**South Carolina General Assembly**

119th Session, 2011-2012

**A60, R96, H4119**

**STATUS INFORMATION**

General Bill

Sponsors: Rep. G.A. Brown

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Introduced in the House on April 26, 2011

Introduced in the Senate on May 11, 2011

Last Amended on May 26, 2011

Passed by the General Assembly on June 1, 2011

Governor's Action: June 14, 2011, Signed

Summary: Advertisements, Musical performance, sound recording defined

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

4/26/2011 House Introduced and read first time ([House Journal‑page 17](file:///h:\hj%20archive\2011\04-26-11.docx))

4/26/2011 House Referred to Committee on **Labor, Commerce and Industry** ([House Journal‑page 17](file:///h:\hj%20archive\2011\04-26-11.docx))

4/28/2011 House Recalled from Committee on **Labor, Commerce and Industry** ([House Journal‑page 41](file:///h:\hj%20archive\2011\04-28-11.docx))

5/4/2011 House Read second time ([House Journal‑page 35](file:///h:\hj%20archive\2011\05-04-11.docx))

5/4/2011 House Roll call Yeas‑106 Nays‑0 ([House Journal‑page 35](file:///h:\hj%20archive\2011\05-04-11.docx))

5/5/2011 House Read third time and sent to Senate ([House Journal‑page 14](file:///h:\hj%20archive\2011\05-05-11.docx))

5/11/2011 Senate Introduced and read first time ([Senate Journal‑page 15](file:///h:\sj%20archive\2011\05-11-11.docx))

5/11/2011 Senate Referred to Committee on **Judiciary** ([Senate Journal‑page 15](file:///h:\sj%20archive\2011\05-11-11.docx))

5/24/2011 Senate Polled out of committee **Judiciary** ([Senate Journal‑page 22](file:///h:\sj%20archive\2011\05-24-11.docx))

5/24/2011 Senate Committee report: Favorable **Judiciary** ([Senate Journal‑page 22](file:///h:\sj%20archive\2011\05-24-11.docx))

5/25/2011 Senate Amended ([Senate Journal‑page 26](file:///h:\sj%20archive\2011\05-25-11.docx))

5/25/2011 Senate Read second time ([Senate Journal‑page 26](file:///h:\sj%20archive\2011\05-25-11.docx))

5/25/2011 Senate Roll call Ayes‑41 Nays‑2 ([Senate Journal‑page 26](file:///h:\sj%20archive\2011\05-25-11.docx))

5/26/2011 Scrivener's error corrected

5/26/2011 Senate Amended ([Senate Journal‑page 38](file:///h:\sj%20archive\2011\05-26-11.docx))

5/26/2011 Senate Read third time and returned to House with amendments ([Senate Journal‑page 38](file:///h:\sj%20archive\2011\05-26-11.docx))

5/26/2011 Senate Roll call Ayes‑36 Nays‑2 ([Senate Journal‑page 38](file:///h:\sj%20archive\2011\05-26-11.docx))

5/31/2011 Scrivener's error corrected

6/1/2011 House Concurred in Senate amendment and enrolled ([House Journal‑page 33](file:///h:\hj%20archive\2011\06-01-11.docx))

6/1/2011 House Roll call Yeas‑101 Nays‑0 ([House Journal‑page 33](file:///h:\hj%20archive\2011\06-01-11.docx))

6/8/2011 Ratified R 96

6/14/2011 Signed By Governor

6/20/2011 Effective date 06/14/11

6/20/2011 Act No. 60

**VERSIONS OF THIS BILL**

[4/26/2011](file:///p:\pprever\2011-12\4119_20110426.docx)

[4/28/2011](file:///p:\pprever\2011-12\4119_20110428.docx)

[5/24/2011](file:///p:\pprever\2011-12\4119_20110524.docx)

[5/25/2011](file:///p:\pprever\2011-12\4119_20110525.docx)

[5/26/2011](file:///p:\pprever\2011-12\4119_20110526.docx)

[5/26/2011-A](file:///p:\pprever\2011-12\4119_20110526A.docx)

[5/31/2011](file:///p:\pprever\2011-12\4119_20110531.docx)

(A60, R96, H4119)

**AN ACT 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.**

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

**Deceptive or misleading advertisement of live musical performance, definitions, rights, remedies**

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;

(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;

(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.”

**Time effective**

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

Ratified the 8th day of June, 2011.

Approved the 14th day of June, 2011.

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