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BILL ANALYSIS

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Senate Bill 1125 (as introduced 3-9-06)
Sponsor: Senator Martha G. Scott
Committee: Judiciary

Date Completed: 6-6-06

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 group's name, by virtue of use or operation under the group's name without having abandoned the name or affiliation with the group.
- The live musical performance or production was identified in all advertising and promotion as a salute or tribute.
- 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.

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.