

## CHAPTER 540

## COMMERCIAL DISCRIMINATION

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**540.01 Unfair discrimination and competition prohibited; definition of commodity.—**

(1) Any person doing business in the state, and engaged in the production, manufacture, sale or distribution of any commodity in general use, that shall, for the purpose of destroying the business of a competitor in any locality, discriminate between different sections, communities, or cities of this state by selling such commodity at a lower rate in one section, community or city, than is charged for said commodity by said party in another section, community or city, after making due allowance for the difference, if any, in the grade or quality and in the actual cost of transportation from the point of production, if a raw product, or from the point of manufacture, if a manufactured product, shall be deemed guilty of unfair discrimination, which is declared unlawful; provided, however, that nothing herein contained shall prevent discrimination in prices in the same or different sections, communities, or cities of this state made in good faith in an amount necessary to meet competition.

(2) As used in this chapter the word "commodity" shall include any article, product, thing of value, service or output of a service trade.

**History.**—s. 1, ch. 6945, 1915; RGS 2517; CGL 3939; s. 1, ch. 61-323; s. 1, ch. 67-485.

**540.02 Duty of state attorneys.**—The state attorneys and the Department of Legal Affairs shall enforce the provisions of s. 540.01 by appropriate actions in courts of competent jurisdiction.

**History.**—s. 3, ch. 6945, 1915; RGS 2518; CGL 3940; ss. 11, 35, ch. 69-106; s. 26, ch. 73-334.

**540.03 Complaints made to Department of State; duty.**—If complaint shall be made to the Department of State that any corporation authorized to do business in this state is guilty of unfair discrimination within the terms of this chapter, the Department of State shall refer the matter to the Department of Legal Affairs which may, if the facts justify it, institute proceedings in the courts against such corporation.

**History.**—s. 4, ch. 6945, 1915; RGS 2519; CGL 3941; ss. 10, 11, 35, ch. 69-106.

**540.04 Department of State to revoke permit of corporation found guilty of discrimination.**—If any corporation, foreign or domestic, authorized to do business in this state, is found guilty of unfair discrimination within the terms of this chapter, the Department of State shall immediately revoke the permit of such corporation to do business in this state.

**History.**—s. 5, ch. 6945, 1915; RGS 2520; CGL 3942; ss. 10, 35, ch. 69-106.

**540.05 Ouster of corporation found guilty.**—If after revocation of its permit, such corporation, or any other corporation not having a permit and found guilty of having violated any of the provisions of this chapter, shall continue or attempt to do business in this state, the Department of Legal Affairs, by a proper suit in the name of the state, shall oust such corporation from all business of every kind and character in this state.

**History.**—s. 6, ch. 6945, 1915; RGS 2521; CGL 3943; ss. 11, 35, ch. 69-106.

**540.06 Unfair commercial discrimination prohibited; penalty.**—Any person, firm, company, association or corporation violating any of the provisions of s. 540.01, and any officer, agent or receiver of any firm, company, association or corporation, or any member of the same, or any individual shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 2, ch. 6945, 1915; RGS 5668; CGL 7871; s. 530, ch. 71-136.

**540.08 Unauthorized publication of name or likeness.—**

(1) No person shall publish, print, display or otherwise publicly use for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of any natural person without the express written or oral consent to such use given by:

(a) Such person; or

(b) Any other person, firm or corporation authorized in writing by such person to license the commercial use of his name or likeness; or

(c) If such person is deceased, any person, firm or corporation authorized in writing to license the commercial use of his name or likeness, or if no person, firm or corporation is so authorized, then by any one from among a class composed of his surviving spouse and surviving children.

(2) In the event the consent required in subsection (1) is not obtained, the person whose name, portrait, photograph, or other likeness is so used, or any person, firm, or corporation authorized by such person in writing to license the commercial use of his name or likeness, or, if the person whose likeness is used is deceased, any person, firm, or corporation having the right to give such consent, as provided hereinabove, may bring an action to enjoin such unauthorized publication, printing, display or other public use, and to recover damages for any loss or injury sustained by reason thereof, including an amount which would have been a reasonable royalty, and punitive or exemplary damages.

(3) The provisions of this section shall not apply to:

(a) The publication, printing, display, or use of the name or likeness of any person in any newspaper, magazine, book, news broadcast or telecast, or other news medium or publication as part of any bona fide news report or presentation having a current and legitimate public interest and where such name or likeness is not used for advertising purposes;

(b) The use of such name, portrait, photograph, or other likeness in connection with the resale or other distribution of literary, musical, or artistic productions or other articles of merchandise or property where such person has consented to the use of his name, portrait, photograph, or likeness on or in connection with the initial sale or distribution thereof; or

(c) Any photograph of a person solely as a member of the public and where such person is not named or otherwise identified in or in connection with the use of such photograph.

(4) No action shall be brought under this section by reason of any publication, printing, display, or other public use of the name or likeness of a person occurring after the expiration of 40 years from and after the death of such person.

(5) As used in this section, a person's "surviving spouse" is the person's surviving spouse under the law of his domicile at the time of his death, whether or not the spouse has later remarried; and a person's "children" are his immediate offspring and any children legally adopted by him. Any consent provided for in subsection (1) shall be given on behalf of a minor by the guardian of his person or by either parent.

(6) The remedies provided for in this section shall be in addition to and not in limitation of the remedies and rights of any person under the common law against the invasion of his privacy.

**History.**—s. 1, ch. 67-57.

#### **540.09 Unauthorized publication of photographs or pictures of areas to which admission is charged.—**

(1) Any person who shall sell any photograph, drawing, or other visual representation of any area, building, or structure, the entry or admittance to which is subject to an admission charge or fee, or of any real or personal property located therein, or who shall use any such photograph, drawing, or other visual representation in connection with the sale or advertising of any other product, property or service, without the express written or oral consent of the owner or operator of the area, building, structure, or other property so depicted, shall be liable to such owner or operator for any loss, damage, or injury sustained by reason thereof, including an amount which would have been a reasonable royalty, and for punitive or exemplary damages, and such unauthorized sale or use may be enjoined.

(2) The provisions of this section shall not apply to:

(a) Photographs, drawings, or other visual representations in any newspaper, magazine, book, news broadcast or telecast, or other news medium or publication as part of any bona fide news report or presentation having a current and legitimate public interest and where such photographs, drawings, or other visual representations are not used for advertising purposes; or

(b) Photographs, drawings, or other visual representations in which the depiction of such property is incidental to the principal subject or subjects thereof and not calculated or likely to lead the viewer to associate such property with the sale, offering for sale or advertising of any property, product or service.

(3) Any person who by means of a tower or other structure to which directly or indirectly admission is charged shall permit any other person or persons to look into or view any previously established tourist attraction, the entry or admission to which for the purpose of viewing the same is subject to an admission charge or fee, without the express written or oral consent of the owner or operator of such previously established tourist attraction, shall be liable to the owner or operator of the previously established tourist attraction for any loss, damage or injury sustained by reason thereof and punitive or exemplary damages, and the use of a tower or other structure for such unauthorized viewing may be enjoined.

(4) The remedies provided for in this section shall be in addition to and not in limitation of the remedies and rights of any person under the common law against the unauthorized sale or use for purposes of trade or advertising of photographs, drawings, or other visual representations of his property.

**History.**—s. 1, ch. 67-57; s. 1, ch. 69-243.

#### **540.10 Exemption of news media from liability.—**

No relief may be obtained under s. 540.08 or s. 540.09, against any broadcaster, publisher or distributor broadcasting, publishing or distributing paid advertising matter by radio or television or in a newspaper, magazine, or similar periodical without knowledge or notice that any consent required by s. 540.08 or s. 540.09, in connection with such advertising matter has not been obtained, except an injunction against the presentation of such advertising matter in future broadcasts or in future issues of such newspaper, magazine, or similar periodical.

**History.**—s. 1, ch. 67-57.

#### **540.11 Unauthorized copying of phonograph records, disk, wire, tape, film, or other article on which sounds are recorded.—**

(1) As used in this section, unless the context otherwise requires:

(a) "Owner" means the person who owns the original sounds embodied in the master phonograph record, master disk, master tape, master film, or other device used for reproducing sounds on phonograph records, disks, tapes, films, or other articles upon which sound is recorded, and from which the transferred recorded sounds are directly or indirectly derived, or the person who owns the rights to record or authorize the recording of a live performance.

(b) "Performer" means the person or persons appearing in the performance.

(c) "Master recording" means the original fixation of sounds upon an article from which copies can be made.

(d) "Person" means any individual, partnership, corporation, association, or other legal entity.

(e) "Article" means the tangible medium upon which sounds or images are recorded or any original phono-

graph record, disk, tape, audio or video cassette, wire, film, or other medium now known or later developed on which sounds or images are or can be recorded or otherwise stored, or any copy or reproduction which duplicates, in whole or in part, the original.

(2)(a) It is unlawful:

1. Knowingly and willfully and without the consent of the owner, to transfer or cause to be transferred, directly or indirectly, any sounds recorded on a phonograph record, disk, wire, tape, film, or other article on which sounds are recorded, with the intent to sell, or cause to be sold, or use or cause to be used for profit through public performance, such article on which sounds are so transferred without consent of the owner.

2. Knowingly to manufacture, distribute, wholesale or transport within the state or cause to be transported within the state for commercial advantage or private financial gain any article on which sounds are recorded with knowledge that the sounds thereon are transferred without consent of the owner.

3. Knowingly and willfully and without the consent of the performer, to transfer to or cause to be transferred to any phonograph record, disk, wire, tape, film, or other article any performance, whether live before an audience or transmitted by wire or through the air by radio or television, with the intent to sell, or cause to be sold, or to use or cause to be used for profit through public performance or to be used to promote the sale of any product or such article onto which such performance is so transferred.

4. Knowingly to manufacture, distribute, wholesale or transport within this state or cause to be transported within this state for commercial advantage or private financial gain any article embodying a performance, whether live before an audience or transmitted by wire or through the air by radio or television, recorded with the knowledge that the performance is so transferred without consent of the owner.

Subparagraphs 1. and 2. apply only to sound recordings fixed prior to February 15, 1972.

(b)1. A person who violates paragraph (a) commits a felony of the third degree, punishable as provided in s. 775.082, by a fine of up to \$250,000, or both if the offense involves at least 1,000 unauthorized articles embodying sound or at least 65 unauthorized audiovisual articles during any 180-day period or is a second or subsequent conviction under either this subparagraph or subparagraph 2.

2. A person who violates paragraph (a) commits a felony of the third degree, punishable as provided in s. 775.082, by a fine of up to \$150,000, or both if the offense involves more than 100 but less than 1,000 unauthorized articles embodying sound or more than 7 but less than 65 unauthorized audiovisual articles during any 180-day period.

3. A person who otherwise violates paragraph (a) commits a misdemeanor of the first degree, punishable as provided in s. 775.082, by a fine of up to \$25,000, or both.

(c) For purposes of this subsection, a person who is authorized to maintain custody and control over business records which reflect whether or not the owner of

the live performance consented to having the live performance recorded or fixed shall be a proper witness in any proceeding regarding the issue of consent.

(3)(a) It is unlawful:

1. To sell or offer for sale or resale, advertise, cause the sale or resale of, rent, transport or cause to be rented or transported, or possess for any of these purposes any article with the knowledge, or with reasonable grounds to know, that the sounds thereon have been transferred without the consent of the owner.

2. To sell or offer for sale or resale, advertise, cause the sale or resale of, rent, transport or cause to be rented or transported, or possess for any of these purposes any article embodying any performance, whether live before an audience or transmitted by wire or through the air by radio or television, recorded without the consent of the performer.

3. Knowingly, for commercial advantage or private financial gain to sell or resell, offer for sale or resale, advertise, cause the sale or resale of, rent, transport or cause to be rented or transported, or possess for such purposes, any phonograph record, disk, wire, tape, film, or other article on which sounds are recorded, unless the outside cover, box, or jacket clearly and conspicuously discloses the actual name and address of the manufacturer thereof, and the name of the actual performer or group.

(b)1. A person who violates paragraph (a) commits a felony of the third degree, punishable as provided in s. 775.082, by a fine of up to \$250,000, or both if the offense involves at least 1,000 unauthorized articles embodying sound or at least 65 unauthorized audiovisual articles during any 180-day period or is a second or subsequent conviction under either this subparagraph or subparagraph 2. of this subsection.

2. A person who violates paragraph (a) commits a felony of the third degree, punishable as provided in s. 775.082, by a fine of up to \$150,000, or both if the offense involves more than 100 but less than 1,000 unauthorized articles embodying sound or more than 7 but less than 65 unauthorized audiovisual articles during any 180-day period.

3. A person who otherwise violates this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082, by a fine of up to \$25,000, or both.

(4) Any recorded article produced in violation of subsections (2) and (3), or any equipment or components used in the production thereof, shall be subject to seizure and forfeiture and destruction by the seizing law enforcement agency.

(5) This section shall neither enlarge nor diminish the right of parties in private litigation.

(6) This section does not apply:

(a) To any broadcaster who, in connection with, or as part of, a radio, television, or cable broadcast transmission, or for the purpose of archival preservation, transfers any such sounds recorded on a sound recording.

(b) To any person who transfers such sounds in the home for personal use and without compensation for such transfer.

(c) To any not-for-profit educational institution or any federal or state governmental entity, if all the following conditions exist:

1. The primary purpose of the institution or entity is the advancement of the public's knowledge and the dissemination of information.

2. Such purpose is clearly set forth in the institution's or entity's charter, bylaws, certificate of incorporation, or similar document.

3. Prior to the transfer of the sounds, the institution or entity has made a good faith effort to identify and locate the owner or owners of the articles to be transferred.

4. Despite good faith efforts, the owner or owners have not been located.

**History.**—ss. 1, 1A, ch. 71-102; s. 2, ch. 77-440; s. 221, ch. 79-400; s. 1, ch. 89-181.

**Note.**—Former s. 543.041.