

**SUBJECT:** Protecting sound recordings on consignment with distributor from seizure

**COMMITTEE:** Business and Industry — committee substitute recommended

**VOTE:** 8 ayes — Giddings, Elkins, Bailey, Martinez, Solomons, Taylor, Vo, Zedler

0 nays

1 absent — Bohac

**WITNESSES:** For — Cindi C. Lazzari; Wendy Morgan

Against — None

**BACKGROUND:** Occupations Code, subtitle C, sec. 2101.003 establishes, notwithstanding any provision of the Business and Commerce Code, that a work of art delivered to an art dealer for exhibition or sale and the proceeds from the dealer's sale of the work of art are not subject to a claim, lien, or security interest of a creditor of the dealer. Sec. 2101.002 defines "art" to mean a commonly recognized art form, including a painting, sculpture, drawing, work of graphic art, pottery, weaving, batik, macramé, or quilt.

**DIGEST:** CSHB 611 would protect a sound recording delivered to a distributor for sale from a claim, lien, or security interest of a creditor of the distributor under certain circumstances.

Under the bill, notwithstanding any provision of the Business and Commerce Code, if a sound recording were delivered by an artist who produced the music to a recording distributor for sale, neither the recording nor the proceeds from the sale would be subject to a claim, lien, or security interest of a creditor of the recording distributor. This provision would apply to proceeds of a sale of a sound recording whether the recording distributor or another person purchased the recording. It would not apply to sale proceeds of a sound recording delivered to a recording distributor for which the artist had been paid in full.

A "sound recording" would be a tangible medium on which music or other sounds were recorded or stored, including a phonograph record, disc, tape,

cassette, or other medium. It would include a medium existing now or developed later on which music or other sounds were or could be recorded or stored. It also would include a copy or reproduction that duplicated, in whole or in part, the original. The term would not include a medium on which the primary recorded information was information other than music, such as a motion picture or computer program that contained recorded sound as an integrated part of the primary information.

CSHB 611 would amend Occupations Code, ch. 2101, which governs consignment of art works, to include a sound recording of a musical performance in the definition of "art." The bill would define "recording distributor" to mean a person who acquired a sound recording and sold it to another person for use or resale. The bill would alter the definition of "consignment" in the Uniform Commercial Code (UCC) to exclude delivery of a sound recording to a distributor if the delivery were governed by ch. 2101 of the Occupations Code.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005.

**SUPPORTERS  
SAY:**

HB 611 would protect recording artists' products and proceeds from creditors' claims, liens, or secured interests against recording distributors or retailers who sell records on consignment. Art dealers frequently acquire works of art under a consignment arrangement in which the dealer does not purchase the work from the artist but is authorized to sell it on the artist's behalf. Under this arrangement, the art dealer is obligated to remit some portion of the sale proceeds to the artist. Current law recognizes these consignment arrangements and provides that art work is not subject to a dealer's creditors. Although Occupations Code, subtitle C is headed "Arts and Music," the definition of "art" within that subtitle does not include music or sound recording as art forms.

HB 611 would insert "sound recording of a musical performance" in the definition of "art" as it relates to consignment and would include a provision exempting consigned sound recordings from creditors' claims or liens. The bill also would conform the definition in the UCC provisions on consignment of art to include delivery of a sound recording to a distributor.

The bill would not supersede any existing contractual or written agreements between or among recording artists and distributors or retailers. The bill should not harm creditors because they still could pursue collateral that was rightfully owned. CSHB 611 would protect recording artists and the Texas music industry, a major stimulus to the state's economy.

OPPONENTS  
SAY:

No apparent opposition

NOTES:

The committee substitute would differ from the introduced version by amending the definition of "art" found in Occupations Code, sec. 2101.002(1) to include a sound recording of a musical performance and deleting language that would amend the definition of "artist."

The companion bill, SB 846 by Jane k, passed the Senate on the Local and Uncontested Calendar on April 14 and was reported favorably, as substituted, by the House Business and Industry Committee on May 3, making it eligible to be considered in lieu of HB 611.