

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 399
94TH GENERAL ASSEMBLY

Reported from the Committee on Judiciary April 2, 2007 with recommendation that House Committee Substitute for House Bill No. 399 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(21)(f).

D. ADAM CRUMBLISS, Chief Clerk

0053L.02C

AN ACT

To amend chapter 407, RSMo, by adding thereto one new section relating to false or deceptive business practices, with a penalty provision.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 407, RSMo, is amended by adding thereto one new section, to be
2 known as section 407.309, to read as follows:

407.309. 1. As used in this section, the following terms mean:

2 (1) "Performing group", a vocal or instrumental group seeking to use the name of
3 another group that has previously released a commercial sound recording under that
4 name;

5 (2) "Recording group", a vocal or instrumental group at least one of whose
6 members has previously released a commercial sound recording under that group's name
7 and in which the member or members have a legal right by virtue of use or operation
8 under the group name without having abandoned the name or affiliation with the group;

9 (3) "Sound recording", a work that results from the fixation on a material object
10 of a series of musical, spoken, or other sounds regardless of the nature of the material
11 object, such as a disk, tape, or other phono-record, in which the sounds are embodied.

12 2. It shall be unlawful for any person to advertise or conduct a live musical
13 performance or production in this state through the use of a false, deceptive, or misleading

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14 **affiliation, connection, or association between the performing group and the recording**
15 **group. This section shall not apply if:**

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

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

21 **(3) The live musical performance or production is identified in all advertising and**
22 **promotion as a salute or tribute;**

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

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

26 **3. (1) Whenever the attorney general or prosecuting attorney has reason to believe**
27 **that any person is advertising or conducting or is about to advertise or conduct a live**
28 **musical performance or production in violation of subsection 2 of this section and that**
29 **proceedings would be in the public interest, the attorney general or prosecuting attorney**
30 **may bring an action in the name of the state against the person to restrain by temporary**
31 **or permanent injunction that practice.**

32 **(2) Whenever any court issues a permanent injunction to restrain and prevent**
33 **violations of this section as authorized in subdivision (1) of this subsection, the court may**
34 **in its discretion direct that the defendant restore to any person in interest any moneys or**
35 **property, real or personal, which may have been acquired by means of any violation of this**
36 **section, under terms and conditions to be established by the court.**

37 **4. A person who violates subsection 2 of this section shall be liable to the state for**
38 **a civil penalty of not less than five thousand dollars nor more than fifteen thousand dollars**
39 **per violation, which civil penalty shall be in addition to any other relief which may be**
40 **granted under subsection 3 of this section. Each performance or production declared**
41 **unlawful by subsection 2 of this section shall constitute a separate violation.**

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