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AS PASSED BY THE SENATE

May 26, 2011

**H. 4119**

Introduced by Rep. G.A. Brown

S. Printed 5/26/11--S. [SEC 5/31/11 1:03 PM]

Read the first time May 11, 2011.

**A** **BILL**

TO AMEND SECTION 39‑5‑38, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DECEPTIVE OR MISLEADING ADVERTISEMENT OF A LIVE MUSICAL PERFORMANCE, SO AS TO DEFINE A SOUND RECORDING, AND TO PROVIDE CERTAIN EXEMPTIONS, REMEDIES, AND A FINE.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 39‑5‑38 of the 1976 Code, as added by Act 204 of 2004, is amended to read:

“Section 39‑5‑38. (A) For purposes of this section:

(1) ‘performing person or group’ means a vocal or instrumental performer seeking to use the name of another person or group that has previously produced or released, or both, a commercial recording;  ~~and~~

(2) ‘recording person or group’ means a vocal or instrumental performer that has previously produced or released, or both, a commercial recording~~.~~; and

(3) ‘sound recording’ means the fixation of a series of musical, spoken, or other sounds on a material object such as a disk, tape, or other phono‑record on which the sounds are embodied.

(B) It is an unlawful trade practice pursuant to Section 39‑5‑20 to advertise a live musical performance or production in South Carolina through the use of a false, deceptive, or misleading affiliation, connection, or association between the performing person or group with a recording person or group.

(C) The advertisement of a live musical performance does not violate subsection (B) if the:

(1) performing person or at least one member of the performing group was a member of the recording person or group and has a legal right by virtue of use or operation under the group name without having abandoned the name of affiliation with the group;

(2) live musical performance or production is identified as a ‘salute’ or ‘tribute’ to, and is otherwise unaffiliated with, the recording person or group;

(3) advertising does not relate to a live musical performance taking place in South Carolina; ~~or~~

(4) performance is expressly authorized in the advertising by the recording person or group; or

(5) performing group is the authorized registrant and owner of a federal service mark for that group and registered in the United States Patent and Trademark Office.

(D)(1) A court of this State may issue a temporary or permanent injunction for a violation or attempted violation of this chapter where the court believes an injunction would best serve the public interest.

(2) A court that issues a permanent injunction to restrain and prevent a violation of this section may order the enjoined party to restore to its legal owner money or property acquired by the enjoined party through a violation of this section.

(E) A person who violates the provisions of this section is subject to a penalty of at least five thousand dollars and not more than fifteen thousand dollars for each violation.”

SECTION 2. This act takes effect upon approval by the Governor.

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