

2007 DRAFTING REQUEST

Bill

Received: **01/22/2007**

Received By: **csundber**

Wanted: **As time permits**

Identical to LRB:

For: **Mark Pocan (608) 266-8570**

By/Representing: **Glenn Wavrunek**

This file may be shown to any legislator: **NO**

Drafter: **csundber**

May Contact:

Addl. Drafters:

Subject: **Trade Regulation - other**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Pocan@legis.wisconsin.gov**

Carbon copy (CC:) to: **christopher.sundberg@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Truth in music advertising

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	csundber 01/24/2007	lkunkel 02/20/2007		_____			
/P1	csundber 03/13/2007	lkunkel 03/13/2007	rschluet 02/20/2007	_____	cduerst 02/20/2007		
/1	csundber 03/14/2007	lkunkel 03/14/2007	rschluet 03/13/2007	_____	mbarman 03/13/2007		
/2			jfrantze	_____	lparisi	sbasford	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
			03/15/2007 _____		03/15/2007	03/15/2007	

FE Sent For:

<END>

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/1			rschluet 03/13/2007	_____	mbarman 03/13/2007		

1/2/mk 3/14
3/15 3/15

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/?	csundber 01/24/2007	lkunkel 02/20/2007					
/P1			rschluet 02/20/2007		cduerst 02/20/2007		

1/mk 3/13

Handwritten signatures and scribbles, including the number 3134.

<END>

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/?	csundber	p1/mk2/19					

FE Sent For:

<END>

Sundberg, Christopher

From: Wavrunek, Glenn
Sent: Monday, January 22, 2007 1:29 PM
To: Sundberg, Christopher
Subject: WI version of "Truth in Music Advertising"

Attachments: NJ Testimony.doc; LA Times 3 11 Sendable.doc; Truth in Music Adv Model Legislation with changes.pdf

Christopher -

I don't know if this falls under your area or not, but Mark would like drafted a consumer protection bill that goes after music groups that pose as the original music group without the permission from the original music group. However, while the original groups do have the opportunity to take these fake groups to court on trademark violations, the fake groups will often tie these suits up in the court system and continue to do their "touring" across the country. This legislation will allow the AG and District Attorney's to go after these fake groups.

Jon Bauman (aka "Bowzer" from Sha Na Na) has become a huge advocate for this legislation across the country and does a really good job of describing why this is needed. Here is an op-ed that he wrote for the LA Times and testimony when this bill was up for a public hearing in New Jersey:



NJ Testimony.doc
(31 KB)



LA Times 3 11
Sendable.doc (50...

Here is model legislation that Jon Bauman's group has written for Pennsylvania (please note two changes that Mark would like made to this [page 2, Section 3, Subsection 3 and 4]):



Truth in Music Adv
Model Legis...

Here is a link to Jon Bauman's organization that is leading the charge for this legislation (note: copy of Pennsylvania legislation is located in the upper right-hand corner listed as "Model Legislation"):

<http://www.vocalgroup.org/truth.htm>

Here is a copy of Connecticut's Act that is now law:

<http://www.cga.ct.gov/2006/ACT/PA/2006PA-00016-R00HB-05801-PA.htm>

Here is a copy of Illinois' Act that is now law:

<http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=094-0854>

And finally an article from Stateline.org on this issue:

<http://www.stateline.org/live/details/story?contentId=130301>

Hopefully this material will help you draft the legislation for Wisconsin, and if you have any questions, please feel free to call me at 266-8570. Thanks!

Glenn Wavrunek
Office of Rep. Mark Pocan

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 929 Session of
2005

INTRODUCED BY ROBBINS, M. WHITE, BOSCOLA, ERICKSON, WOZNIAK,
LEMMOND, PILEGGI, COSTA, RAFFERTY, D. WHITE, KITCHEN,
WASHINGTON AND FONTANA, OCTOBER 13, 2005

REFERRED TO CONSUMER PROTECTION AND PROFESSIONAL LICENSURE,
OCTOBER 13, 2005

AN ACT

1 Prohibiting the advertising and conducting of certain live
2 musical performances or productions; providing for
3 enforcement; and imposing a penalty.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the Truth in
8 Music Advertising Act.

9 Section 2. Definitions.

10 The following words and phrases when used in this act shall
11 have the meanings given to them in this section unless the
12 context clearly indicates otherwise:

13 "Performing group." A vocal or instrumental group seeking to
14 use the name of another group that has previously released a
15 commercial sound recording under that name.

16 "Recording group." A vocal or instrumental group at least
17 one of whose members has previously released a commercial sound

1 recording under that group's name and in which the member or
2 members have a legal right by virtue of use or operation under
3 the group name without having abandoned the name or affiliation
4 with the group.

5 "Sound recording." A work that results from the fixation on
6 a material object of a series of musical, spoken or other sounds
7 regardless of the nature of the material object, such as a disk,
8 tape or other phono-record, in which the sounds are embodied.

9 Section 3. Production.

10 It shall be unlawful for any person to advertise or conduct a
11 live musical performance or production in this Commonwealth
12 through the use of a false, deceptive or misleading affiliation,
13 connection or association between a performing group and a
14 recording group. This section does not apply if any of the
15 following apply:

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

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

23 (3) The live musical performance or production is
24 identified in all advertising and promotion as a salute or
25 tribute.

26 (4) ~~The advertising does not relate to a live musical~~
27 ~~performance or production taking place in this Commonwealth.~~
*and the name of the vocal or instrumental group
performing is not so closely related or similar that
used by the performing group that it would tend to
confuse or mislead the public.*

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

30 Section 4. Restraining prohibited acts.

1 (a) Injunction.--Whenever the Attorney General or a district
2 attorney has reason to believe that any person is advertising or
3 conducting or is about to advertise or conduct a live musical
4 performance or production in violation of section 3 and that
5 proceedings would be in the public interest, the Attorney
6 General or district attorney may bring an action in the name of
7 the Commonwealth against the person to restrain by temporary or
8 permanent injunction that practice.

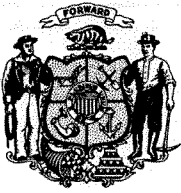
9 (b) Payment of costs and restitution.--Whenever any court
10 issues a permanent injunction to restrain and prevent violations
11 of this act as authorized in subsection (a), the court may in
12 its discretion direct that the defendant restore to any person
13 in interest any moneys or property, real or personal, which may
14 have been acquired by means of any violation of this act, under
15 terms and conditions to be established by the court.

16 Section 5. Penalty.

17 A person who violates section 3 is liable to the Commonwealth
18 for a civil penalty of not less than \$5,000 nor more than
19 \$15,000 per violation, which civil penalty shall be in addition
20 to any other relief which may be granted under section 4. Each
21 performance or production declared unlawful by section 3 shall
22 constitute a separate violation.

23 Section 6. Effective date.

24 This act shall take effect in 60 days.



2/19 mdr

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

h-note

Ben Cast

1 AN ACT ...; relating to: fraud in advertising of musical performances 10

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version. ✓

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 SECTION 1. 100.185 of the statutes is created to read: ✓

3 100.185 Fraud, advertising musical performances. (1) DEFINITIONS. In ✓
4 this section:

5 (a) "Performing group" means a vocal or instrumental group that intends to
6 advertise or perform under the name of a recording group. ✓

7 (b) "Recording group" means a vocal or instrumental group to whom all of the
8 following apply:

9 1. At least one member of the group has released a commercial sound recording
10 under the name of a group. ✓

1 2. The member identified in subd. 1. has a right by virtue of use or operation
2 to perform under the name of the group that released the commercial sound
3 recording, and the member has not abandoned the recording group's name or the
4 member's affiliation with the group that released the commercial sound recording. ✓

5 (c) "Sound recording" means a work that results from the fixation of a series
6 of musical, spoken, or other sounds on a material object, including a disk, ^ctape, or
7 other phono~~graph~~ record.

8 (2) PRODUCTION. No person may advertise or conduct a live musical
9 performance or production in this state through the use of a false, deceptive, or
10 misleading affiliation, connection, or association between a performing group and a
11 recording group, unless any of the following applies:

12 (a) The performing group is the authorized registrant and owner of a service
13 mark for that group registered in the U.S. patent and trademark office. ✓

14 (b) At least one member of the performing group was a member of the recording
15 group and has a right by virtue of use or operation to perform under the name of the
16 group that released the commercial sound recording, and the member has not
17 abandoned the name or the member's affiliation with the group that released the
18 commercial sound recording. ✓
 Keep

19 (c) The live musical performance or production is identified in all advertising
20 and promotion as a salute or tribute and the name of the performing group is not so
21 closely related or similar to the name of the recording group as to be misleading or
22 confusing to ^areasonable person. ✓

23 (d) The performance or production is expressly authorized by the recording
24 group.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1623/P1dn

CTS:.....

mk

(date)

Representative Pocan:

This is a preliminary draft. Please review it carefully to ensure it is consistent with your intent. Note that I have made some modifications to the language of the Pennsylvania legislation to enhance clarity and readability. ✓

Also note that the draft incorporates some language that seems vague. This includes language from the Pennsylvania legislation referring to a right "by virtue of use or operation" to perform under a certain name and language referring to an "affiliation" with a recording group. ✓

Christopher T. Sundberg

Legislative Attorney

Phone: (608) 266-9739

E-mail:

christopher.sundberg@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1623/P1dn
CTS:lmk:rs

February 20, 2007

Representative Pocan:

This is a preliminary draft. Please review it carefully to ensure it is consistent with your intent. Note that I have made some modifications to the language of the Pennsylvania legislation to enhance clarity and readability.

Also note that the draft incorporates some language that seems vague. This includes language from the Pennsylvania legislation referring to a right "by virtue of use or operation" to perform under a certain name and language referring to an "affiliation" with a recording group.

Christopher T. Sundberg
Legislative Attorney
Phone: (608) 266-9739
E-mail:
christopher.sundberg@legis.wisconsin.gov

Sundberg, Christopher

From: bowzer1@aol.com
Sent: Monday, March 12, 2007 2:01 PM
To: Sundberg, Christopher
Subject: Truth in Music

Chris,
This is Jon Bauman, I'm Chair of the Truth in Music Committee at the Vocal Group Hall of Fame.

Our bill is fine. Only thing I don't love is the use of the word "unless" after "false, misleading and deceptive practices". Makes it sound like if you fall into one of the exceptions (yiu have a trademark, etc) then it's OK to use false, deceptive or misleading practices. The old way said "This section does not apply if" rather than "unless".

A nitpick, but a good one I think.

Jon
Sent via BlackBerry from Cingular Wireless

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

3/13/07 Olena/Pocan

Redraft as /1 with change suggested
in Bannon e-mail.





In: 3/13/07
State of Wisconsin
2007 - 2008 LEGISLATURE

Wanted Wed AM, if possible

LRB-1623/PI RmNR

CTS:lmk/rs

SKYS

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

2007 BILL

INS
A

Revised

vt

1 AN ACT to create 100.185 of the statutes; relating to: fraud in advertising of
2 musical performances. and providing a penalty

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 100.185 of the statutes is created to read:

4 100.185 Fraud, advertising musical performances. (1) DEFINITIONS. In
5 this section:

6 (a) "Performing group" means a vocal or instrumental group that intends to
7 advertise or perform under the name of a recording group.

8 (b) "Recording group" means a vocal or instrumental group to whom all of the
9 following apply:

10 1. At least one member of the group has released a commercial sound recording
11 under the name of a group.

1 to restrain the violation by temporary or permanent injunction. If a court issues a
2 permanent injunction against a violation of this section by a defendant, the court
3 may also order the defendant to pay to a person injured by the violation any amounts
4 or property the defendant obtained as a result of the violation.

5 (b) A court may require a person who violates sub. (2) to forfeit an amount not
6 less than \$5,000 nor more than \$15,000 per violation. Each performance or
7 production in violation of sub. (2) constitutes a separate violation.

8 **SECTION 2. Effective date.**

9 (1) This act takes effect on the first day of the 2nd month beginning after the
10 effective date of this subsection.

11

(END)

1 2. The member identified in subd. 1. has a right by virtue of use or operation
2 to perform under the name of the group that released the commercial sound
3 recording, and the member has not abandoned the recording group's name or the
4 member's affiliation with the group that released the commercial sound recording.

5 (c) "Sound recording" means a work that results from the fixation of a series
6 of musical, spoken, or other sounds on a material object, including a disc, tape, or
7 other phonorecord.

8 (2) PRODUCTION. No person may advertise or conduct a live musical
9 performance or production in this state through the use of a false, deceptive, or
10 misleading affiliation, connection, or association between a performing group and a
11 recording group, ~~unless any of the following applies:~~

⊙ This subsection does not apply to any of the following

12 (a) The performing group is the authorized registrant and owner of a service
13 mark for that group registered in the U.S. patent and trademark office.

14 (b) At least one member of the performing group was a member of the recording
15 group.

16 (c) The live musical performance or production is identified in all advertising
17 and promotion as a salute or tribute and the name of the performing group is not so
18 closely related or similar to the name of the recording group as to be misleading or
19 confusing to a reasonable person.

if any of the following are true

20 (d) The performance or production is expressly authorized by the recording
21 group.

22 (3) ENFORCEMENT. (a) If the attorney general or a district attorney has reason
23 to believe that a person is advertising or conducting or intends to advertise or conduct
24 a live musical performance or production in violation of sub. (2), the attorney general
25 or district attorney may bring an action in the name of the state against the person

2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1623/lins
CTS:.....

1

Insert A:

This bill prohibits advertising or conducting a live musical performance or production using a false, deceptive, or misleading connection between the group that is to perform ("performing group") and a group that has released a recording using *The e* @ group name ("recording group"). The prohibition does not apply if any of the following are true: 1) the performing group is the registrant and owner of a service *** mark for the group; 2) at least one member of the performing group was a member *** of the recording group; 3) the performance or production is identified as a salute or *** tribute; or 4) the recording group has expressly authorized the performance. ✓

The provisions of the bill are enforced by the district attorney or attorney general through an action for injunctive relief. Also under the bill, a court may impose a forfeiture of \$5,000 to \$15,000 per violation. ✓

Sundberg, Christopher

From: Wavrunek, Glenn
Sent: Wednesday, March 14, 2007 3:03 PM
To: Sundberg, Christopher
Subject: RE: LRB-1623

Chris -

Jon is here and we looked at this language ... looks good! So please make this change and make it a /2 version. Thanks!

-glenn

From: Sundberg, Christopher
Sent: Tuesday, March 13, 2007 11:06 AM
To: Wavrunek, Glenn
Subject: LRB-1623

FWIW, here's a better suggestion than my last one:

No person may advertise or conduct a live musical performance or production in this state through the use of a false, deceptive, or misleading affiliation, connection, or association between a performing group and a recording group. For purposes of this subsection, an advertisement or performance is not false, deceptive, or misleading if any of the following applies:

I really think the bill needs to better explain what is or isn't "false, deceptive, or misleading."

Christopher Sundberg
Legislative Attorney
Legislative Reference Bureau
(608) 266-9739
christopher.sundberg@legis.state.wi.us



In: 3/14/07
State of Wisconsin
2007 - 2008 LEGISLATURE
Wanted: Wednesday, 3/21

2
LRB-1623/f
CTS:lmk:rs
RMNR
says

2007 BILL

Under the bill, an advertisement, production or performance is not false, deceptive, or misleading

ReGen

VA

1 AN ACT to create 100.185 of the statutes; relating to: fraud in advertising of
2 musical performances and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill prohibits advertising or conducting a live musical performance or production using a false, deceptive, or misleading connection between the group that is to perform ("performing group") and a group that has released a recording using the group name ("recording group"). The prohibition does not apply if any of the following are true: 1) the performing group is the registrant and owner of a service mark for the group; 2) at least one member of the performing group was a member of the recording group; 3) the performance or production is identified as a salute or tribute; or 4) the recording group has expressly authorized the performance.

The provisions of the bill are enforced by the district attorney or attorney general through an action for injunctive relief. Also under the bill, a court may impose a forfeiture of \$5,000 to \$15,000 per violation.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 100.185 of the statutes is created to read:
4 **100.185 Fraud, advertising musical performances.** (1) DEFINITIONS. In
5 this section:

BILL

1 (a) "Performing group" means a vocal or instrumental group that intends to
2 advertise or perform under the name of a recording group.

3 (b) "Recording group" means a vocal or instrumental group to whom all of the
4 following apply:

5 1. At least one member of the group has released a commercial sound recording
6 under the name of a group.

7 2. The member identified in subd. 1. has a right by virtue of use or operation
8 to perform under the name of the group that released the commercial sound
9 recording, and the member has not abandoned the recording group's name or the
10 member's affiliation with the group that released the commercial sound recording.

11 (c) "Sound recording" means a work that results from the fixation of a series
12 of musical, spoken, or other sounds on a material object, including a disc, tape, or
13 other phonorecord.

14 (2) PRODUCTION. No person may advertise or conduct a live musical
15 performance or production in this state through the use of a false, deceptive, or
16 misleading affiliation, connection, or association between a performing group and a
17 recording group. ~~This subsection does not apply if any of the following are true:~~ keep

18 (a) The performing group is the authorized registrant and owner of a service
19 mark for that group registered in the U.S. patent and trademark office.

20 (b) At least one member of the performing group was a member of the recording
21 group.

22 (c) The live musical performance or production is identified in all advertising
23 and promotion as a salute or tribute and the name of the performing group is not so
24 closely related or similar to the name of the recording group as to be misleading or
25 confusing to a reasonable person.

INS 2-17

BILL

1 (d) The performance or production is expressly authorized by the recording
2 group.

3 **(3) ENFORCEMENT.** (a) If the attorney general or a district attorney has reason
4 to believe that a person is advertising or conducting or intends to advertise or conduct
5 a live musical performance or production in violation of sub. (2), the attorney general
6 or district attorney may bring an action in the name of the state against the person
7 to restrain the violation by temporary or permanent injunction. If a court issues a
8 permanent injunction against a violation of this section by a defendant, the court
9 may also order the defendant to pay to a person injured by the violation any amounts
10 or property the defendant obtained as a result of the violation.

11 (b) A court may require a person who violates sub. (2) to forfeit an amount not
12 less than \$5,000 nor more than \$15,000 per violation. Each performance or
13 production in violation of sub. (2) constitutes a separate violation.

14 **SECTION 2. Effective date.**

15 (1) This act takes effect on the first day of the 2nd month beginning after the
16 effective date of this subsection.

17 (END)

**2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1623/2ins
CTS:.....

1 **Insert 2-17:**

2 For purposes of this subsection, an advertisement or performance is not false,
3 deceptive, or misleading if any of the following applies

production

Barman, Mike

From: Wavrunek, Glenn
Sent: Thursday, March 15, 2007 12:53 PM
To: LRB.Legal
Subject: Draft Review: LRB 07-1623/2 Topic: Truth in music advertising

Please Jacket LRB 07-1623/2 for the ASSEMBLY.