

SENATE BILL 711

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8lr1392

By: **Senator Lenett**

Introduced and read first time: February 1, 2008

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Truth in Music Advertising Act**

3 FOR the purpose of prohibiting a person from advertising or conducting a live musical
4 performance or production in the State through the use of a false, deceptive, or
5 misleading affiliation, connection, or association between a performing group
6 and a recording group; providing for certain exceptions; authorizing the
7 Attorney General to seek an injunction to prohibit a person from continuing or
8 engaging in a violation under certain circumstances; authorizing a court to
9 enter a judgment to restore to certain persons any money or real or personal
10 property acquired by means of any prohibited practice; providing that a person
11 who violates this Act is subject to a certain civil penalty; providing that each
12 performance or production in violation of this Act is a separate violation;
13 defining certain terms; and generally relating to the Truth in Music Advertising
14 Act.

15 BY adding to

16 Article – Commercial Law

17 Section 11–1501 through 11–1504 to be under the new subtitle “Subtitle 15.
18 Truth in Music Advertising Act”

19 Annotated Code of Maryland

20 (2005 Replacement Volume and 2007 Supplement)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
22 MARYLAND, That the Laws of Maryland read as follows:

23 **Article – Commercial Law**

24 **SUBTITLE 15. TRUTH IN MUSIC ADVERTISING ACT.**

25 **11–1501.**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
2 INDICATED.

3 (B) “PERFORMING GROUP” MEANS A VOCAL OR INSTRUMENTAL GROUP
4 SEEKING TO USE THE NAME OF A RECORDING GROUP.

5 (C) “RECORDING GROUP” MEANS A VOCAL OR INSTRUMENTAL GROUP
6 WITH AT LEAST ONE MEMBER WHO HAS:

7 (1) PREVIOUSLY RELEASED A COMMERCIAL SOUND RECORDING
8 UNDER THAT GROUP’S NAME; AND

9 (2) A LEGAL RIGHT TO USE THE GROUP’S NAME DUE TO THE
10 MEMBER’S USE OF OR OPERATION UNDER THE GROUP’S NAME WITHOUT HAVING
11 ABANDONED THE NAME OR AFFILIATION WITH THE GROUP.

12 (D) “SOUND RECORDING” MEANS A WORK THAT RESULTS FROM THE
13 FIXATION ON A MATERIAL OBJECT OF A SERIES OF MUSICAL, SPOKEN, OR
14 OTHER SOUNDS REGARDLESS OF THE NATURE OF THE MATERIAL OBJECT, SUCH
15 AS A DISK, TAPE, OR OTHER PHONORECORD, IN WHICH THE SOUNDS ARE
16 EMBODIED.

17 11-1502.

18 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A
19 PERSON MAY NOT ADVERTISE OR CONDUCT A LIVE MUSICAL PERFORMANCE OR
20 PRODUCTION IN THE STATE THROUGH THE USE OF A FALSE, DECEPTIVE, OR
21 MISLEADING AFFILIATION, CONNECTION, OR ASSOCIATION BETWEEN A
22 PERFORMING GROUP AND A RECORDING GROUP.

23 (B) SUBSECTION (A) OF THIS SECTION DOES NOT APPLY IF:

24 (1) THE PERFORMING GROUP IS THE AUTHORIZED REGISTRANT
25 AND OWNER OF A SERVICE MARK FOR THAT GROUP THAT IS REGISTERED WITH
26 THE UNITED STATES PATENT AND TRADEMARK OFFICE;

27 (2) AT LEAST ONE MEMBER OF THE PERFORMING GROUP WAS A
28 MEMBER OF THE RECORDING GROUP AND THE MEMBER HAS A LEGAL RIGHT TO
29 THE RECORDING GROUP NAME DUE TO THE MEMBER’S USE OF OR OPERATION
30 UNDER THE GROUP NAME WITHOUT HAVING ABANDONED THE RECORDING
31 GROUP NAME OR AFFILIATION WITH THE RECORDING GROUP;

32 (3) THE LIVE MUSICAL PERFORMANCE OR PRODUCTION IS
33 IDENTIFIED IN ALL ADVERTISING AND PROMOTION AS A SALUTE OR TRIBUTE

1 AND THE PERFORMING GROUP NAME IS NOT SO CLOSELY RELATED OR SIMILAR
2 TO THAT USED BY THE RECORDING GROUP THAT IT WOULD TEND TO CONFUSE
3 OR MISLEAD THE PUBLIC;

4 (4) THE ADVERTISING DOES NOT RELATE TO A LIVE MUSICAL
5 PERFORMANCE OR PRODUCTION IN THE STATE; OR

6 (5) THE PERFORMANCE OR PRODUCTION IS EXPRESSLY
7 AUTHORIZED BY THE RECORDING GROUP.

8 **11-1503.**

9 (A) IF THE ATTORNEY GENERAL BELIEVES THAT A PERSON HAS
10 ENGAGED IN OR WILL ENGAGE IN A VIOLATION OF § 11-1502 OF THIS SUBTITLE,
11 AND AN INJUNCTION WOULD BE IN THE PUBLIC INTEREST, THE ATTORNEY
12 GENERAL MAY SEEK AN INJUNCTION TO PROHIBIT A PERSON FROM
13 CONTINUING OR ENGAGING IN THE VIOLATION.

14 (B) IF A COURT ISSUES A PERMANENT INJUNCTION UNDER SUBSECTION
15 (A) OF THIS SECTION, THE COURT MAY ENTER A JUDGMENT TO RESTORE TO A
16 PERSON ANY MONEY OR REAL OR PERSONAL PROPERTY ACQUIRED FROM THE
17 PERSON BY MEANS OF ANY PROHIBITED PRACTICE.

18 (C) (1) IN ADDITION TO ANY RELIEF GRANTED UNDER SUBSECTION
19 (B) OF THIS SECTION, A PERSON WHO VIOLATES § 11-1502 OF THIS SUBTITLE IS
20 SUBJECT TO A CIVIL PENALTY OF NOT LESS THAN \$5,000 OR MORE THAN
21 \$15,000 FOR EACH VIOLATION.

22 (2) EACH PERFORMANCE OR PRODUCTION IN VIOLATION OF §
23 11-1502 OF THIS SUBTITLE IS CONSIDERED A SEPARATE VIOLATION.

24 **11-1504.**

25 THIS SUBTITLE MAY BE CITED AS THE "TRUTH IN MUSIC ADVERTISING
26 ACT".

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 October 1, 2008.