

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE BILL 634  
House Committee Substitute Favorable 5/27/09

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 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.

33 (2) At least one member of the performing group was a member of the recording  
34 group and has a legal right by virtue of use or operation under the group  
35 name without having abandoned the name or affiliation with the group.

36 (3) The live musical performance or production is identified in all advertising  
37 and promotion as a salute or tribute, or the vocal or instrumental group



1 performing is not so closely related or similar to that used by the recording  
2 group that it would tend to confuse or mislead the public.

3 (4) The advertising does not relate to a live musical performance or production  
4 taking place in this State.

5 (5) The performance or production is expressly authorized by the recording  
6 group.

7 **"§ 75-127. Restraining prohibited acts.**

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

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

18 **"§ 75-128. Penalty.**

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

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