

CS/HB 189

2012

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 an exemption for
10 certain providers of online services or network access
11 and related services; amending s. 775.089, F.S.;
12 providing that a crime victim entitled to restitution
13 may include a trade association representing the owner
14 or lawful producer of a pirated recording in certain
15 circumstances; 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. Subsection (3) of section 540.11, Florida
20 Statutes, is amended, and paragraph (d) is added to subsection
21 (6) of that section, to read:

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

25 (3)(a) It is unlawful:

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

CS/HB 189

2012

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

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

39 3. Knowingly, for commercial advantage or private
40 financial gain to sell or resell, offer for sale or resale,
41 advertise, cause the sale or resale of, rent, transport or cause
42 to be 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
53 is a second or subsequent conviction under either this
54 subparagraph 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

57 fine of up to \$150,000, or both if the offense involves more
58 than 100 but less than 1,000 unauthorized articles embodying
59 sound or more than 7 but less than 65 unauthorized audiovisual
60 articles during 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 is convicted of violating subparagraph
65 (a)3. shall be ordered to make restitution to any owner or
66 lawful producer of a master recording that has suffered injury
67 resulting from the crime, or to the trade association
68 representing such owner or lawful producer. The order of
69 restitution shall be based on the aggregate wholesale value of
70 lawfully manufactured and authorized recordings corresponding to
71 the number of nonconforming recordings involved in the offense
72 unless a greater value can be proven. The order of restitution
73 shall also include investigative costs relating to the offense.

74 (6) This section does not apply:

75 (d) To any provider of online services or network access,
76 the operator of facilities thereof, or any entity that provides
77 the transmission, routing, or connections for online
78 communications, between or among points specified by a user or
79 material of the user's choosing, without modification to the
80 content of the material as sent or received, by virtue of being
81 used by another person to transport any article or communicate
82 regarding any article, unless such service provider:

83 1. Knowingly and willfully aids and abets a violation of
84 this section; or

CS/HB 189

2012

85 2. Is substantially engaged in the unlawful reproduction,
86 distribution, or public performance of sound recordings.

87 Section 2. Paragraph (c) of subsection (1) of section
88 775.089, Florida Statutes, is amended to read:

89 775.089 Restitution.—

90 (1)

91 (c) The term "victim" as used in this section and in any
92 provision of law relating to restitution means each person who
93 suffers property damage or loss, monetary expense, or physical
94 injury or death as a direct or indirect result of the
95 defendant's offense or criminal episode, and also includes the
96 victim's estate if the victim is deceased, ~~and~~ the victim's next
97 of kin if the victim is deceased as a result of the offense, and
98 the victim's trade association if the offense is a violation of
99 s. 540.11(3)(a)3. and the victim has granted the trade
100 association written authorization to represent the victim's
101 interests in criminal legal proceedings and to collect
102 restitution on the victim's behalf.

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