

1 AN ACT relating to music advertising of performances and productions.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO
4 READ AS FOLLOWS:

5 *As used in Sections 1 to 3 of this Act:*

6 *(1) "Performing group" means a vocal or instrumental group of one (1) or more*
7 *members that intends to advertise or perform under the name of a recording*
8 *group or a name substantially similar to a recording group;*

9 *(2) "Recording group" means a vocal or instrumental group of one (1) or more*
10 *members, at least one (1) of whose members has previously released a*
11 *commercial sound recording under that group's name and in which the member*
12 *or members have a legal right by virtue of use or operation under the group name*
13 *without having abandoned the name affiliated with the group; and*

14 *(3) "Sound recording" means a work that results from the fixation of a series of*
15 *musical, spoken, or other sounds, regardless of the nature of the material object,*
16 *such as a phonograph, disc, tape, wire, digital storage, or other medium, in which*
17 *the sounds are embodied.*

18 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO
19 READ AS FOLLOWS:

20 *A person may not advertise or conduct a live musical performance in the*
21 *Commonwealth of Kentucky through the use of a false, deceptive, or misleading*
22 *affiliation, connection, or association between a performing group and a recording*
23 *group. This section does not apply if:*

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

27 *(2) At least one (1) member of the performing group was a member of the recording*

1 group and has a legal right to use or operate under the name of the recording
2 group without having abandoned the name or affiliation with the recording
3 group;

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

8 (4) The advertising does not relate to a live musical performance or production
9 taking place in, or streamed or broadcast into, the Commonwealth of Kentucky;
10 or

11 (5) The performance or production is expressly authorized by the performing group.

12 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO
13 READ AS FOLLOWS:

14 (1) If the Attorney General or a Commonwealth's attorney has reason to believe that
15 a person is advertising or conducting or intends to advertise or conduct a live
16 musical performance or production in violation of Section 2 of this Act, the
17 Attorney General or Commonwealth's attorney may bring an action in the name
18 of the Commonwealth of Kentucky against the person to restrain the violation by
19 temporary or permanent injunction.

20 (2) When a court issues a permanent injunction to restrain and prevent a violation of
21 Section 2 of this Act, the court may make additional orders or judgments as
22 necessary to restore money or property that may have been acquired because of a
23 violation of Section 2 of this Act.

24 (3) A person who violates Section 2 of this Act is liable to the Commonwealth of
25 Kentucky for a civil penalty of not less than five thousand dollars (\$5,000) or
26 more than fifteen thousand dollars (\$15,000) per violation.

27 (4) The civil penalty provided by this section is in addition to injunctive relief or any

- 1 *other remedy that may be available.*
- 2 *(5) Any party, assignee, authorized agent, or licensee of that party who is injured as*
- 3 *a result of a person's violation of Section 2 of this Act may bring a civil action for*
- 4 *appropriate legal and equitable relief, including injunctive relief, and for treble*
- 5 *damages, reasonable attorney's fees, filing fees, and costs for the injured party.*
- 6 *(6) Each performance or production in violation of Section 2 of this Act constitutes a*
- 7 *separate unlawful act under KRS 367.170.*

8 ➔Section 4. Sections 1 to 3 of this Act may be cited as the Kentucky Truth in

9 Music Advertising Act.