

1-1 By: Janek S.B. No. 846  
1-2 (In the Senate - Filed March 1, 2005; March 10, 2005, read  
1-3 first time and referred to Committee on Business and Commerce;  
1-4 April 6, 2005, reported favorably by the following vote: Yeas 9,  
1-5 Nays 0; April 6, 2005, sent to printer.)

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

1-8 relating to distribution of recordings on consignment.

1-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-10 SECTION 1. Section 2101.002, Occupations Code, is amended  
1-11 by amending Subdivision (3) and adding Subdivisions (6) and (7) to  
1-12 read as follows:

1-13 (3) "Artist" means the creator of a work of art or a  
1-14 sound recording or, if the creator is dead, the creator's estate.

1-15 (6) "Recording distributor" means a person who  
1-16 acquires a sound recording and sells the sound recording to another  
1-17 person for use or resale.

1-18 (7) "Sound recording" means a tangible medium on which  
1-19 music or other sounds are recorded or otherwise stored, including a  
1-20 phonograph record, disc, tape, cassette, or other medium now  
1-21 existing or developed later on which music or other sounds are or  
1-22 can be recorded or otherwise stored or a copy or reproduction that  
1-23 duplicates in whole or in part the original. The term does not  
1-24 include a medium on which the primary recorded information is  
1-25 information other than music or other sound, such as a motion  
1-26 picture or computer program, and that contains recorded sound as an  
1-27 integrated part of the primary recorded information.

1-28 SECTION 2. Chapter 2101, Occupations Code, is amended by  
1-29 adding Section 2101.004 to read as follows:

1-30 Sec. 2101.004. CONSIGNED SOUND RECORDINGS EXEMPT FROM  
1-31 CERTAIN LIENS OR CLAIMS. (a) Notwithstanding any provision of the  
1-32 Business & Commerce Code, a sound recording delivered by the artist  
1-33 who produced the music or other sound on the recording to a  
1-34 recording distributor for sale and the proceeds from the recording  
1-35 distributor's sale of the sound recording are not subject to a  
1-36 claim, lien, or security interest of a creditor of the recording  
1-37 distributor.

1-38 (b) Except as provided by Subsection (c), this section  
1-39 applies to the proceeds of a sale of a sound recording regardless of  
1-40 whether the recording distributor or another person purchased the  
1-41 work.

1-42 (c) This section does not apply to the proceeds of a sale of  
1-43 a sound recording if the artist delivered the recording to the  
1-44 recording distributor pursuant to a sale for which the artist has  
1-45 been paid in full.

1-46 SECTION 3. Subdivision (20), Subsection (a), Section 9.102,  
1-47 Business & Commerce Code, is amended to read as follows:

1-48 (20) "Consignment" means a transaction, regardless of  
1-49 its form, in which a person delivers goods to a merchant for the  
1-50 purpose of sale and:

1-51 (A) the merchant:

1-52 (i) deals in goods of that kind under a name  
1-53 other than the name of the person making delivery;

1-54 (ii) is not an auctioneer; and

1-55 (iii) is not generally known by its  
1-56 creditors to be substantially engaged in selling the goods of  
1-57 others;

1-58 (B) with respect to each delivery, the aggregate  
1-59 value of the goods is \$1,000 or more at the time of delivery;

1-60 (C) the goods are not consumer goods immediately  
1-61 before delivery;

1-62 (D) the transaction does not create a security  
1-63 interest that secures an obligation; and

1-64 (E) the transaction does not involve delivery of

2-1 a work of art to an art dealer or delivery of a sound recording to a  
2-2 distributor if[, ~~as provided by~~] Chapter 2101, Occupations Code,  
2-3 applies to the delivery.

2-4 SECTION 4. This Act takes effect immediately if it receives  
2-5 a vote of two-thirds of all the members elected to each house, as  
2-6 provided by Section 39, Article III, Texas Constitution. If this  
2-7 Act does not receive the vote necessary for immediate effect, this  
2-8 Act takes effect September 1, 2005.

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