

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 711

(Senator Lenett)

Finance

Economic Matters

Truth in Music Advertising Act

This bill prohibits a person from advertising or conducting a live musical performance or production in the State through the use of a false, deceptive, or misleading affiliation, connection, or association between a performing group and a recording group, with specific exceptions. The bill authorizes the Attorney General to seek an injunction to prevent violations of the bill's provisions, allows a court to enter judgment for restitution, and subjects violators to a civil penalty ranging from \$5,000 to \$15,000 for each violation.

Fiscal Summary

State Effect: General fund revenues could increase due to the bill's civil penalty provision, but any increases are expected to be minimal. If the Attorney General's Office receives fewer than 50 complaints per year stemming from the bill, the additional workload could be handled with existing resources.

Local Effect: The bill would not directly affect local finances or operations.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: The bill defines a "performing group" as a vocal or instrumental group seeking to use the name of a recording group. A "recording group" is defined as a vocal or instrumental group with at least one member who • has previously released a

commercial sound recording under that group's name; and • has a legal right to use the group's name without having abandoned the name or affiliation with the group.

Exceptions: The bill's prohibition against false, deceptive, or misleading advertisement or performance does not apply if • the performing group is the authorized registrant and owner of a service mark for that group that is registered with the U.S. Patent and Trademark Office; • at least one member of the performing group was a member of the recording group and the member has a legal right to the recording group name due to the member's use of or operation under the group name without having abandoned the recording group name or affiliation with the recording group; • the live musical performance or production is identified in all advertising and promotion as a salute, or tribute, parody, or satire, and the performing group name is not so closely related or similar to that used by the recording group that it would tend to confuse or mislead the public; • the advertising does not relate to a live musical performance or production in the State; or • the performance or production is expressly authorized by the recording group.

Enforcement: The Attorney General may seek an injunction to prohibit a person from engaging in a violation of the bill's provisions if the Attorney General believes that a person has engaged in or will engage in such a violation and that an injunction would be in the public interest. If a court issues a permanent injunction, the court may enter a judgment to restore to a person any money or real or personal property acquired from the person by means of a violation. In addition, a violator is subject to a civil penalty of at least \$5,000 but not more than \$15,000 for each violation. Each performance or production in violation of the bill's provisions is considered a separate violation.

Current Law: State law currently prohibits false advertising under Title 11, Subtitle 7 of the Commercial Law Article, which states that a person may not advertise falsely in the conduct of any business, trade, or commerce or in the provision of any service. This statute currently states that certain factors may be used to determine if an advertisement is misleading, including • any representation made by statement, word, design, device, or sound, whether alone or together; and • the extent to which the advertisement fails to reveal a fact which, in light of any representation made, is material with respect to the advertised commodity or service under conditions which are customary or usual or described in the advertisement. Any person who violates any provision of this subtitle is subject to a penalty for each violation, not exceeding \$500, which the Attorney General may recover for the State in a civil action. Before the Attorney General commences any such action, notice must be given by registered or certified mail to the person against whom the action is proposed, as well as an opportunity to show cause orally or in writing why the action should not be commenced.

Background: The bill's provisions are based on a model law created and promoted by the Vocal Group Hall of Fame Foundation, a nonprofit organization whose stated mission is to "induct vocal groups into the Vocal Group Hall of Fame, to preserve their music, perpetuate their memories, display their memorabilia in a world class Vocal Group Hall of Fame Museum and to promote their musical legacy throughout the world while paying tribute to them as international music treasures." Through their model "Truth in Music Advertising" law, this foundation seeks to protect musical groups from identity theft by other groups that deceptively use the same name and perform the same songs, misleading the public into believing that they are the original group. To date, a number of states have enacted similar "Truth in Music Advertising" laws, including California, Connecticut, Florida, Illinois, Maine, Massachusetts, Michigan, Missouri, Nevada, New Jersey, New York, North Dakota, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, and Wisconsin.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General, Department of Legislative Services

Fiscal Note History: First Reader - February 25, 2008
mll/ljm Revised - Senate Third Reader - March 19, 2008

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