

By Senator Saunders

37-349-07

1 A bill to be entitled
2 An act relating to false, deceptive, or
3 misleading advertising; creating s. 817.4115,
4 F.S.; defining the terms "performing person or
5 group" and "recording person or group";
6 prohibiting a person, in advertising or
7 conducting a live musical performance, from
8 using a false, deceptive, or misleading
9 statement of an affiliation, connection, or
10 association between a performing person or
11 group and a recording person or group;
12 providing exceptions; providing that a
13 violation of the act is a misdemeanor of the
14 first degree; providing criminal penalties;
15 authorizing the Department of Legal Affairs or
16 state attorney to file a civil action for
17 injunctive relief against any person or group
18 violating the act; providing for the prevailing
19 party to receive court costs and attorney's
20 fees; authorizing a court to impose a civil
21 penalty for each violation of the act;
22 providing an effective date.

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24 Be It Enacted by the Legislature of the State of Florida:
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26 Section 1. Section 817.4115, Florida Statutes, is
27 created to read:

28 817.4115 False, deceptive, or misleading advertisement
29 of live musical performances.--

30 (1) For purposes of this section, the term:
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1 (a) "Performing person or group" means a vocal or
2 instrumental performer using or attempting to use the name of
3 a recording person or group.

4 (b) "Recording person or group" means a vocal or
5 instrumental performer that has previously produced or
6 released, or both, a commercial recording.

7 (2)(a) A person may not advertise a live musical
8 performance or production in this state using a false,
9 deceptive, or misleading statement of an affiliation,
10 connection, or association between a performing person or
11 group and a recording person or group.

12 (b) A person may not conduct a live musical
13 performance or production in this state using a false,
14 deceptive, or misleading statement of an affiliation,
15 connection, or association between a performing person or
16 group and a recording person or group.

17 (3) An advertisement of a live musical performance
18 does not violate subsection (2) if:

19 (a) The performing person or at least one member of
20 the performing group was a member of the recording group and
21 retains the legal right to use the name of the recording group
22 by not having abandoned the affiliation with the recording
23 group or its name;

24 (b) The performing person or group is the authorized
25 registrant and owner of a federal service mark for that person
26 or group which is registered with the United States Patent and
27 Trademark Office;

28 (c) The live musical performance or production is
29 identified as a "salute" or "tribute" to, and is otherwise
30 unaffiliated with, the recording person or group;
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1 (d) The advertising does not relate to a live musical
2 performance taking place in this state; or

3 (e) The performance is expressly authorized in the
4 advertising by the recording person or group.

5 (4) Any person who violates subsection (2) commits a
6 misdemeanor of the second degree, punishable as provided in s.
7 775.082 or s. 775.083. Upon a second or subsequent violation
8 of subsection (2), the person commits a misdemeanor of the
9 first degree, punishable as provided in s. 775.082 or by a
10 fine not to exceed \$5,000, or both.

11 (5) The Department of Legal Affairs or a state
12 attorney may file a civil action on behalf of the people of
13 this state for injunctive relief against any person or group
14 violating subsection (2) to restrain the prohibited activity.
15 The court may award court costs and reasonable attorney's fees
16 to the prevailing party. The court may also impose a civil
17 penalty not to exceed \$5,000 for each violation of subsection
18 (2).

19 Section 2. This act shall take effect July 1, 2007.

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22 SENATE SUMMARY

23 Defines the terms "performing person or group" and
24 "recording person or group." Prohibits a person from
25 advertising or conducting a live musical performance
26 using a false, deceptive, or misleading statement of an
27 affiliation, connection, or association between a
28 performing group and a recording group. Provides
29 exceptions. Provides that a person who violates the act
30 commits a misdemeanor of the first degree. Provides
31 criminal penalties. Authorizes the Department of Legal
Affairs or state attorney to file a civil action on
behalf of the people of this state for injunctive relief
against any person or group violating the act. Provides a
civil penalty not to exceed \$5,000 for each violation of
the act.