

HOUSE BILL REPORT

SB 5284

As Passed House:
April 7, 2009

Title: An act relating to truth in music advertising.

Brief Description: Concerning truth in music advertising.

Sponsors: Senators Keiser, Holmquist, Kohl-Welles, Pridemore, Marr and Kauffman.

Brief History:

Committee Activity:

Commerce & Labor: 3/20/09 [DP].

Floor Activity

Passed House: 4/7/09, 97-0.

Brief Summary of Bill

- Prohibits a person from advertising or conducting a live musical performance through the use of a false, deceptive, or misleading affiliation between the performing group and a recording group, except in certain circumstances.
- Provides penalties for a violation of this prohibition.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass. Signed by 8 members: Representatives Conway, Chair; Wood, Vice Chair; Condotta, Ranking Minority Member; Chandler, Crouse, Green, Moeller and Williams.

Staff: Alison Hellberg (786-7152)

Background:

A service mark is a word, phrase, symbol, or combination of words, phrases, or symbols that identify and distinguish the source of a service. The name of a musical recording or performing group can be considered a service mark.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Service marks are protected intellectual property. Service marks may, but are not required to be, registered with the U.S. Patent and Trademark Office and/or with the Washington Secretary of State. Registration provides certain protections, including: (1) constructive notice to the public that the registrant owns the mark; and (2) a legal presumption that the registrant owns the mark and has exclusive right to use it. Ownership of a service mark may arise from use, registration, or both. A service mark owner may prevent others from using the mark for the same or similar service. An owner may also prevent others from using the mark for other services or products if such use could be confusing to consumers.

A service mark owner may lose that owner's rights to the exclusive use of a service mark if that owner abandons the service mark. Abandonment may be shown by the owner having notice of another using the service mark and failing to take action to stop the infringement.

Summary of Bill:

A person may not advertise or conduct a live musical performance or production through the use of a false, deceptive, or misleading affiliation, connection, or association between the performing group and a recording group, unless:

- the performing group is the authorized registrant and owner of a federal service mark for the group registered in the U.S. Patent and Trademark Office;
- at least one member of the performing group was previously a member of the recording group and has a legal right to the name;
- the live musical performance is identified in all advertising and promotion as a salute or tribute;
- the advertising does not relate to a live musical performance taking place in this state; or
- the performance is expressly authorized by the recording group.

A person who violates these provisions is subject to a civil penalty of not less than \$5,000 or more than \$15,000. An action for a civil penalty or other injunctive relief may be brought by the Attorney General or a county or city prosecutor.

These provisions may be known and cited as the "Truth in Music Advertising Act."

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This is a bill that protects both consumers and performers. Doo-wop and Motown bands have had this happen to them. It deceives the public about who is actually performing. It also hurts performers from the original band who are still performing and trying to make a living. It is difficult when several bands are using their name. Several states have passed similar legislation.

(Opposed) None.

Persons Testifying: Senator Keiser, prime sponsor.

Persons Signed In To Testify But Not Testifying: None.