

**Second Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 08-0651.01 Thomas Morris

HOUSE BILL 08-1196

HOUSE SPONSORSHIP

Riesberg,

SENATE SPONSORSHIP

(None),

House Committees

Business Affairs and Labor

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING TRUTHFUL ADVERTISING OF MUSICAL PERFORMANCES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Prohibits the use of a false, deceptive, or misleading affiliation, connection, or association between a performing group and a recording group in connection with an advertisement for or the conduct of a live musical performance. Makes exceptions and defines terms. Specifies enforcement authority, civil penalties, and other remedies.

1 *Be it enacted by the General Assembly of the State of Colorado:*

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

1 **SECTION 1.** Part 7 of article 1 of title 6, Colorado Revised
2 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
3 read:

4 **6-1-718. Truth in music advertising. (1) Definitions.** AS USED
5 IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

6 (a) "PERFORMING GROUP" MEANS A VOCAL OR INSTRUMENTAL
7 GROUP SEEKING TO USE THE NAME OF A RECORDING GROUP.

8 (b) "RECORDING GROUP" MEANS A VOCAL OR INSTRUMENTAL
9 GROUP, AT LEAST ONE OF WHOSE MEMBERS HAS PREVIOUSLY RELEASED A
10 COMMERCIAL SOUND RECORDING UNDER THAT GROUP'S NAME AND IN
11 WHICH AT LEAST ONE OF THE MEMBERS HAS A LEGAL RIGHT BY VIRTUE OF
12 USE OR OPERATION UNDER THE GROUP NAME WITHOUT HAVING
13 ABANDONED THE NAME OR AFFILIATION WITH THE GROUP.

14 (c) "SOUND RECORDING" MEANS A WORK THAT RESULTS FROM THE
15 FIXATION, ON OR IN A RECORDING MEDIUM OR OTHER MATERIAL OBJECT,
16 OF A SERIES OF MUSICAL, SPOKEN, OR OTHER SOUNDS REGARDLESS OF THE
17 NATURE OF THE MEDIUM OR OBJECT, SUCH AS A DISK, TAPE, OR OTHER
18 PHONO RECORD, IN WHICH THE SOUNDS ARE RECORDED.

19 (2) **Production.** (a) EXCEPT AS OTHERWISE PROVIDED IN
20 PARAGRAPH (b) OF THIS SUBSECTION (2), IT IS UNLAWFUL FOR ANY PERSON
21 TO ADVERTISE OR CONDUCT A LIVE MUSICAL PERFORMANCE OR
22 PRODUCTION IN THIS STATE THROUGH THE USE OF A FALSE, DECEPTIVE, OR
23 MISLEADING AFFILIATION, CONNECTION, OR ASSOCIATION BETWEEN A
24 PERFORMING GROUP AND A RECORDING GROUP.

25 (b) PARAGRAPH (a) OF THIS SUBSECTION (2) DOES NOT APPLY IF:

26 (I) THE PERFORMING GROUP IS THE AUTHORIZED REGISTRANT AND
27 OWNER OF A FEDERAL SERVICE MARK FOR THAT GROUP REGISTERED IN THE

1 UNITED STATES PATENT AND TRADEMARK OFFICE;

2 (II) AT LEAST ONE MEMBER OF THE PERFORMING GROUP WAS A
3 MEMBER OF THE RECORDING GROUP AND HAS A LEGAL RIGHT BY VIRTUE
4 OF USE OR OPERATION UNDER THE GROUP NAME WITHOUT HAVING
5 ABANDONED THE NAME OR AFFILIATION WITH THE GROUP;

6 (III) THE LIVE MUSICAL PERFORMANCE OR PRODUCTION IS
7 IDENTIFIED IN ALL ADVERTISING AND PROMOTION AS A SALUTE OR
8 TRIBUTE;

9 (IV) THE ADVERTISING DOES NOT RELATE TO A LIVE MUSICAL
10 PERFORMANCE OR PRODUCTION TAKING PLACE IN THIS STATE; OR

11 (V) THE PERFORMANCE OR PRODUCTION IS EXPRESSLY
12 AUTHORIZED BY THE RECORDING GROUP.

13 (3) **Restraining prohibited acts.** IN ADDITION TO THE ACTIONS
14 AND REMEDIES SPECIFIED IN PART 1 OF THIS ARTICLE THAT MAY APPLY:

15 (a) **Injunction.** WHENEVER THE ATTORNEY GENERAL OR A
16 DISTRICT ATTORNEY HAS REASON TO BELIEVE THAT A PERSON IS
17 ADVERTISING, CONDUCTING, OR ABOUT TO ADVERTISE OR CONDUCT A LIVE
18 MUSICAL PERFORMANCE OR PRODUCTION IN VIOLATION OF THIS SECTION
19 AND THAT PROCEEDINGS WOULD BE IN THE PUBLIC INTEREST, THE
20 ATTORNEY GENERAL OR DISTRICT ATTORNEY MAY BRING AN ACTION IN
21 THE NAME OF THE STATE AGAINST THE PERSON TO RESTRAIN THAT
22 PRACTICE BY TEMPORARY OR PERMANENT INJUNCTION.

23 (b) **Payment of costs and restitution.** WHENEVER A COURT
24 ISSUES A PERMANENT INJUNCTION TO RESTRAIN AND PREVENT VIOLATIONS
25 OF THIS SECTION AS AUTHORIZED IN PARAGRAPH (a) OF THIS SUBSECTION
26 (3), THE COURT MAY, IN ITS DISCRETION, DIRECT THAT THE DEFENDANT
27 RESTORE TO ANY PERSON IN INTEREST ANY MONEYS OR PROPERTY, REAL

1 OR PERSONAL, THAT MAY HAVE BEEN ACQUIRED BY MEANS OF A
2 VIOLATION OF THIS SECTION, UNDER TERMS AND CONDITIONS TO BE
3 ESTABLISHED BY THE COURT.

4 (c) **Penalty.** A PERSON WHO VIOLATES THIS SECTION IS LIABLE TO
5 THE STATE FOR A CIVIL PENALTY OF NOT LESS THAN FIVE THOUSAND
6 DOLLARS NOR MORE THAN FIFTEEN THOUSAND DOLLARS PER VIOLATION,
7 WHICH CIVIL PENALTY SHALL BE IN ADDITION TO ANY OTHER RELIEF THAT
8 MAY BE GRANTED UNDER THIS SUBSECTION (3) BUT WHICH SHALL NOT BE
9 CUMULATIVE WITH THE PENALTY SPECIFIED IN SECTION 6-1-112. EACH
10 PERFORMANCE OR PRODUCTION THAT VIOLATES THIS SECTION
11 CONSTITUTES A SEPARATE VIOLATION.

12 **SECTION 2. Effective date - applicability.** (1) This act shall
13 take effect at 12:01 a.m. on the day following the expiration of the
14 ninety-day period after final adjournment of the general assembly that is
15 allowed for submitting a referendum petition pursuant to article V,
16 section 1 (3) of the state constitution, (August 6, 2008, if adjournment
17 sine die is on May 7, 2008); except that, if a referendum petition is filed
18 against this act or an item, section, or part of this act within such period,
19 then the act, item, section, or part, if approved by the people, shall take
20 effect on the date of the official declaration of the vote thereon by
21 proclamation of the governor.

22 (2) The provisions of this act shall apply to acts occurring on or
23 after the applicable effective date of this act.