prior to the transfer of the sounds, the institution or

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88 entity has made a good faith effort to identify and locate the
89 owner or owners of the articles to be transferred.

90 4. Despite good faith efforts, the owner or owners have not
91 been located.

92 (d) To communication service providers as defined in s.
93 202.11(2), commercial mobile service providers, or providers of
94 information services, including, but not limited to, Internet
95 access service providers and hosting service providers, when
96 providing only the transmission, storage, or caching of
97 electronic communications or messages of others or providing
98 other related telecommunications, commercial mobile radio
99 service, or information services used by others in violation of
100 this section. This exemption does not apply to providers of
101 communication or information services that personally violate
102 this section or knowingly facilitate the specific violation of
103 this section by others.

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