

Senate Bill 428

By: Senators Cowser of the 46th, Mullis of the 53rd, Ginn of the 47th, Miller of the 49th, Martin of the 9th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 2 of Article 15 of Chapter 1 of Title 10 of the Official Code of Georgia
2 Annotated, relating to the "Fair Business Practices Act of 1975," so as to prohibit the
3 deceptive practice of musical performance groups advertising and appearing as the recording
4 group without the recording group's permission or denoting that it is a salute or tribute
5 performance; to provide for definitions; to specify violations; to provide for related matters;
6 to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Part 2 of Article 15 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated,
10 relating to the "Fair Business Practices Act of 1975," is amended by adding a new Code
11 section to read as follows:

12 "10-1-393.16.

13 (a) As used in this part, the term:

14 (1) 'Performing group' means a vocal or instrumental act consisting of one or more
15 members that intends to advertise or appear under the name of a recording group or a
16 name substantially similar to a recording group.

17 (2) 'Recording group' means a vocal or instrumental act that consists of one or more
18 members of which:

19 (A) At least one has previously released a sound recording commercially under such
20 act's name; and

21 (B) At least one has a legal right to such act's name by virtue of use or operation under
22 such act's name without having abandoned such name or affiliation with such act.

23 (3) 'Service mark' means any word, name, symbol, or device or any combination thereof
24 adopted and used by a person to identify the services of such person and to distinguish
25 such services from the services of others.

26 (4) 'Sound recording' means a work that results from the fixation of a series of musical,
27 spoken, or other sounds, regardless of the nature of the material object, such as a
28 phonograph, disc, tape, wire, digital storage, or other medium in which the sounds are
29 embodied.

30 (b) It shall be unlawful for a person to advertise or conduct a vocal or instrumental
31 performance or production in this state by using any false, deceptive, or misleading
32 affiliation, connection, or association between a performing group and a recording group
33 without the express authorization of the recording group unless:

34 (1) Such person or performing group is the authorized registrant and owner of a service
35 mark for the recording group that is registered in the United States Patent and Trademark
36 Office;

37 (2) At least one member of the performing group was a member of the recording group
38 and such member of the recording group has a legal right to use or operate under the
39 name of the recording group;

40 (3) The performance or production is identified in all advertising and promotion as a
41 salute or tribute and the name of the performing group is not so closely related or similar
42 to the name used by the recording group that it would tend to confuse or mislead the
43 public; or

44 (4) The advertisement does not relate to a live performance or production taking place
45 in, streamed into, or broadcasted in this state.

46 (c) Each advertisement, performance, or production in violation of this Code section shall
47 constitute a separate violation."

48 **SECTION 2.**

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