

1-1 By: Hughes S.B. No. 855  
 1-2 (In the Senate - Filed February 26, 2021; March 11, 2021,  
 1-3 read first time and referred to Committee on State Affairs;  
 1-4 April 9, 2021, reported adversely, with favorable Committee  
 1-5 Substitute by the following vote: Yeas 9, Nays 0; April 9, 2021,  
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 855 By: Nelson

1-19 A BILL TO BE ENTITLED  
 1-20 AN ACT

1-21 relating to the electronic dissemination of commercial recordings  
 1-22 or audiovisual works.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Title 14, Business & Commerce Code, is amended by  
 1-25 adding Chapter 642 to read as follows:

1-26 CHAPTER 642. ELECTRONIC DISSEMINATION OF COMMERCIAL RECORDINGS OR  
 1-27 AUDIOVISUAL WORKS

1-28 SUBCHAPTER A. GENERAL PROVISIONS

1-29 Sec. 642.001. DEFINITIONS. In this chapter:

1-30 (1) "Electronic dissemination" means initiating a  
 1-31 transmission of, making available, or otherwise offering a  
 1-32 recording or audiovisual work for distribution, display, or  
 1-33 performance through the Internet or other digital network.

1-34 (2) "Recording or audiovisual work" means a recording  
 1-35 or audiovisual work that consists of substantially all of the  
 1-36 recording or work. The term does not include a recording or  
 1-37 audiovisual work that is a short extract from the recording or work.

1-38 (3) "Website" means a set of related web pages served  
 1-39 from a single web domain. The term does not include a home page or  
 1-40 channel page for the user account of a person who is not the owner or  
 1-41 operator of the website on which the user home page or channel page  
 1-42 appears.

1-43 Sec. 642.002. COMMERCIAL RECORDING OR AUDIOVISUAL WORK.

1-44 For purposes of this chapter, a recording or audiovisual work is  
 1-45 considered to be a commercial recording or audiovisual work if the  
 1-46 owner, assignee, authorized agent, or licensee of the recording or  
 1-47 work disseminates or intends to disseminate the recording or work  
 1-48 for sale, rental, or performance or exhibition to the public,  
 1-49 including under license, regardless of whether the person who  
 1-50 disseminates the recording or work seeks commercial advantage or  
 1-51 private financial gain from the dissemination.

1-52 Sec. 642.003. NO LIABILITY FOR CERTAIN PROVIDERS. This

1-53 chapter does not impose liability on providers of an interactive  
 1-54 computer service, communications service, commercial mobile  
 1-55 service, or information service, including an Internet access  
 1-56 service provider, an advertising network or exchange, a domain name  
 1-57 registration provider, and a hosting service provider, if the  
 1-58 providers provide the transmission, storage, or caching of  
 1-59 electronic communications or messages of others or provide another  
 1-60 related telecommunications service, a commercial mobile radio

2-1 service, or an information service, for use by another person that  
2-2 violates this chapter.

2-3 SUBCHAPTER B. REQUIRED DISCLOSURES

2-4 Sec. 642.051. DISCLOSURE OF CERTAIN INFORMATION REQUIRED.

2-5 (a) An owner or operator of a website or online service that deals  
2-6 in substantial part in the electronic dissemination of third-party  
2-7 commercial recordings or audiovisual works, directly or  
2-8 indirectly, and that electronically disseminates those recordings  
2-9 or works to consumers in this state shall clearly and conspicuously  
2-10 disclose on the website or online service in a location that is  
2-11 readily accessible to a consumer using or visiting the website or  
2-12 online service, the owner or operator's true and correct:

- 2-13 (1) name;
- 2-14 (2) physical address;
- 2-15 (3) telephone number; and
- 2-16 (4) e-mail address.

2-17 (b) For purposes of this section, a location is considered  
2-18 readily accessible on a website or online service if the location  
2-19 is:

- 2-20 (1) a landing or home web page or screen;
- 2-21 (2) an "about" or "about us" web page or screen;
- 2-22 (3) a "contact" or "contact us" web page or screen;
- 2-23 (4) an informational web page or screen; or
- 2-24 (5) another place on the website or online service  
2-25 commonly used to display information identifying the owner or  
2-26 operator of the website or online service.

2-27 (c) Subsection (a) applies regardless of whether another  
2-28 person has previously electronically disseminated the same  
2-29 recording or audiovisual work.

2-30 SUBCHAPTER C. ENFORCEMENT

2-31 Sec. 642.101. DECLARATORY JUDGMENT OR INJUNCTIVE RELIEF.

2-32 (a) An owner, assignee, authorized agent, or exclusive licensee of  
2-33 a commercial recording or audiovisual work electronically  
2-34 disseminated by a website or online service in violation of this  
2-35 chapter may bring a private cause of action against a person who  
2-36 violates or threatens to violate this chapter to obtain:

- 2-37 (1) a declaratory judgment; and
- 2-38 (2) permanent or temporary injunctive relief.

2-39 (b) Before filing an action under this section, the  
2-40 aggrieved party must provide notice to the person alleged to be in  
2-41 violation of this chapter that states:

- 2-42 (1) the person may be in violation of this chapter; and
- 2-43 (2) that failure to cure the violation before the 14th  
2-44 day after the date of receiving the notice may result in an action  
2-45 being filed against the person under this section.

2-46 (c) After the 14th day after the date the aggrieved party  
2-47 provides notice under Subsection (b), the aggrieved party may bring  
2-48 an action under this section in a court of competent jurisdiction.

2-49 (d) On motion of the party initiating the action, the court  
2-50 may make appropriate orders to compel compliance with this chapter.

2-51 (e) The prevailing party is entitled to recover necessary  
2-52 expenses incurred in an action under this section, including  
2-53 reasonable attorney's fees.

2-54 Sec. 642.102. DECEPTIVE TRADE PRACTICE; REMEDIES. (a) A  
2-55 violation of this chapter is a false, misleading, or deceptive act  
2-56 or practice as defined by Section 17.46(b).

2-57 (b) The relief provided under this subchapter for a  
2-58 violation of this chapter is in addition to any remedy provided  
2-59 under other federal or state law, including Subchapter E, Chapter  
2-60 17.

2-61 SECTION 2. This Act takes effect January 1, 2022.

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