

Assembly Bill No. 702

CHAPTER 395

An act to add Section 17537.12 to the Business and Professions Code, relating to deceptive practices.

[Approved by Governor October 10, 2007. Filed with
Secretary of State October 10, 2007.]

LEGISLATIVE COUNSEL'S DIGEST

AB 702, Portantino. Musical performances or productions: deceptive acts.

Existing law prohibits various unfair business practices, including certain advertising practices. Existing law provides various remedies for these violations, including civil penalties of not more than \$2,500 per violation, restitution, and injunctive relief. Existing law also makes it a crime to violate any of the provisions governing advertising.

This bill would make it unlawful for any performing group or its promoter, manager, or agent to advertise or conduct a live musical performance or production through the use of a false, deceptive, or misleading affiliation, connection, or association between a performing group and a recording group, as defined, except under specified circumstances.

By adding this new provision, this bill would expand the scope of an existing crime, thereby imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 17537.12 is added to the Business and Professions Code, to read:

17537.12. (a) This section shall be known and may be cited as the Truth in Music Advertising Act.

(b) As used in this section, the following terms have the following meanings unless the context clearly indicates otherwise:

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

(2) "Person" means the performing group or its promoter, manager, or agent. "Person" does not include the performance venue or its owners,

managers, or operators, unless the performance venue owns or produces the performing group, or knew or should have known that the performing group does not have a legal right to perform.

(3) “Recording group” means a vocal or instrumental group, at least one of whose members has previously released a commercial sound recording under that group’s name and in which the member or members have a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation with the group.

(4) “Sound recording” means a work that results from the fixation on a material object of a series of musical, spoken, or other sounds regardless of the nature of the material object, such as a disk, tape, or other phonorecord, in which the sounds are embodied.

(c) No person shall advertise or conduct a live musical performance or production through the use of a false, deceptive, or misleading affiliation, connection, or association between a performing group and a recording group unless any of the following apply:

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

(2) At least one member of the performing group was previously a member of the recording group and has a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation of the group.

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

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

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

(d) (1) Any person who violates any of the provisions of this section shall be subject to a civil penalty not to exceed two thousand five hundred dollars (\$2,500) per violation, as provided in subdivision (a) of Section 17206. An action for a civil penalty be brought by a public prosecutor as provided in subdivision (a) of Section 17206 and shall be enforceable as a civil judgment.

(2) Any person who violates any of the provisions of this section shall be subject to the equitable remedies described in Chapter 5 (commencing with Section 17200) of Part 2.

(3) Nothing in this section shall preclude prosecution of a violation of this section under any other provision of law.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction,

or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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