COMMITTEE REPORT

March 2, 2021

**S. 505**

Introduced by Senators Talley, Alexander and Gambrell

S. Printed 3/2/21--S.

Read the first time January 28, 2021.

**THE COMMITTEE ON LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (S. 505) 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, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

THOMAS C. ALEXANDER for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**State Expenditure**

This bill creates a new chapter of law relating to the electronic dissemination of commercial recordings or audiovisual works. The bill provides definitions and requires a website or online service owner or operator substantially dealing in the direct or indirect electronic dissemination of third-party commercial recordings or audiovisual works to consumers to disclose his name, physical address, telephone number, and e-mail address on his website or online service in a conspicuous location. Failure to provide this information in the prescribed manner, if done with intent, constitutes an unfair trade practice and enables the work’s owner, assignee, authorized agent, or exclusive licensee to bring a private cause of action to obtain a declaratory judgment against the website or online service owner or operator.

An aggrieved party must make the alleged violator aware of his complaint and allow 14 days for the violator to cure the matter. Should the alleged violator fail to cure within that time frame, the aggrieved party may file a civil action in a court of competent jurisdiction. The court may then make orders to compel compliance of the alleged violator. The prevailing party in such cases is entitled to recover necessary expenses and reasonable attorney’s fees. These provisions are supplemental to existing state and federal criminal and civil law imposing prohibitions or providing penalties, sanctions, or remedies against such conduct. The bill does not impose liability on interactive computer, communications, commercial mobile, or information services providers involved with the transmission, storage, or caching of electronic communications or messages of others when those services are used by another person in violation of the bill’s provisions.

**Judicial Department.** This bill defines terms related to the electronic dissemination of commercial recordings or visual works and creates a civil cause of action and its required procedure for cases where a website or online service owner or operator fails to provide the required information when disseminating a third-party commercial recording or audiovisual work to consumers. The department reports that implementation of the bill may increase caseloads in common pleas and magistrate and municipal courts; however, as the bill creates a new cause of action, there is no data with which to estimate the number of filings, hearings, or trials that may result. The department expects to manage any increase in costs due to increased caseloads using existing general fund resources.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**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.

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) ‘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.

(2) ‘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.

(3) ‘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.

‑‑‑‑XX‑‑‑‑