

## **BILL ANALYSIS**

C.S.S.B. 855  
By: Hughes  
Business & Industry  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Other states have implemented laws protecting consumers and legitimate businesses against websites and online services engaged in the unauthorized online distribution of commercial music and movies. Illicit sites prey on unsuspecting consumers by selling unauthorized content, stealing personal data and payment information, and infecting computers with destructive malware. Moreover, an increased online presence of consumers due to the COVID-19 pandemic has exacerbated this risk. The unauthorized sale or distribution of products undermines the legitimate operations of Texas businesses, both online and in person. This activity may threaten their survival and their many economic and workforce contributions. These illicit sites not only generate no money for the creators of the content they sell, but they also displace legitimate sales of the work.

Accordingly, there are calls to help ensure a legitimate marketplace to protect the livelihood of Texas artists, as well as their economic and cultural contributions to the state. C.S.S.B. 855 seeks to require an applicable owner or operator of a website or online service to clearly and conspicuously disclose on the website or online service in a location that is readily accessible to a consumer the owner or operator's true and correct name, physical address, telephone number, and email address. The bill also provides for certain enforcement actions for a violation of its provisions.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.S.B. 855 amends the Business & Commerce Code to require an owner or operator of a website or online service that deals in substantial part in the electronic dissemination of third-party commercial recordings or audiovisual works, directly or indirectly, and that electronically disseminates those recordings or works to consumers in Texas to clearly and conspicuously disclose on the website or online service in a location that is readily accessible to a consumer using or visiting the website or online service the owner or operator's true and correct:

- name;
- physical address;
- telephone number; and
- email address.

This requirement applies regardless of whether another person has previously electronically disseminated the same recording or audiovisual work.

C.S.S.B. 855 provides that a location is considered readily accessible on a website or online service if the location is, as follows:

- a landing or home web page or screen;
- an "about" or "about us" web page or screen;
- a "contact" or "contact us" web page or screen;
- an informational web page or screen; or
- another place on the website or online service commonly used to display information identifying the owner or operator of the website or online service.

C.S.S.B. 855 establishes that an owner, assignee, authorized agent, or exclusive licensee of a commercial recording or audiovisual work electronically disseminated by a website or online service in violation of the bill's provisions may bring a private cause of action against a person who violates or threatens to violate the bill's provisions to obtain a declaratory judgment and permanent or temporary injunctive relief. The bill provides the following:

- before filing an action, the aggrieved party must provide notice to the person alleged to be in violation that states:
  - the person may be in violation of the bill's provisions; and
  - that failure to cure the violation before the 14th day after the date of receiving the notice may result in an action being filed against the person under the bill's provisions;
- after the 14th day after the date the aggrieved party provides notice, the aggrieved party may bring an action in a court of competent jurisdiction;
- a court, on motion of the party initiating the action, may make appropriate orders to compel compliance with the bill's provisions; and
- the prevailing party is entitled to recover necessary expenses incurred in an action, including reasonable attorney's fees.

C.S.S.B. 855 establishes that a violation of its provisions is a false, misleading, or deceptive act or practice and that the relief provided under the bill's provisions is in addition to any remedy provided under other federal or state law, including the Deceptive Trade Practices-Consumer Protection Act.

C.S.S.B. 855 establishes that, for purposes of the bill's provisions, a recording or audiovisual work is considered to be a commercial recording or work if the owner, assignee, authorized agent, or licensee of the recording or work disseminates or intends to disseminate the recording or work for sale, rental, or performance or exhibition to the public, including under license, regardless of whether the person who disseminates the recording or work seeks commercial advantage or private financial gain from the dissemination. The bill's provisions do not apply to a website operated by a radio or television station licensed by the FCC.

C.S.S.B. 855 expressly does not impose financial liability on providers of an interactive computer service, communications service, commercial mobile service, or information service, including an Internet access service provider, an advertising network or exchange, a domain name registration provider, and a hosting service provider, to the extent that the providers provide the transmission, storage, or caching of electronic communications or messages of others or provide another related telecommunications service, a commercial mobile radio service, or an information service, for use by another person that violates the bill's provisions.

C.S.S.B. 855 defines "electronic dissemination," "recording or audiovisual work," and "website" for the purposes of its provisions.

**EFFECTIVE DATE**

January 1, 2022.

**COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE**

While C.S.S.B. 855 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

The substitute includes a provision, which was not contained in the engrossed, establishing that the bill's provisions do not apply to a website operated by a radio or television station licensed by the FCC.

With respect to the provision contained in the engrossed establishing that the bill's provisions expressly do not impose liability on certain providers, the substitute clarifies that the liability is financial liability.