

By: Thompson

H.B. No. 3125

Substitute the following for H.B. No. 3125:

By: Kuempel

C.S.H.B. No. 3125

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the offenses of unauthorized duplication, unauthorized  
3 recording, unauthorized operation of recording device, and  
4 improper labeling of recordings.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 641.001(4), Business & Commerce Code, is  
7 amended to read as follows:

8 (4) "Recording" means a tangible medium on which  
9 sounds, images, or both are recorded or otherwise stored,  
10 including:

11 (A) an original phonograph record, disc, tape,  
12 audio or video cassette, wire, film, electronic storage device, or  
13 other medium now existing or later developed; or

14 (B) a copy or reproduction that wholly or partly  
15 duplicates the original.

16 SECTION 2. Section 641.052, Business & Commerce Code, is  
17 amended to read as follows:

18 Sec. 641.052. UNAUTHORIZED RECORDING OF LIVE PERFORMANCE.

19 (a) In this section:

20 (1) "Artist" means a person who contracts to perform  
21 or entertain at a live entertainment event.

22 (2) "Live entertainment event" means an event that  
23 occurs on a specific date and at which:

24 (A) an individual or a group of individuals,

1 physically present at the venue, performs for the purpose of  
2 entertaining a person who is present at the event;

3 (B) a traveling circus or animal show performs  
4 for the purpose of entertaining a person who is present at the  
5 event; or

6 (C) a historical, museum-quality artifact is on  
7 display at an exhibition.

8 (3) "Live performance" means a recitation, rendering,  
9 or playing of a series, in an audible sequence, of:

10 (A) images;

11 (B) musical, spoken, or other sounds; or

12 (C) a combination of images and sounds.

13 (4) "Promoter" means an individual contracted by an  
14 artist to promote, organize, coordinate, operate, and manage a live  
15 entertainment event. The term includes services related to:

16 (A) the provision of staff for the live  
17 entertainment event; or

18 (B) the scheduling and promotion of an artist  
19 performing or entertaining at the live entertainment event.

20 (b) A person commits an offense if the person, with the  
21 knowledge that a live performance has been recorded or fixed  
22 without the consent of the owner:

23 (1) for commercial advantage or private financial  
24 gain, advertises, offers for sale, sells, rents, or transports,  
25 causes the sale, resale, rental, or transportation of, or possesses  
26 for one or more of these purposes a recording containing sounds of  
27 the live performance; or

1           (2) with the intent to sell for commercial advantage  
2 or private financial gain, records or fixes the live performance,  
3 or causes the live performance to be recorded or fixed on a  
4 recording.

5           (c) [~~(b)~~] An offense under this section is punishable by:

6           (1) imprisonment for a term of not more than five  
7 years, a fine not to exceed \$250,000, or both, if:

8           (A) the offense involves at least 1,000  
9 unauthorized recordings embodying sound or at least 65 unauthorized  
10 audiovisual recordings during a 180-day period; or

11           (B) the defendant has been previously convicted  
12 under this section;

13           (2) imprisonment for a term of not more than two years,  
14 a fine not to exceed \$250,000, or both, if the offense involves more  
15 than 100 but fewer than 1,000 unauthorized recordings embodying  
16 sound or more than seven but fewer than 65 unauthorized audiovisual  
17 recordings during a 180-day period; or

18           (3) confinement in the county jail for a term of not  
19 more than one year, a fine not to exceed \$25,000, or both, if the  
20 offense is not otherwise punishable under Subdivision (1) or (2).

21           (d) A promoter and an artist shall, regarding a contract for  
22 the artist's performance at a live entertainment event:

23           (1) comply with the terms of the contract regarding  
24 the distribution of recording revenue or event proceeds between the  
25 promoter and the artist; and

26           (2) agree to and secure permission for the recording  
27 of the live entertainment event in writing before the event is

1 recorded.

2       (e) [~~(c)~~] In the absence of a written agreement or law to  
3 the contrary, the performer or performers of a live performance are  
4 presumed to own the rights to record or fix those sounds.

5       (f) [~~(d)~~] For purposes of this section, a person authorized  
6 to maintain custody and control over business records that reflect  
7 whether the owner of a live performance consented to having the live  
8 performance recorded or fixed is a proper witness in a proceeding  
9 regarding the issue of consent. A witness called under this  
10 subsection is subject to the rules of evidence relating to the  
11 competency of a witness to testify and the relevance and  
12 admissibility of the testimony offered.

13       SECTION 3. Section 641.001(2), Business & Commerce Code, is  
14 repealed.

15       SECTION 4. The change in law made by this Act applies only  
16 to an offense committed on or after the effective date of this Act.  
17 An offense committed before the effective date of this Act is  
18 governed by the law in effect at the time the offense was committed,  
19 and the former law is continued in effect for that purpose. For  
20 purposes of this section, an offense was committed before the  
21 effective date of this Act if any element of the offense occurred  
22 before that date.

23       SECTION 5. This Act takes effect September 1, 2011.