

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 934

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;  
ENACTING THE TRUTH IN MUSIC ADVERTISING ACT; PROHIBITING  
CERTAIN CONDUCT; PROVIDING FOR INJUNCTIVE RELIEF AND PAYMENT OF  
COSTS AND RESTITUTION; ESTABLISHING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the  
"Truth in Music Advertising Act".

Section 2. DEFINITIONS.--As used in the Truth in Music  
Advertising Act:

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

B. "recording group" means a vocal or instrumental

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1 group at least one of whose members has previously released a  
2 commercial sound recording under that group's name and in which  
3 the members have a legal right by virtue of use or operation  
4 under the group name without having abandoned the name or  
5 affiliation with the group; and

6 C. "sound recording" means a work that results from  
7 the fixing on a material object of a series of musical, spoken  
8 or other sounds regardless of the nature of the material  
9 object, including a disk, electronic media, tape or phonograph  
10 record, in which the sounds are embodied.

11 Section 3. FALSE ADVERTISING.--It is unlawful for a  
12 person to advertise or conduct a live musical performance or  
13 production in this state through the use of a false, deceptive  
14 or misleading affiliation, connection or association between a  
15 performing group and a recording group. This section does not  
16 apply if any of the following apply:

17 A. the performing group is the authorized  
18 registrant and owner of a federal service mark or trademark for  
19 that group registered in the United States patent and trademark  
20 office;

21 B. at least one member of the performing group was  
22 a member of the recording group and has a legal right by virtue  
23 of use or operation under the group name without having  
24 abandoned the name or affiliation with the group;

25 C. the live musical performance or production is

1 identified in all advertising and promotion as a salute or  
2 tribute;

3 D. the advertising does not relate to a live  
4 musical performance or production taking place in this state;  
5 or

6 E. the performance or production is expressly  
7 authorized by the recording group.

8 Section 4. RESTRAINING PROHIBITED ACTS.--

9 A. Whenever the attorney general or a district  
10 attorney has a reason to believe that a person is advertising  
11 or conducting or is about to advertise or conduct a live  
12 musical performance or production in violation of Section 3 of  
13 the Truth in Music Advertising Act and that proceedings would  
14 be in the public interest, the attorney general or district  
15 attorney may bring an action in the name of the state of New  
16 Mexico against the person to restrain by temporary or permanent  
17 injunction that advertisement or conduct.

18 B. Whenever a court issues a permanent injunction  
19 to restrain and prevent violations of the Truth in Music  
20 Advertising Act as authorized in Subsection A of this section,  
21 the court may, in its discretion, direct that the defendant  
22 restore to a person in interest any money or property, real or  
23 personal, that may have been acquired by means of a violation  
24 of that act, under terms and conditions to be established by  
25 the court.

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1           Section 5. PENALTY.--A person who is found by a court to  
2 have violated Section 3 of the Truth in Music Advertising Act  
3 is liable to the state for a civil penalty of not less than  
4 five thousand dollars (\$5,000) nor more than fifteen thousand  
5 dollars (\$15,000) per violation, which civil penalty shall be  
6 in addition to any other relief that may be granted under  
7 Section 4 of that act. Each performance or production declared  
8 unlawful by Section 3 of the Truth in Music Advertising Act  
9 shall constitute a separate violation.

10           Section 6. EFFECTIVE DATE.--The effective date of the  
11 provisions of this act is July 1, 2009.