Florida Senate - 2007

CS for SB 426

By the Committee on Judiciary; and Senators Saunders and Crist

590-2497-07

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";
б	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	<u>(a) "Performing person or group" means a vocal or</u>
2	instrumental performer using or attempting to use the name of
3	<u>a recording person or group.</u>
4	(b) "Recording person or group" means a vocal or
5	instrumental performer that has previously produced or
б	released, or both, a commercial recording.
7	<u>(2)(a) A person may not advertise a live musical</u>
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 or
18	production 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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2performance taking place in this state; or3(e) The performance is expressly authorized in the advertising by the recording person or group.5(f) Any person who violates subsection (2) commits a misdemeanor of the second degree, punishable as provided in s.7775.082 or s. 775.083. Upon a second or subsequent violation of subsection (2), the person commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or by a fine not to exceed \$5,000, or both.10(5) The Department of Legal Affairs or a state attorney may file a civil action on behalf of the people of this state for injunctive relief against any person or group violating subsection (2) to restrain the prohibited activity.15The court may award court costs and reasonable attorney's fees to the prevailing party. The court may also impose a civil penalty not to exceed \$5,000 for each violation of subsection (2).18(2).19Section 2. This act shall take effect July 1, 2007.20STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN COMMITTEE SUBSTITUTE FOR SE SE 42621Adds the words "or production" to a provision to conform to the language of two earlier provisions of the bill.229331034103510361037103610371038103910301030103110321033103410351036103	1	(d) The advertising does not relate to a live musical
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 0 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 yiolating 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. 20 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN 21 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN 22 SE SA 426 23 Adds the words "or production" to a provision to conform to the l	2	performance taking place in this state; or
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