

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 634
PROPOSED HOUSE COMMITTEE SUBSTITUTE S634-PCS85236-RN-29

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 It shall be unlawful for any person to advertise or conduct a live musical performance or
27 production in this State through the use of a false, deceptive, or misleading affiliation,
28 connection, or association between a performing group and a recording group. This section
29 does not apply if any of the 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.



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- 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. Restraining prohibited acts.**

13 (a) Injunction. – Whenever the Attorney General or a district attorney has reason to
14 believe that any person is advertising or conducting or is about to advertise or conduct a live
15 musical performance or production in violation of G.S. 75-126 and that proceedings would be
16 in the public interest, the Attorney General or district attorney may bring an action in the name
17 of the State against the person to restrain by temporary or permanent injunction that practice.

18 (b) Payment of Costs and Restitution. – Whenever any court issues a permanent
19 injunction to restrain and prevent violations of this Article as authorized in subsection (a) of
20 this section, the court may in its discretion direct that the defendant restore to any person in
21 interest any moneys or property, real or personal, which may have been acquired by means of
22 any violation of this Article, under terms and conditions to be established by the court.

23 **"§ 75-128. Penalty.**

24 A person who violates G.S. 75-126 is liable to the State for a civil penalty of not less than
25 five thousand dollars (\$5,000) nor more than fifteen thousand dollars (\$15,000) per violation,
26 which civil penalty shall be in addition to any other relief which may be granted under
27 G.S. 75-127. Each performance or production declared unlawful by G.S. 75-126 shall
28 constitute a separate violation."

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