

By: Thompson

H.B. No. 3125

A BILL TO BE ENTITLED

AN ACT

relating to unauthorized recordings of a live performance.

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

SECTION 1. Section 641.001, Business & Commerce Code, is amended to read as follows:

Sec 641.001. DEFINITIONS. In this chapter:

(1) "Fix" means to embody in a recording or other tangible medium of expression, by or under the authority of the author, so that the matter embodied is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration.

~~(2) "Live performance" means a recitation, rendering, or playing of a series, in an audible sequence, of:~~

~~(A) images;~~

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

~~(C) a combination of images and sounds.~~

~~(3)~~ "Owner" means a person who owns the sounds fixed in a master phonograph record, master disc, master tape, master film, or other recording:

(A) on which sound is recorded; and

(B) from which the transferred recorded sounds are directly or indirectly derived.

(3) ~~(4)~~ "Recording" means a tangible medium on which sounds, images, or both are recorded or otherwise stored,

1 including:

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

5 (B) a copy or reproduction that wholly or partly
6 duplicates the original.

7 SECTION 2. Chapter 641.001 Business & Commerce Code, is
8 amended to read as follows:

9 Sec. 641.052. UNAUTHORIZED RECORDING OF LIVE PERFORMANCE.

10 (a) In this section:

11 (1) "Artist" means a person who contacts to perform or
12 entertain at a live entertainment event.

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

15 (A) an individual or a group of individuals,
16 physically present at the venue, performs and or rehearses for the
17 purpose of entertaining a person who is present at the event.

18 (B) a traveling circus or animal show performs
19 for the purpose of entertaining a person who is present at the
20 event; or

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

23 (3) "Live Performance" means a recitation, rendering,
24 or playing of a series, in an audible sequence, of

25 (A) images;

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

27 (C) a combination of images and sounds.

1 (4) "Promoter" means an individual contacted by an
2 artist to promote, organize, coordinate, operate, and manage a live
3 entertainment event. The term includes services related to:

4 (A) the provision of staff for the live
5 entertainment event; or

6 (B) the schedule and promotion of an artist
7 performing or entertaining at the live entertainment event.

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

11 (1) for commercial advantage or private financial
12 gain, advertises, offers for sale, sells, rents, or transports,
13 causes the sale, resale, rental, or transportation of, or possesses
14 for one or more of these purposes a recording containing sounds of
15 the live performance; or

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

20 (c) ~~(b)~~ An offense under this section is punishable by:

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

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

26 (B) the defendant has been previously convicted
27 under this section;

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

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

9 ~~(c)~~ (d) A promoter and an artist are mandated pursuant to
10 this chapter, regarding a contract for the artist's performance at
11 a live entertainment event to:

12 (1) distribute any recording revenue and event
13 proceeds, in the form of a payments to each other as contractually
14 stipulated; and

15 (2) agree to and secure permission for the recording
16 of the live entertainment event in writing before the event is
17 recorded.

18 ~~(d)~~ (f) In the absence of a written agreement or law to the
19 contrary, the performer or performers of a live performance are
20 presumed to own the rights to record or fix those sounds.

21 (g) For purposes of this section, a person authorized to
22 maintain custody and control over business records that reflect
23 whether the owner of a live performance consented to having the live
24 performance recorded or fixed is a proper witness in a proceeding
25 regarding the issue of consent. A witness called under this
26 subsection is subject to the rules of evidence relating to the
27 competency of a witness to testify and the relevance and

1 admissibility of the testimony offered.

2 SECTION 3. The change in law made by this Act applies only
3 to an offense committed on or after the effective date of this Act.
4 An offense committed before the effective date of this Act is
5 governed by the law in effect at the time of the offense was
6 committed, and the former law is continued in effect for that
7 purpose. For purposes of this section, an offense was committed
8 before the effective date of this Act if any element of the offense
9 occurred before that date.

10 SECTION 4. This Act takes effect September 1, 2011.