

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 634
House Committee Substitute Favorable 5/27/09
House Committee Substitute #2 Favorable 6/23/09
Fourth Edition Engrossed 6/24/09

Short Title: Truth in Music Advertising Act.

(Public)

Sponsors:

Referred to:

March 18, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO PROHIBIT THE ADVERTISING AND CONDUCTING OF CERTAIN LIVE
3 MUSICAL PERFORMANCES OR PRODUCTIONS, TO PROVIDE FOR
4 ENFORCEMENT, AND TO IMPOSE A PENALTY.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Chapter 75 of the General Statutes is amended by adding a new
7 Article to read:

8 "Article 6.

9 "Truth in Music Advertising Act.

10 "**§ 75-125. Short title and definitions.**

11 (a) Short Title. – This Article may be cited as the Truth in Music Advertising Act.

12 (b) Definitions. – The following definitions apply in this Article:

13 (1) Performing group. – A vocal or instrumental group seeking to use the name
14 of another group that has previously released a commercial sound recording
15 under that name.

16 (2) Recording group. – A vocal or instrumental group at least one of whose
17 members has previously released a commercial sound recording under that
18 group's name and in which the member or members have a legal right by
19 virtue of use or operation under the group name without having abandoned
20 the name or affiliation with the group.

21 (3) Sound recording. – A work that results from the fixation on a material object
22 of a series of musical, spoken, or other sounds regardless of the nature of the
23 material object, such as a disk, tape, or other phono-record, in which the
24 sounds are embodied.

25 "**§ 75-126. Production.**

26 No person shall advertise or conduct a live musical performance or production in this State
27 through the use of a false, deceptive, or misleading affiliation, connection, or association
28 between a performing group and a recording group. This section does not apply if any of the
29 following apply:

30 (1) The performing group is the authorized registrant and owner of a federal
31 service mark for that group registered in the United States Patent and
32 Trademark Office.



- 1 (2) At least one member of the performing group was a member of the recording
2 group and has a legal right by virtue of use or operation under the group
3 name without having abandoned the name or affiliation with the group.
- 4 (3) The live musical performance or production is identified in all advertising
5 and promotion as a salute or tribute, or the vocal or instrumental group
6 performing is not so closely related or similar to that used by the recording
7 group that it would tend to confuse or mislead the public.
- 8 (4) The advertising does not relate to a live musical performance or production
9 taking place in this State.
- 10 (5) The performance or production is expressly authorized by the recording
11 group.

12 **§ 75-127. Penalty.**

13 A person who violates G.S. 75-126 is liable to the State for a civil penalty of not less than
14 five thousand dollars (\$5,000) nor more than fifteen thousand dollars (\$15,000) per violation,
15 which civil penalty shall be in addition to any other relief which may be granted under other
16 applicable laws. Each performance or production in violation of G.S. 75-126 shall constitute a
17 separate violation.

18 **§ 75-128. Unfair and deceptive trade practice.**

19 A violation of this Article shall be an unfair and deceptive trade practice under
20 G.S. 75-1.1."

21 **SECTION 2.** This act becomes effective October 1, 2009, and applies to acts
22 occurring on or after that date.