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BILL ANALYSIS



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Senate Bill 1125 (as passed by the Senate)  
Sponsor: Senator Martha G. Scott  
Committee: Judiciary

(as enrolled)

Date Completed: 7-18-06

## **RATIONALE**

Several bands apparently tour the country using the names of pioneering recording groups of the 1950s and 1960s, and performing those groups' familiar songs, without having any legitimate connection to the original recording groups. The Vocal Group Hall of Fame has been promoting state legislation that would prohibit performing groups from using the famous names of recording groups, unless the performing group included at least one member of the recording group who had continuously used the group's name, the performing group was an obvious salute or tribute to the recording group, the performing group had the recording group's permission to use its name, or the performing group held the Federal service mark for the group name. Pennsylvania, Connecticut, and Illinois already have enacted these so-called "truth-in-music" laws and some people believe that Michigan should pass similar legislation.

## **CONTENT**

**The bill would amend the Michigan Consumer Protection Act to prohibit as an unfair trade practice advertising or conducting a live musical performance or production by using a false or misleading association between a "performing group" and a "recording group", subject to certain exceptions.**

The Act provides that unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce are unlawful, and contains a list of such practices. The bill would include in that list advertising or conducting a live musical performance or production in Michigan through the use of a false,

deceptive, or misleading affiliation, connection, or association between a performing group and a recording group. This provision would not apply, however, if any of the following were met:

- The performing group was the authorized registrant and owner of a Federal service mark for that group registered in the United States Patent and Trademark Office.
- At least one member of the performing group was a member of the recording group and had a legal right to use the recording group's name, by virtue of use or operation under the recording group's name without having abandoned the name or affiliation with the recording group.
- The live musical performance or production was identified in all advertising and promotion as a salute or tribute, and the name of the vocal or instrumental group performing was not so closely related or similar to the name used by the recording group that it would tend to confuse or mislead the public.
- The advertising did not relate to a live musical performance or production taking place in Michigan.
- The performance or production was expressly authorized by the recording group.

The Act allows the Attorney General to bring an action to restrain a defendant from engaging in a method, act, or practice if he or she has probable cause to believe that the person has engaged, is engaging, or is about to engage in a method, act, or practice that constitutes an unfair, unconscionable, or deceptive method, act, or practice in the conduct of trade or

commerce. The court may award costs to the prevailing party and, for persistent and knowing violations, may assess a civil fine of up to \$25,000. Under the bill, for violations involving a live musical performance or production using a false, deceptive, or misleading affiliation, connection, or association between a performing group and a recording group, each performance or production would be a separate violation.

Under the bill, "performing group" would mean a vocal or instrumental group seeking to use the name of another group that has previously released a commercial sound recording under that name. "Recording group" would mean a vocal or instrumental group that meets both of the following:

- At least one of the members of the group has previously released a commercial sound recording under the group's name.
- At least one of the members of the group has a legal right to use the group's name, by virtue of use or operation under the group's name without abandoning the name of or affiliation with the group.

MCL 445.902 et al.

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

Each year, there reportedly are hundreds of performances across the country by groups using the names of successful pioneering rock and roll recording groups, such as the Platters, Drifters, and Coasters. Indeed, according to testimony before the Senate Judiciary Committee by Jon "Bowzer" Bauman, a former member of the group Sha Na Na, more than 75 groups once performed under the name of the Platters at various venues around the country on the same night.

By using the name of a familiar group, and singing its hit songs, the contemporary performing groups suggest to consumers and entertainment venues that they are the original group, or have at least one member of the original recording group. These imposter groups may even use an older musician, leading fans to believe that he or she must be one of the "real" members of

the old recording group. Typically, though, none of the members of the performing group has any connection with the recording group of the same name.

This situation deceives consumers as to the identity of the performers they are paying to see and hear in concert, and can be viewed as a form of identity theft perpetrated against the legitimate members of the original recording groups. At least three states already have taken action to prohibit imposter performing groups from profiting off the names of established recording groups, and legislation has been proposed in many others. By defining "recording group" and "performing group" in Michigan law and prohibiting a performing group from using the name of a recording group unless the performing group owned the rights to the name or included at least one original member of the recording group who had continuously used its name, or other criteria were met, the bill would protect the rights of consumers and the original recording artists, as well as the integrity of the music industry.

At the same time, the bill would not preclude legitimate and obvious tributes to the original recording groups. The bill contains an exception from the prohibition for a live musical performance or production identified in all advertising and promotion as a salute or tribute, allowing for performances by obvious tribute groups such as the popular Beatlemania, which impersonates the Beatles.

### **Opposing Argument**

The bill may have a couple of shortcomings. It should include a provision assigning civil liability to arenas, concert halls, and other entertainment venues that hire and host ersatz performing groups. This would give the owners and operators of those facilities an incentive not to book imposter performances.

Also, the exception for salute or tribute performances may be too broad. It could offer illegitimate bands a loophole for deceptively using an established group's name.

**Response:** Entertainment venues rarely contract directly with performing groups, but typically rely on independent agents or promoters who peddle musical shows. A law like the one the bill proposes

likely would provide sufficient incentive for Michigan-based music venues to be diligent in refraining from scheduling the questionable groups.

Advocates of truth-in-music laws have realized as they have promoted this legislation around the country that the tribute exception may need to be tightened. One group apparently has promoted a show with the confusing title "A Tribute to the Platters, Featuring the Platters". An amendment to the bill's tribute exception would prohibit the name of the performing group from being so closely related or similar to the name used by the recording group that it would tend to confuse or mislead the public. This should prevent fake groups from using the exception to get away with improperly using another group's name.

Legislative Analyst: Patrick Affholter

#### **FISCAL IMPACT**

The bill would have an indeterminate impact. Enforcement costs and revenue from fines would depend on the number of violations.

Fiscal Analyst: Bill Bowerman

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.