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HOUSE BILL NO. 1969

Offered January 10, 2007

Prefiled January 5, 2007

A BILL to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 38.1, consisting of sections numbered 59.1-466.1 through 59.1-466.4, relating to the Truth in Music Advertising Act; civil penalty.

Patron—Albo

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 59.1 a chapter numbered 38.1, consisting of sections numbered 59.1-466.1 through 59.1-466.4, as follows:

CHAPTER 38.1.

TRUTH IN MUSIC ADVERTISING ACT.

§ 59.1-466.1. Definitions.

As used in this chapter, unless the context requires a different meaning:

"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.

"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.

"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.

§ 59.1-466.2. Production.

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

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 the Commonwealth; or

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

§ 59.1-466.3. Restraining prohibited acts.

Whenever the Attorney General or an attorney for the Commonwealth 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 § 59.1-466.2 and that proceedings would be in the public interest, the Attorney General or the attorney for the Commonwealth may bring an action in the name of the Commonwealth against the person to restrain by temporary or permanent injunction that practice.

Whenever any court issues a permanent injunction to restrain and prevent violations of this chapter, the court may direct that the defendant restore to any person in interest any moneys or property, real or personal, which may have been acquired by means of any violation of this chapter, under terms and conditions to be established by the court.

§ 59.1-466.4. Penalty.

Any person who violates § 59.1-466.2 shall be liable to the Commonwealth for a civil penalty of not less than \$5,000 nor more than \$15,000 per violation, which civil penalty shall be in addition to any other relief that may be granted under § 59.1-466.3. The civil penalty collected pursuant to this section shall be payable to the State Treasurer for deposit to the general fund. Each performance or production declared unlawful by § 59.1-466.2 shall constitute a separate violation.

59 2. That an emergency exists and this act is in force from its passage.