

ENROLLED HOUSE
BILL NO. 2057

By: Thompson, Johnson and Inman
of the House

and

Sykes of the Senate

An Act relating to trademarks and labels; enacting the Truth in Music Advertising Act; defining terms; prescribing certain conduct as unlawful; providing exception; prohibiting certain use of information related to vocal or instrumental groups; authorizing action by Attorney General or district attorney; authorizing restitution; providing for civil penalties; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 101 of Title 78, unless there is created a duplication in numbering, reads as follows:

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

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 102 of Title 78, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Performing group" means a vocal or instrumental group seeking to use the name or another group that has previously released a commercial sound recording under that name;

2. "Recording group" means a vocal or instrumental group at least one of whose members has previously released a commercial sound recording under that group's name and in which the member or members have a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation with the group; and

3. "Sound recording" means a work that results from the fixation on a material object of a series of musical, spoken or other sounds regardless of the nature of the material object, such as a disk, tape or other phono record, in which the sounds are embodied.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 103 of Title 78, unless there is created a duplication in numbering, reads as follows:

It shall be unlawful for any person to advertise or conduct a live musical performance or production in this state through the use of a false, deceptive or misleading affiliation, connection or association between a performing group and a recording group. This section does not apply if any of the following apply:

1. The performing group is the authorized registrant and owner of a federal service mark for that group registered in the United States Patent and Trademark Office;

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

3. The live musical performance or production is identified in all advertising and promotion as a salute or tribute and the name of the vocal or instrumental group performing is not so closely related or similar to that used by the recording group that it would tend to confuse or mislead the public;

4. The advertising does not relate to a live musical performance or production taking place in this state; and

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

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 104 of Title 78, unless there is created a duplication in numbering, reads as follows:

A. Whenever the Attorney General or a district attorney has reason to believe that any person is advertising or conducting or is about to advertise or conduct a live musical performance or production in violation of Section 3 of this act and that proceedings would be in the public interest, the Attorney General or district attorney may bring an action in the name of the state against the person to restrain by temporary or permanent injunction that practice.

B. Whenever any court issues a permanent injunction to restrain and prevent violations of this act as authorized in subsection A of this section, the court may in its discretion direct that the defendant restore to any person in interest any monies or property, real or personal, which may have been acquired by means of any violation of this act, under terms and conditions to be established by the court.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 105 of Title 78, unless there is created a duplication in numbering, reads as follows:

A person who violates Section 3 of this act shall be liable to the State of Oklahoma for a civil penalty of not less than Five Thousand Dollars (\$5,000.00) nor more than Fifteen Thousand Dollars (\$15,000.00) per violation, which civil penalty shall be in addition to any other relief which may be granted under Section 4 of this act. Each performance or production declared unlawful by Section 3 of this act shall constitute a separate violation.

SECTION 6. This act shall become effective November 1, 2009.

Passed the House of Representatives the 16th day of February,
2009.

Presiding Officer of the House of
Representatives

Passed the Senate the 16th day of April, 2009.

Presiding Officer of the Senate