

The House Committee on Judiciary offers the following substitute to SB 226:

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 15 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated,
2 relating to deceptive or unfair practices, so as to provide for the prohibition against the
3 advertising and conducting of certain live musical performances and productions; to provide
4 for a short title; to provide for definitions; to provide for enforcement and penalties; to
5 provide for related matters; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Article 15 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to
9 deceptive or unfair practices, is amended by adding a new part to read as follows:

10 "Part 7

11 10-1-439.

12 This part shall be known and may be cited as the 'Truth in Music Advertising Act.'

13 10-1-439.1.

14 As used in this part, the term:

15 (1) 'Performing group' means a vocal or instrumental group seeking to use the name of
16 another group that has previously released a commercial sound recording under that
17 name.

18 (2) 'Recording group' means a vocal or instrumental group of which at least one member
19 has previously released a commercial sound recording under that group's name and in
20 which the member or members have a legal right to such group name by virtue of use or
21 operation under such group name without having abandoned the name or affiliation with
22 the group.

23 (3) 'Sound recording' means a work that results from the fixation on a material object of
 24 a series of musical, spoken, or other sounds regardless of the nature of the material object,
 25 such as a disc, tape, or other phonographic record, in which the sounds are embodied.

26 10-1-439.2.

27 (a) It shall be unlawful for any person to advertise or conduct a live musical performance
 28 or production in this state through the use of a false, deceptive, or misleading affiliation,
 29 connection, or association between a performing group and a recording group.

30 (b) This Code section shall not apply if:

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

33 (2) At least one member of the performing group was a member of the recording group
 34 and has a legal right to the group name by virtue of use or operation under the group
 35 name without having abandoned the name or affiliation with the group;

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

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

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

41 10-1-439.3.

42 (a) Whenever it may appear to the administrator that any person is using, has used, or is
 43 about to use any method, act, or practice declared by this part to be unlawful and that
 44 proceedings would be in the public interest, whether or not any person has actually been
 45 misled, he or she may:

46 (1) Subject to notice and opportunity for hearing in accordance with Code Section
 47 10-1-398, unless the right to notice is waived by the person against whom the sanction
 48 is imposed, take any or all of the following actions:

49 (A) Issue a cease and desist order prohibiting any unfair or deceptive act or practice
 50 against any person; or

51 (B) Issue an order against a person who willfully violates this part, imposing a civil
 52 penalty of up to a maximum of \$2,000.00 per violation; or

53 (2) Without regard as to whether the administrator has issued any orders under this Code
 54 section, upon a showing by the administrator in any superior court of competent
 55 jurisdiction that a person has violated or is about to violate this part or an order of the
 56 administrator, the court may enter or grant any or all of the following relief:

57 (A) A temporary restraining order or temporary or permanent injunction;

- 58 (B) A civil penalty of up to a maximum of \$5,000.00 per violation of this part;
59 (C) A declaratory judgment;
60 (D) Restitution to any person or persons adversely affected by a defendant's actions in
61 violation of this part; or
62 (E) Other relief as the court deems just and equitable.
- 63 (b) Unless the administrator determines that a person subject to this part designs quickly
64 to depart from this state or to remove his or her property therefrom or to conceal himself,
65 herself, or his or her property therein or that there is immediate danger of harm to citizens
66 of this state or of another state, the administrator shall, before initiating any proceedings
67 as provided in this Code section, give notice in writing that such proceedings are
68 contemplated.
- 69 (c) With the exception of consent judgments entered before any testimony is taken, a final
70 judgment under this Code section shall be admissible as prima-facie evidence of such
71 specific findings of fact as may be made by the court which enters the judgment in
72 subsequent proceedings by or against the same person or his or her successors or assigns."

73 **SECTION 2.**

74 All laws and parts of laws in conflict with this Act are repealed.