

By Senator Flores

38-00498-12

2012432

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.

14  
15 Be It Enacted by the Legislature of the State of Florida:

16  
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

38-00498-12

2012432

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.

38-00498-12

2012432

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.