Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

A Bill

HOUSE BILL  2207

State of Arkansas
87th General Assembly
Regular Session, 2009

By: Representative Kerr

For An Act To Be Entitled

AN ACT TO PROHIBIT THE ADVERTISING AND CONDUCTING OF CERTAIN LIVE MUSICAL PERFORMANCES OR PRODUCTIONS; TO CREATE THE TRUTH IN MUSIC ADVERTISING ACT; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE TRUTH IN MUSIC ADVERTISING ACT.

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

SECTION 1. Arkansas Code Title 4, Chapter 70, is amended to add an additional subchapter to read as follows:

Subchapter 4
— Truth in Music Advertising Act

4-70-401. Title.
This subchapter shall be known and may be cited as the “Truth in Music Advertising Act”.

4-70-402. Definitions.
As used in this subchapter:

(1) "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;

(2) “Recording group” means a vocal or instrumental group at least one (1) 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; and

(3) “Sound recording” means 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 phonograph record, in which the sounds are embodied.

4-70-403. Production.

(a) Except as provided in subsection (b) of this section, it shall be unlawful for any person to 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 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 (1) 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 promotions 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; or

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

4-70-404. Restraining prohibited acts.

(a) If the Attorney General or a prosecuting 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 § 4-70-
and that proceedings would be in the public interest, the Attorney
General or prosecuting attorney may bring an action in the name of the state
against the person to restrain by temporary or permanent injunction that
practice.

(b) If a court issues a permanent injunction to restrain and prevent
violations of this act as authorized in subsection (a) of this section, 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 subchapter, under terms and
conditions to be established by the court.

4-70-405. Penalty.

(a) A person who violates § 4-70-403 is liable to the state for a
civil penalty of not less than five thousand dollars ($5,000) nor more than
fifteen thousand dollars ($15,000) per violation, and the civil penalty shall
be in addition to any other relief which may be granted under § 4-70-404.

(b) Each performance or production declared unlawful by § 4-70-403
shall constitute a separate violation.