

1 SB31  
2 115089-2  
3 By Senator Denton  
4 RFD: Judiciary  
5 First Read: 12-JAN-10  
6 PFD: 11/04/2009

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8 SYNOPSIS: This bill would create a punishable civil  
9 offense for advertising and conducting certain live  
10 musical performances or productions by a group that  
11 would use another group's name.

12  
13 A BILL  
14 TO BE ENTITLED  
15 AN ACT

16  
17 Creating the Truth in Music Advertising Act; to  
18 provide that the use of false, deceptive, or misleading  
19 affiliation between performing or recording groups is  
20 unlawful, and to provide certain penalties.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. This act shall be known and may be cited  
23 as the "Truth in Music Advertising Act."

24 Section 2. The following words and phrases, when  
25 used in this act, shall have the meaning given to them in this  
26 section unless the context clearly indicates otherwise:

1           (1) PERFORMING GROUP. A vocal or instrumental group  
2 seeking to use the name of another group that has previously  
3 released a commercial sound recording under that name.

4           (2) RECORDING GROUP. A vocal or instrumental group  
5 at least one of whose members has previously released a  
6 commercial sound recording under that group's name and in  
7 which the member or members have a legal right by virtue of  
8 use or operation under the group name without having abandoned  
9 the name or affiliation with the group.

10           (3) SOUND RECORDING. A work that results from the  
11 fixation on a material object of a series of musical, spoken,  
12 or other sounds regardless of the nature of the material  
13 object, such as a disk, tape, or other phono-record, in which  
14 the sounds are embodied.

15           Section 3. (a) It shall be unlawful for any person  
16 to advertise or conduct a live musical performance or  
17 production in this state through the use of false, deceptive,  
18 or misleading affiliation, connection, or association between  
19 a performing group and a recording group.

20           (b) This section does not apply to the following:

21           (1) A performing group that is the authorized  
22 registrant and owner of a federal service mark for that group  
23 registered in the United States Patent and Trademark Office.

24           (2) A group of which at least one member was a  
25 member of the recording group and has a legal right by virtue  
26 of use or operation under the group name without having  
27 abandoned the name or affiliation with the group.

1           (3) A live musical performance or production which  
2 is identified in all advertising and promotion as a salute or  
3 tribute and the name used of the vocal or instrumental group  
4 performing is not so closely related or similar to that used  
5 by the recording group that it would confuse or mislead the  
6 public.

7           (4) Advertising which does not relate to a live  
8 musical performance or production taking place in this state.

9           (5) A performance or production that is expressly  
10 authorized by the recording group.

11           Section 4. (a) Whenever the Attorney General or a  
12 district attorney has reason to believe that any person is  
13 advertising or conducting or is about to advertise or conduct  
14 a live musical performance or production in violation of  
15 Section 3 and that proceedings would be in the public  
16 interest, the Attorney General or district attorney may bring  
17 an action in the name of the state against the person to  
18 restrain by temporary or permanent injunction that practice.

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

26           Section 5. (a) A person who violates Section 3 is  
27 liable to the state for a civil penalty of not less than five

1 thousand dollars (\$5,000) nor more than fifteen thousand  
2 dollars (\$15,000) per violation, which civil penalty shall be  
3 in addition to any other relief which may be granted under  
4 Section 4.

5 (b) Each performance or production declared unlawful  
6 by Section 3 shall constitute a separate violation.

7 Section 6. This act shall become effective on the  
8 first day of the third month following its passage and  
9 approval by the Governor, or its otherwise becoming law.