

CHAPTER 52

(SB 272)

AN ACT relating to sound that is recorded or performed live.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 5 of this Act:

- (1) *"Commercial recording or audiovisual work" means a recording or work whose owner, assignee, authorized agent, or licensee has disseminated or intends to disseminate the recording for sale, rental, performance, or exhibition to the public, including under license, but does not include an excerpt consisting of less than substantially all of a work or recording. A recording or 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; and*
- (3) *"Web site" 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 Web site upon which the user home page or channel page appears.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

- (1) *A person who owns or operates a Web site or online service dealing in substantial part in the electronic dissemination of third-party commercial recordings or audiovisual work, directly or indirectly, and who electronically disseminates such recordings or audiovisual works to consumers in this state shall clearly and conspicuously disclose his or her true and correct name, physical address, telephone number, and e-mail address on his or her Web site or online service in a location readily accessible to a consumer using or visiting the Web site or online service.*
- (2) *The following locations are deemed readily accessible for purposes of this section:*
 - (a) *A landing or home Web page or screen;*
 - (b) *An "about" or "about us" Web page or screen;*
 - (c) *A "contact" or "contact us" Web page or screen;*
 - (d) *An information Web page or screen; or*
 - (e) *Another place on the Web site or online service commonly used to display identifying information to consumers.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

- (1) *An owner, assignee, authorized agent, or exclusive licensee of a commercial recording or audiovisual work electronically disseminated by a Web site or online service in violation of Section 2 of this Act may bring a private cause of action to obtain a declaratory judgment that an act or practice violates Section 2 of this Act and obtain an injunction against any person who knowingly has violated, is violating, or is otherwise likely to violate that section. As a condition precedent to filing a civil action under Sections 1 to 5 of this Act, the aggrieved party must make reasonable efforts to place an individual alleged to be in violation of Section 2 of this Act on notice of the alleged violation and that failure to cure within fourteen (14) business days may result in a civil action filed in a court of competent jurisdiction.*
- (2) *Upon motion of the party instituting the action, the court may make appropriate orders to compel compliance with Section 2 of this Act.*
- (3) *The prevailing party in a cause under subsection (1) of this section is entitled to recover necessary expenses and reasonable attorney's fees.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

- (1) *The remedies and penalties provided in Section 3 of this Act are 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 Sections 1 to 5 of this Act.*
- (2) *Sections 1 to 5 of this Act shall not be construed to:*
 - (a) *Bar any cause of action or preclude the imposition of sanctions or penalties that would otherwise be available under state or federal law; or*
 - (b) *Impose financial liability on providers of an interactive computer service, communications service, commercial or mobile service, or information service, including but not limited to an Internet provider, advertising network or exchange, 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, commercial mobile radio service, or information service, for use of such services by another person in violation of Sections 1 to 5 of this Act.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

- (1) *A violation of Section 2 of this Act shall be deemed an unfair, false, misleading, or deceptive act or practice in the conduct of trade or commerce in violation of KRS 367.170.*
- (2) *A public or private right or remedy prescribed by KRS 367.110 to 367.300 may be used to enforce Sections 1 to 5 of this Act.*
- (3) *All of the remedies, powers, and duties delegated to the Attorney General by KRS 367.190 to 367.300, and the penalties provided in KRS 367.990, relating to acts and practices violating KRS 367.170, shall apply with equal force and effect to acts and practices declared unlawful by Sections 1 to 5 of this Act.*
- (4) *A person who violates Section 2 of this Act is liable to this Commonwealth for a civil penalty of not more than two thousand dollars (\$2,000) per violation. Each twenty-four (24) hour period for which a person does not comply with Section 2 of this Act shall constitute a separate violation.*
- (5) *Nothing in Sections 1 to 5 of this Act shall be construed to limit or restrict the exercise of powers or the performance of the duties of the Attorney General authorized under any other provision of law.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 365 IS CREATED TO READ AS FOLLOWS:

As used in Sections 6 to 8 of this Act:

- (1) *"Performing group" means a vocal or instrumental group of one (1) or more members that intends to advertise or perform under the name of a recording group or a name confusingly similar to a recording group;*
- (2) *"Recording group" means a vocal or instrumental group of one (1) or more members, at least one (1) of whose members previously released a commercial sound recording under that group's name and the legal rights to which have not been abandoned; and*
- (3) *"Sound recording" means a work that results from the fixation of a series of musical, spoken, or other sounds, regardless of the nature of the material object, such as a phonograph, disc, tape, wire, digital storage, or other medium, in which sounds are embodied.*

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 365 IS CREATED TO READ AS FOLLOWS:

- (1) *A person shall not advertise or conduct a live musical performance or production in this Commonwealth through the use of a false, deceptive, or misleading affiliation, connection, or association between a performing group and a recording group.*
- (2) *This section shall not apply if:*
 - (a) *The performing group is the authorized registrant and owner of a federal service mark or trademark for the recording group which is:*
 1. *Registered in the United States; or*
 2. *A licensee of or otherwise authorized to use the mark by such registrant and owner;*

- (b) *At least one (1) member of the performing group was a member of the recording group and that member has a legal right to use or operate under the name of the recording group without having abandoned the name or affiliation with the recording group;*
- (c) *The live musical performance or production is identified in all advertising and promotion as a salute or tribute and the name of the performing group is not confusingly similar to a recording group; or*
- (d) *The performance or production is expressly authorized by the recording group.*

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 365 IS CREATED TO READ AS FOLLOWS:

- (1) *The Attorney General or county attorney may bring a civil action for temporary or permanent injunctive relief against a person, if the Attorney General or county attorney has reason to believe a person is advertising, conducting, or intends to advertise or conduct a live musical performance or production in violation of Section 7 of this Act.*
- (2) *A person who violates Section 7 of this Act shall be assessed a civil penalty of not less than two thousand dollars (\$2,000) or more than fifteen thousand dollars (\$15,000) per violation. Each performance or production in violation of Section 7 of this Act constitutes a separate violation.*
- (3) *The civil penalty provided by subsection (2) of this section is in addition to injunctive relief and any other remedy that may be available.*
- (4) *Any party, or assignee, authorized agent, or licensee of that party, who is injured as a result of a person's violation of Section 7 of this Act may bring a civil action for compensable damages and equitable relief, including injunctive relief, and for treble damages, reasonable attorney's fees, filing fees, and costs for the injured party.*
- (5) *Each performance or production in violation of Section 7 of this Act constitutes a separate violation.*

➔Section 9. Sections 1 to 8 of this Act may be cited as the Kentucky True Origin of Digital Goods and Truth in Musical Advertising Act.

Signed by Governor March 30, 2022.