

1-1 By: Thompson (Senate Sponsor - Patrick) H.B. No. 3125  
1-2 (In the Senate - Received from the House May 12, 2011;  
1-3 May 12, 2011, read first time and referred to Committee on  
1-4 Jurisprudence; May 21, 2011, reported favorably by the following  
1-5 vote: Yeas 5, Nays 0; May 21, 2011, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to the offenses of unauthorized duplication, unauthorized  
1-9 recording, unauthorized operation of recording device, and  
1-10 improper labeling of recordings.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Section 641.001(4), Business & Commerce Code, is  
1-13 amended to read as follows:

1-14 (4) "Recording" means a tangible medium on which  
1-15 sounds, images, or both are recorded or otherwise stored,  
1-16 including:

1-17 (A) an original phonograph record, disc, tape,  
1-18 audio or video cassette, wire, film, electronic storage device, or  
1-19 other medium now existing or later developed; or

1-20 (B) a copy or reproduction that wholly or partly  
1-21 duplicates the original.

1-22 SECTION 2. Section 641.052, Business & Commerce Code, is  
1-23 amended to read as follows:

1-24 Sec. 641.052. UNAUTHORIZED RECORDING OF LIVE PERFORMANCE.

1-25 (a) In this section:

1-26 (1) "Artist" means a person who contracts to perform  
1-27 or entertain at a live entertainment event.

1-28 (2) "Live entertainment event" means an event that  
1-29 occurs on a specific date and at which:

1-30 (A) an individual or a group of individuals,  
1-31 physically present at the venue, performs for the purpose of  
1-32 entertaining a person who is present at the event;

1-33 (B) a traveling circus or animal show performs  
1-34 for the purpose of entertaining a person who is present at the  
1-35 event; or

1-36 (C) a historical, museum-quality artifact is on  
1-37 display at an exhibition.

1-38 (3) "Live performance" means a recitation, rendering,  
1-39 or playing of a series, in an audible sequence, of:

1-40 (A) images;

1-41 (B) musical, spoken, or other sounds; or

1-42 (C) a combination of images and sounds.

1-43 (4) "Promoter" means an individual contracted by an  
1-44 artist to promote, organize, coordinate, operate, and manage a live  
1-45 entertainment event. The term includes services related to:

1-46 (A) the provision of staff for the live  
1-47 entertainment event; or

1-48 (B) the scheduling and promotion of an artist  
1-49 performing or entertaining at the live entertainment event.

1-50 (b) A person commits an offense if the person, with the  
1-51 knowledge that a live performance has been recorded or fixed  
1-52 without the consent of the owner:

1-53 (1) for commercial advantage or private financial  
1-54 gain, advertises, offers for sale, sells, rents, or transports,  
1-55 causes the sale, resale, rental, or transportation of, or possesses  
1-56 for one or more of these purposes a recording containing sounds of  
1-57 the live performance; or

1-58 (2) with the intent to sell for commercial advantage  
1-59 or private financial gain, records or fixes the live performance,  
1-60 or causes the live performance to be recorded or fixed on a  
1-61 recording.

1-62 (c) ~~(b)~~ An offense under this section is punishable by:

1-63 (1) imprisonment for a term of not more than five  
1-64 years, a fine not to exceed \$250,000, or both, if:

2-1 (A) the offense involves at least 1,000  
2-2 unauthorized recordings embodying sound or at least 65 unauthorized  
2-3 audiovisual recordings during a 180-day period; or

2-4 (B) the defendant has been previously convicted  
2-5 under this section;

2-6 (2) imprisonment for a term of not more than two years,  
2-7 a fine not to exceed \$250,000, or both, if the offense involves more  
2-8 than 100 but fewer than 1,000 unauthorized recordings embodying  
2-9 sound or more than seven but fewer than 65 unauthorized audiovisual  
2-10 recordings during a 180-day period; or

2-11 (3) confinement in the county jail for a term of not  
2-12 more than one year, a fine not to exceed \$25,000, or both, if the  
2-13 offense is not otherwise punishable under Subdivision (1) or (2).

2-14 (d) A promoter and an artist shall, regarding a contract for  
2-15 the artist's performance at a live entertainment event:

2-16 (1) comply with the terms of the contract regarding  
2-17 the distribution of recording revenue or event proceeds between the  
2-18 promoter and the artist; and

2-19 (2) agree to and secure permission for the recording  
2-20 of the live entertainment event in writing before the event is  
2-21 recorded.

2-22 (e) [~~e~~] In the absence of a written agreement or law to  
2-23 the contrary, the performer or performers of a live performance are  
2-24 presumed to own the rights to record or fix those sounds.

2-25 (f) [~~d~~] For purposes of this section, a person authorized  
2-26 to maintain custody and control over business records that reflect  
2-27 whether the owner of a live performance consented to having the live  
2-28 performance recorded or fixed is a proper witness in a proceeding  
2-29 regarding the issue of consent. A witness called under this  
2-30 subsection is subject to the rules of evidence relating to the  
2-31 competency of a witness to testify and the relevance and  
2-32 admissibility of the testimony offered.

2-33 SECTION 3. Section 641.001(2), Business & Commerce Code, is  
2-34 repealed.

2-35 SECTION 4. The change in law made by this Act applies only  
2-36 to an offense committed on or after the effective date of this Act.  
2-37 An offense committed before the effective date of this Act is  
2-38 governed by the law in effect at the time the offense was committed,  
2-39 and the former law is continued in effect for that purpose. For  
2-40 purposes of this section, an offense was committed before the  
2-41 effective date of this Act if any element of the offense occurred  
2-42 before that date.

2-43 SECTION 5. This Act takes effect September 1, 2011.

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