

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.

1 State of Arkansas  
2 87th General Assembly  
3 Regular Session, 2009  
4

# A Bill

HOUSE BILL 2207

5 By: Representative Kerr  
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7

## For An Act To Be Entitled

8  
9 AN ACT TO PROHIBIT THE ADVERTISING AND CONDUCTING  
10 OF CERTAIN LIVE MUSICAL PERFORMANCES OR  
11 PRODUCTIONS; TO CREATE THE TRUTH IN MUSIC  
12 ADVERTISING ACT; AND FOR OTHER PURPOSES.  
13

## Subtitle

14  
15 TO CREATE THE TRUTH IN MUSIC ADVERTISING  
16 ACT.  
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
20

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

### Subchapter 4

#### — Truth in Music Advertising Act

#### 4-70-401. Title.

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27 This subchapter shall be known and may be cited as the "Truth in  
28 Music Advertising Act".  
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#### 4-70-402. Definitions.

##### As used in this subchapter:

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32 (1) "Performing group" means a vocal or instrumental group  
33 seeking to use the name of another group that has previously released a  
34 commercial sound recording under that name;

35 (2) "Recording group" means a vocal or instrumental group at  
36 least one (1) of whose members has previously released a commercial sound



1 recording under that group's name and in which the member or members have a  
 2 legal right by virtue of use or operation under the group name without having  
 3 abandoned the name or affiliation with the group; and

4 (3) "Sound recording" means work that results from the fixation  
 5 on a material object of a series of musical, spoken, or other sounds,  
 6 regardless of the nature of the material object, such as a disc, tape, or  
 7 other phonograph record, in which the sounds are embodied.

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 9 4-70-403. Production.

10 (a) Except as provided in subsection (b) of this section, it shall be  
 11 unlawful for any person to advertise or conduct a live musical performance or  
 12 production in this state through the use of a false, deceptive, or misleading  
 13 affiliation, connection, or association between a performing group and a  
 14 recording group.

15 (b) This section does not apply if any of the following apply:

16 (1) The performing group is the authorized registrant and owner  
 17 of a federal service mark for that group registered in the United States  
 18 Patent and Trademark Office;

19 (2) At least one (1) member of the performing group was a member  
 20 of the recording group and has a legal right by virtue of use or operation  
 21 under the group name without having abandoned the name or affiliation with  
 22 the group;

23 (3) The live musical performance or production is identified in  
 24 all advertising and promotions as a salute or tribute, and the name of the  
 25 vocal or instrumental group performing is not so closely related or similar  
 26 to that used by the recording group that it would tend to confuse or mislead  
 27 the public;

28 (4) The advertising does not relate to a live musical  
 29 performance or production taking place in this state; or

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

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 33 4-70-404. Restraining prohibited acts.

34 (a) If the Attorney General or a prosecuting attorney has reason to  
 35 believe that any person is advertising or conducting or is about to advertise  
 36 or conduct a live musical performance or production in violation of § 4-70-

1 403 and that proceedings would be in the public interest, the Attorney  
2 General or prosecuting attorney may bring an action in the name of the state  
3 against the person to restrain by temporary or permanent injunction that  
4 practice.

5 (b) If a court issues a permanent injunction to restrain and prevent  
6 violations of this act as authorized in subsection (a) of this section, the  
7 court may in its discretion direct that the defendant restore to any person  
8 in interest any moneys or property, real or personal, which may have been  
9 acquired by means of any violation of this subchapter, under terms and  
10 conditions to be established by the court.

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12 4-70-405. Penalty.

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

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

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