

House Bill 508 (AS PASSED HOUSE AND SENATE)

By: Representatives Carpenter of the 4th, Gaines of the 117th, Moore of the 95th, Reeves of the 34th, and Frye of the 118th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to selling
2 and other trade practices, so as to provide protections for commercial recordings, musical
3 performances, and audiovisual works; to prohibit the deceptive practice of musical
4 performance groups advertising and appearing as the recording group without the recording
5 group's permission or denoting that it is a salute or tribute performance; to provide for
6 definitions; to specify violations; to require certain websites or online services to properly
7 identify third-party commercial recordings or audiovisual works; to provide for definitions;
8 to provide for civil and criminal penalties and causes of action; to provide for a short title;
9 to provide for related matters; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to selling and other
13 trade practices, is amended by adding a new Code section to read as follows:

14 "10-1-393.16.

15 (a) As used in this part, the term:

16 (1) 'Performing group' means a vocal or instrumental act consisting of one or more
17 members that intends to advertise or appear under the name of a recording group or a
18 name substantially similar to a recording group.

19 (2) 'Recording group' means a vocal or instrumental act that consists of one or more
20 members of which:

21 (A) At least one has previously released a sound recording commercially under such
22 act's name; and

23 (B) At least one has a legal right to such act's name by virtue of use or operation under
24 such act's name without having abandoned such name or affiliation with such act.

25 (3) 'Service mark' means any word, name, symbol, or device or any combination thereof
26 adopted and used by a person to identify the services of such person and to distinguish
27 such services from the services of others.

28 (4) 'Sound recording' means a work that results from the fixation of a series of musical,
29 spoken, or other sounds, regardless of the nature of the material object, such as a
30 phonograph, disc, tape, wire, digital storage, or other medium in which the sounds are
31 embodied.

32 (b) It shall be unlawful for a person to advertise or conduct a vocal or instrumental
33 performance or production in this state by using any false, deceptive, or misleading
34 affiliation, connection, or association between a performing group and a recording group
35 without the express authorization of the recording group unless:

36 (1) Such person or performing group is the authorized registrant and owner of a service
37 mark for the recording group that is registered in the United States Patent and Trademark
38 Office;

39 (2) At least one member of the performing group was a member of the recording group
40 and such member of the recording group has a legal right to use or operate under the
41 name of the recording group;

42 (3) The performance or production is identified in all advertising and promotion as a
43 salute or tribute and the name of the performing group is not so closely related or similar
44 to the name used by the recording group that it would tend to confuse or mislead the
45 public; or

46 (4) The advertisement does not relate to a live performance or production taking place
47 in, streamed into, or broadcasted in this state.

48 (c) Each advertisement, performance, or production in violation of this Code section shall
49 constitute a separate violation."

50 **SECTION 2.**

51 Said chapter is further amended by adding a new article to read as follows:

52 "ARTICLE 35

53 10-1-930.

54 This article shall be known and may be cited as the Georgia 'True Origin of Digital Goods
55 Act.'

56 10-1-931.

57 As used in this article, the term:

58 (1) 'Commercial recording or audiovisual work' means a recording or audiovisual work:

59 (A) Consisting of substantially all of such recording or audiovisual work; and

60 (B) Whose owner, assignee, authorized agent, or licensee has disseminated or intends
61 to disseminate for sale, for rental, or for performance or exhibition to the public,
62 regardless of whether a commercial advantage or private financial gain is sought or the
63 person disseminating it owns a license of such recording or audiovisual work.

64 (2) 'Electronic dissemination' or 'electronically disseminates' means initiating a
65 transmission of, making available, or otherwise offering a commercial recording or
66 audiovisual work for distribution, display, or performance through the internet or other
67 digital network, regardless of whether such commercial recording or audiovisual work
68 has been previously electronically disseminated by another person.

69 (3) 'Person' means an individual, corporation, business trust, estate, trust, partnership,
70 unincorporated association, or any other legal or commercial entity.

71 (4) 'Third-party commercial recording' means a commercial recording not belonging to
72 the owner of a website or online service that electronically disseminates it.

73 (5) 'Website' means a set of related web pages served from a single web domain. Such
74 term shall not include a home page or channel page for the user account of a person who
75 is not the owner or operator of the website upon which such user home page or channel
76 page appears.

77 10-1-932.

78 (a) A person that owns or operates a website or online service that consists to a substantial
79 extent of the electronic dissemination of third-party commercial recordings or audiovisual
80 works, directly or indirectly, and that electronically disseminates such works to consumers
81 in this state shall clearly and conspicuously disclose its true and correct name, physical
82 address, telephone number, and email address on such website or online service in a
83 location readily accessible to a consumer using or visiting the website or online service.

84 (b) The following locations shall be deemed readily accessible for purposes of this article:

85 (1) A landing or home web page or screen;

86 (2) An 'about' or 'about us' web page or screen;

87 (3) A 'contact' or 'contact us' web page or screen;

88 (4) An information web page or screen; or

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

91 10-1-933.

92 (a) An owner, assignee, authorized agent, or exclusive licensee of a commercial recording
93 or audiovisual work electronically disseminated by a website or online service in violation
94 of this article may bring a private cause of action to obtain a declaratory judgment that an
95 act or practice violates this article and to obtain an injunction against any person who
96 knowingly has violated, is violating, or is otherwise likely to violate this article. As a
97 condition precedent to filing a civil action under this article, the aggrieved party must make
98 reasonable efforts to place any person alleged to be in violation of this article on notice that
99 such person may be in violation of this article and that failure to cure within 14 days may
100 result in a civil action filed in a court of competent jurisdiction.

101 (b) Upon motion of the party instituting the action, the court may make appropriate orders
102 to compel compliance with this article.

103 (c) The prevailing party in a cause under this article is entitled to recover necessary
104 expenses and reasonable attorney fees.

105 10-1-934.

106 (a) This article shall be supplemental to those provisions of state and federal criminal and
107 civil law which impose prohibitions or provide penalties, sanctions, or remedies against the
108 same conduct prohibited by this article.

109 (b) This article shall not:

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

112 (2) Impose liability on providers of an interactive computer service, communications
113 service, commercial mobile service, or information service, including, but not limited to,

114 an internet access service provider, advertising network or exchange, domain name
115 registration provider, and a hosting service provider, if they provide the transmission,
116 storage, or caching of electronic communications or messages of others or provide
117 another related telecommunications service, commercial mobile radio service, or
118 information service for use of such services by another person that is in violation of this
119 article.

120 10-1-935.

121 (a) A violation of this article shall be considered an unfair or deceptive act or practice
122 which is unlawful and which shall be punishable under Part 2 of Article 15 of this chapter,
123 the 'Fair Business Practices Act of 1975.'

124 (b) A public or private right or remedy prescribed by Part 2 of Article 15 of this chapter,
125 the 'Fair Business Practices Act of 1975,' may be used to enforce this article."

126 **SECTION 3.**

127 All laws and parts of laws in conflict with this Act are repealed.