

CHAPTER 117

CONSUMER AND COMMERCIAL TRANSACTIONS

HOUSE BILL 08-1196

BY REPRESENTATIVE(S) Riesberg, Fischer, Frangas, Labuda, Liston, Madden, Marshall, McFadyen, McGihon, Merrifield, Mitchell V., Rose, and Todd;
also SENATOR(S) Gibbs, Tochtrop, and Williams.

AN ACT**CONCERNING TRUTHFUL ADVERTISING OF MUSICAL PERFORMANCES.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Part 7 of article 1 of title 6, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

6-1-719. Truth in music advertising. (1) Definitions. AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "PERFORMING GROUP" MEANS A VOCAL OR INSTRUMENTAL GROUP SEEKING TO USE THE NAME OF A RECORDING GROUP.

(b) "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 AT LEAST ONE OF THE MEMBERS HAS A LEGAL RIGHT BY VIRTUE OF USE OR OPERATION UNDER THE GROUP NAME WITHOUT HAVING ABANDONED THE NAME OR AFFILIATION WITH THE GROUP.

(c) "SOUND RECORDING" MEANS A WORK THAT RESULTS FROM THE FIXATION, ON OR IN A RECORDING MEDIUM OR OTHER MATERIAL OBJECT, OF A SERIES OF MUSICAL, SPOKEN, OR OTHER SOUNDS REGARDLESS OF THE NATURE OF THE MEDIUM OR OBJECT, SUCH AS A DISK, TAPE, OR OTHER PHONO RECORD, IN WHICH THE SOUNDS ARE RECORDED.

(2) **Production.** (a) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (2), IT IS UNLAWFUL FOR ANY PERSON TO ADVERTISE OR CONDUCT A LIVE MUSICAL PERFORMANCE OR PRODUCTION IN THIS STATE THROUGH THE USE OF

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

A FALSE, DECEPTIVE, OR MISLEADING AFFILIATION, CONNECTION, OR ASSOCIATION BETWEEN A PERFORMING GROUP AND A RECORDING GROUP.

(b) PARAGRAPH (a) OF THIS SUBSECTION (2) DOES NOT APPLY IF:

(I) 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;

(II) 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;

(III) THE LIVE MUSICAL PERFORMANCE OR PRODUCTION IS IDENTIFIED IN ALL ADVERTISING AND PROMOTION AS A SALUTE OR TRIBUTE;

(IV) THE ADVERTISING DOES NOT RELATE TO A LIVE MUSICAL PERFORMANCE OR PRODUCTION TAKING PLACE IN THIS STATE; OR

(V) THE PERFORMANCE OR PRODUCTION IS EXPRESSLY AUTHORIZED BY THE RECORDING GROUP.

(3) **Restraining prohibited acts.** IN ADDITION TO THE ACTIONS AND REMEDIES SPECIFIED IN PART 1 OF THIS ARTICLE THAT MAY APPLY:

(a) **Injunction.** WHENEVER THE ATTORNEY GENERAL OR A DISTRICT ATTORNEY HAS REASON TO BELIEVE THAT A PERSON IS ADVERTISING, CONDUCTING, OR ABOUT TO ADVERTISE OR CONDUCT A LIVE MUSICAL PERFORMANCE OR PRODUCTION IN VIOLATION OF THIS SECTION AND THAT PROCEEDINGS WOULD BE IN THE PUBLIC INTEREST, THE ATTORNEY GENERAL OR DISTRICT ATTORNEY MAY BRING AN ACTION IN THE NAME OF THE STATE AGAINST THE PERSON TO RESTRAIN THAT PRACTICE BY TEMPORARY OR PERMANENT INJUNCTION.

(b) **Payment of costs and restitution.** WHENEVER A COURT ISSUES A PERMANENT INJUNCTION TO RESTRAIN AND PREVENT VIOLATIONS OF THIS SECTION AS AUTHORIZED IN PARAGRAPH (a) OF THIS SUBSECTION (3), THE COURT MAY, IN ITS DISCRETION, DIRECT THAT THE DEFENDANT RESTORE TO ANY PERSON IN INTEREST ANY MONEYS OR PROPERTY, REAL OR PERSONAL, THAT MAY HAVE BEEN ACQUIRED BY MEANS OF A VIOLATION OF THIS SECTION, UNDER TERMS AND CONDITIONS TO BE ESTABLISHED BY THE COURT.

(c) **Penalty.** A PERSON WHO VIOLATES THIS SECTION IS LIABLE TO THE STATE FOR A CIVIL PENALTY OF NOT LESS THAN FIVE THOUSAND DOLLARS NOR MORE THAN FIFTEEN THOUSAND DOLLARS PER VIOLATION, WHICH CIVIL PENALTY SHALL BE IN ADDITION TO ANY OTHER RELIEF THAT MAY BE GRANTED UNDER THIS SUBSECTION (3) BUT WHICH SHALL NOT BE CUMULATIVE WITH THE PENALTY SPECIFIED IN SECTION 6-1-112. EACH PERFORMANCE OR PRODUCTION THAT VIOLATES THIS SECTION CONSTITUTES A SEPARATE VIOLATION.

SECTION 2. Effective date - applicability. (1) This act shall take effect at

12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 6, 2008, if adjournment sine die is on May 7, 2008); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to acts occurring on or after the applicable effective date of this act.

Approved: April 10, 2008