

BILL ANALYSIS

Senate Research Center

S.B. 855
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In the online world, criminals have the luxury of creating e-commerce storefronts quickly, cost-effectively, and anonymously. Many use proven marketing techniques to attract potential customers, such as through paid search ads, search engine optimization, email and social media campaigns, branded domain names, etc. As a result, consumers are frequently duped into doing business with fraudulent websites and services that both leave consumers without recourse and displace legitimate sales.

If a site is dealing in substantial part in disseminating covered works such as music and videos, they are engaging in commercial activity themselves and should be subject to the same rules as are applicable to physical goods. Texas consumers deserve to know who they are doing business with, and, if these commercial sites avail themselves of the Texas marketplace, they should expect to comply with the same labeling obligations required of brick and mortar businesses.

In addition to hawking unauthorized content, these sites may steal personal and payment information and load computers with destructive malware. The unauthorized sale or distribution of these products also severely undermines the legitimate operations of Texas businesses and creators, both online and in person.

This bill updates the requirements of Section 641.05 (Improper Labeling), Business & Commerce Code, enacted in 2007 to protect Texas consumers from online fraud. The existing improper labeling statute merely requires physical distributors of commercial music and movie products to include the true name and address of the manufacturer on the product in a location visible to consumers.

The proposed bill adds to this by providing for a site to provide ordinary identifying information on their website for the benefit of Texas consumers. If covered sites are missing that information, S.B. 855 provides for notice to be provided to the site for lack of compliance, and then both an opportunity to cure and an opportunity to be heard.

S.B. 855 protects Texans from the bad guys online just as the long-standing improper labeling statute does for physical goods. Scams are scams, whether physical or digital. This bill simply updates the Texas improper labeling statute to add this further protection.

This legislation would also greatly benefit Texas creators, including the many musicians throughout the state. In addition to generating no money for the state, these illicit sites generate no money for the creators of the content they peddle and displace legitimate sales of their work. Local artists have already been significantly impacted this past year by the inability to tour and perform live. This legislation will help ensure a legitimate marketplace to protect the livelihood of these Texas artists, as well as their economic and cultural contributions to the state.

As proposed, S.B. 855 amends current law relating to the electronic dissemination of commercial recordings or audiovisual works.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 14, Business & Commerce Code, by adding Chapter 642, as follows:

CHAPTER 642. ELECTRONIC DISSEMINATION OF COMMERCIAL RECORDINGS OR AUDIOVISUAL WORKS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 642.001. **DEFINITIONS.** Defines "electronic dissemination," "recording or audiovisual work," and "website."

Sec. 642.002. **APPLICABILITY.** Provides that this chapter does not impose liability on providers of an interactive computer service, communications service, commercial mobile service, or information service, including, but not limited to, an Internet access service provider, advertising network or exchange, domain name registration provider, and a hosting service provider, if they provide the transmission, storage, or caching of electronic communications or messages of others or provide another related telecommunications service, commercial mobile radio service, or information service, for use of such services by another person in violation of this section.

Sec. 642.003. **COMMERCIAL RECORDING OR AUDIOVISUAL WORK.** Provides that, for purposes of this chapter, a recording or audiovisual work is considered to be a commercial recording or audiovisual 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.

SUBCHAPTER B. REQUIRED DISCLOSURES

Sec. 642.051. **DISCLOSURE OF CERTAIN INFORMATION REQUIRED.** (a) Requires that 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 this state 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 e-mail address.

(b) Provides that, for purposes of this section, a location is considered readily accessible on an online service website if the location is:

- (1) a landing or home web page or screen;
- (2) an "about" or "about us" web page or screen;
- (3) a "contact" or "contact us" web page or screen;
- (4) an informational web page or screen; or
- (5) 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) Provides that Subsection (a) applies regardless of whether another person has previously electronically disseminated the same recording or audiovisual work.

SUBCHAPTER C. ENFORCEMENT

Sec. 642.101. DECLARATORY JUDGEMENT OR INJUNCTIVE RELIEF. (a) Authorizes 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 this chapter to bring a private cause of action against a person who violates or threatens to violate this chapter to obtain a declaratory judgment, and permanent or temporary injunctive relief.

(b) Requires the aggrieved party, before filing an action under this section, to provide notice to the person alleged to be in violation of this chapter that states the person may be in violation of this chapter, 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 this section.

(c) Authorizes the aggrieved party, after the 14th day after the date the aggrieved party provides notice under Subsection (b), to bring an action under this section in a court of competent jurisdiction.

(d) Authorizes the court, upon motion of the party instituting the action, to make appropriate orders to compel compliance with this chapter.

(e) Entitles the prevailing party to recover necessary expenses incurred in an action under this section, including reasonable attorney's fees.

Sec. 642.102. DECEPTIVE TRADE PRACTICE; REMEDIES. (a) Provides that a violation of this chapter is a false, misleading, or deceptive act or practice as defined by Section 17.46(b) (relating to the definition of "false, misleading, or deceptive acts or practices").

(b) Provides that the relief provided under this subchapter for a violation of this chapter is in addition to any remedy provided under other federal or state law, including Subchapter E (Deceptive Trade Practices and Consumer Protection), Chapter 17 (Deceptive Trade Practices).

SECTION 2. Effective date: January 1, 2022.