

No. 2006-19

AN ACT

SB 929

Prohibiting the advertising and conducting of certain live musical performances or productions; providing for enforcement; and imposing a penalty.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

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

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Performing group.” 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.” 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.” 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 disc, tape or other phono record, in which the sounds are embodied.

Section 3. Production.

It shall be unlawful for any person to advertise or conduct a live musical performance or production in this Commonwealth 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.

(4) The advertising does not relate to a live musical performance or production taking place in this Commonwealth.

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

Section 4. Restraining prohibited acts.

(a) Injunction.—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 and that proceedings would be in the public interest, the Attorney General or district attorney may bring an action in the name of the Commonwealth against the person to restrain by temporary or permanent injunction that practice.

(b) Payment of costs and restitution.—Whenever any court issues a permanent injunction to restrain and prevent violations of this act as authorized in subsection (a), the court may in its discretion 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 act, under terms and conditions to be established by the court.

Section 5. Penalty.

A person who violates section 3 is 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 which may be granted under section 4. Each performance or production declared unlawful by section 3 shall constitute a separate violation.

Section 6. Effective date.

This act shall take effect in 60 days.

APPROVED—The 21st day of February, A.D. 2006.

EDWARD G. RENDELL