

By: Janek

S.B. No. 846

A BILL TO BE ENTITLED

AN ACT

relating to distribution of recordings on consignment.

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

SECTION 1. Section 2101.002, Occupations Code, is amended by amending Subdivision (3) and adding Subdivisions (6) and (7) to read as follows:

(3) "Artist" means the creator of a work of art or a sound recording or, if the creator is dead, the creator's estate.

(6) "Recording distributor" means a person who acquires a sound recording and sells the sound recording to another person for use or resale.

(7) "Sound recording" means a tangible medium on which music or other sounds are recorded or otherwise stored, including a phonograph record, disc, tape, cassette, or other medium now existing or developed later on which music or other sounds are or can be recorded or otherwise stored or a copy or reproduction that duplicates in whole or in part the original. The term does not include a medium on which the primary recorded information is information other than music or other sound, such as a motion picture or computer program, and that contains recorded sound as an integrated part of the primary recorded information.

SECTION 2. Chapter 2101, Occupations Code, is amended by adding Section 2101.004 to read as follows:

Sec. 2101.004. CONSIGNED SOUND RECORDINGS EXEMPT FROM

1 CERTAIN LIENS OR CLAIMS. (a) Notwithstanding any provision of the
2 Business & Commerce Code, a sound recording delivered by the artist
3 who produced the music or other sound on the recording to a
4 recording distributor for sale and the proceeds from the recording
5 distributor's sale of the sound recording are not subject to a
6 claim, lien, or security interest of a creditor of the recording
7 distributor.

8 (b) Except as provided by Subsection (c), this section
9 applies to the proceeds of a sale of a sound recording regardless of
10 whether the recording distributor or another person purchased the
11 work.

12 (c) This section does not apply to the proceeds of a sale of
13 a sound recording if the artist delivered the recording to the
14 recording distributor pursuant to a sale for which the artist has
15 been paid in full.

16 SECTION 3. Section 9.102(a)(20), Business & Commerce Code,
17 is amended to read as follows:

18 (20) "Consignment" means a transaction, regardless of
19 its form, in which a person delivers goods to a merchant for the
20 purpose of sale and:

21 (A) the merchant:

22 (i) deals in goods of that kind under a name
23 other than the name of the person making delivery;

24 (ii) is not an auctioneer; and

25 (iii) is not generally known by its
26 creditors to be substantially engaged in selling the goods of
27 others;

1 (B) with respect to each delivery, the aggregate
2 value of the goods is \$1,000 or more at the time of delivery;

3 (C) the goods are not consumer goods immediately
4 before delivery;

5 (D) the transaction does not create a security
6 interest that secures an obligation; and

7 (E) the transaction does not involve delivery of
8 a work of art to an art dealer or delivery of a sound recording to a
9 distributor if [~~, as provided by~~] Chapter 2101, Occupations Code,
10 applies to the delivery.

11 SECTION 4. This Act takes effect immediately if it receives
12 a vote of two-thirds of all the members elected to each house, as
13 provided by Section 39, Article III, Texas Constitution. If this
14 Act does not receive the vote necessary for immediate effect, this
15 Act takes effect September 1, 2005.