SPONSOR: Sen. Connor & Rep. Thornburg
Sens. Amick, Sorenson, Still; Rep. Maier

DELAWARE STATE SENATE
144th GENERAL ASSEMBLY

SENATE BILL NO. 45

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO PROHIBITING THE ADVERTISING AND CONDUCTING OF CERTAIN LIVE MUSICAL PERFORMANCES OR PRODUCTIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. This Act shall be known and may be cited as the Truth in Music Act.

Section 2. Amend Title 6 of the Delaware Code by inserting therein the following:

"Chapter 33A Truth in Music

§3301A. Definitions.

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

(1) 'Performing group' means a vocal or instrumental group using or seeking to use the name of 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.

(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 media in which the sounds are embodied.

§3302A. Prohibition.

(a) No person shall 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.

(b) This section shall 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.

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

§3303A. Restraining prohibited acts.

(a) Whenever the Attorney General 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 §3302A of this Chapter and that proceedings would be in the public interest, the Attorney General shall 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 Chapter as authorized in subsection (a) of this section, the court may in its discretion direct that the defendant restore to the recording group 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.

§3304A. Penalty.

A person who violates §3302A of this Chapter is liable to the State 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 §3303A of this Chapter. Each performance or production shall constitute a separate violation.”.

Section 3. Effective date.

This Act shall take effect 60 days after its enactment into law.

SYNOPSIS

This Act creates a Truth in Music Act to stop musical performing groups from performing or advertising a performance while pretending to be established recording groups. As of February 2007, 9 State Legislatures [Connecticut, Illinois, Massachusetts, Michigan, New Jersey, North Dakota, Pennsylvania, South Carolina, and Virginia] have passed similar legislation.

AUTHOR: Sen. Connor