AMENDED

March 10, 2022

**H. 3859**

Introduced by Reps. Jordan, Sandifer, Kirby and Cogswell

S. Printed 3/10/22--H.

Read the first time February 9, 2021.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 77 TO TITLE 39 SO AS TO PROVIDE DEFINITIONS, TO PROVIDE THAT A PERSON WHO OWNS OR OPERATES A WEBSITE DEALING IN ELECTRONIC DISSEMINATION OF THIRD‑PARTY COMMERCIAL RECORDINGS OR AUDIOVISUAL WORKS SHALL MAKE CERTAIN DISCLOSURES, TO PROVIDE FOR A PRIVATE CAUSE OF ACTION, TO PROVIDE THAT THIS CHAPTER IS SUPPLEMENTAL TO STATE AND FEDERAL CRIMINAL AND CIVIL LAW, AND TO PROVIDE THAT VIOLATIONS CONSTITUTE AN UNFAIR TRADE PRACTICE.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 39 of the 1976 Code is amended by adding:

“CHAPTER 77

Electronic Dissemination

of Commercial Recordings or Audiovisual Works

Section 39‑77‑20. As used in this chapter:

(1) ‘Audiovisual works’ means works that consist of a series of related images which are intrinsically intended to be shown by the use of machines or devices such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material objects, such as films or tapes, in which the works are embodied.

(2) ‘Commercial recording or audiovisual work’ means a recording or audiovisual work whose owner, assignee, authorized agent, or licensee has disseminated or intends to disseminate such recording or audiovisual work for sale, for rental, or for performance or exhibition to the public, including under license, but does not include an excerpt consisting of less than substantially all of a recording or audiovisual work. A recording or audiovisual work may be commercial regardless of whether a person who electronically disseminates it seeks commercial advantage or private financial gain from the dissemination.

(3) ‘Electronic dissemination’ means initiating a transmission of, making available, or otherwise offering a commercial recording or audiovisual work for distribution, display, or performance through the Internet or other digital network, regardless of whether another person has previously electronically disseminated the same commercial recording or audiovisual work.

(4)  ‘Website’ means a set of related web pages served from a single web domain. The term does not include a home page or channel page for the user account of a person who is not the owner or operator of the website upon which such user home page or channel page appears.

Section 39‑77‑30. (A) A person who owns or operates a website or online service dealing in substantial part in the electronic dissemination of third‑party commercial recordings or audiovisual works, directly or indirectly, and who electronically disseminates the works to consumers in this State shall disclose clearly and conspicuously his correct name, physical address, telephone number, and e‑mail address on his website or online service in a location readily accessible to a consumer using or visiting the website or online service.

(B) The following locations are considered to be readily accessible for purposes of subsection (A):

(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 information web page or screen; or

(5) another place on the website or online service commonly used to display identifying information to consumers.

Section 39‑77‑40. (A) 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 may bring a private cause of action to obtain a declaratory judgment that an act or practice violates this chapter and obtain an injunction against any person who knowingly has violated, is violating, or is otherwise likely to violate this chapter. As a condition precedent to filing a civil action under this chapter, the aggrieved party shall make reasonable efforts to place an individual alleged to be in violation of this chapter on notice that the individual may be in violation of this chapter and that failure to cure within fourteen days may result in a civil action filed in a court of competent jurisdiction.

(B) Upon motion of the party instituting the action, the court may make appropriate orders to compel compliance with this chapter.

(C) The prevailing party in a cause under this chapter is entitled to recover necessary expenses and reasonable attorney’s fees.

Section 39‑77‑50. This chapter is supplemental to those provisions of state and federal criminal and civil law which impose prohibitions or provide penalties, sanctions, or remedies against the same conduct prohibited by this chapter. This chapter does not:

(1) bar any cause of action or preclude the imposition of sanctions or penalties that would otherwise be available under state or federal law; or

(2) 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, or 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 chapter.

Section 39‑77‑60. (A) A violation of this chapter constitutes an unfair trade practice pursuant to Section 39‑5‑20.

(B) A public or private right or remedy prescribed by Chapter 5 may be used to enforce this chapter.”

SECTION 2. This act takes effect upon approval by the Governor.

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