

2007 SENATE BILL 133

April 6, 2007 – Introduced by Senators COGGS, S. FITZGERALD, PLALE, OLSEN, LASSA and ERPENBACH, cosponsored by Representatives M. WILLIAMS, POCAN, TURNER, SINICKI, NERISON, MONTGOMERY, HINTZ, BERCEAU, ZIEGELBAUER, NYGREN, HAHN, TOWNSEND and VOS. Referred to Committee on Small Business, Emergency Preparedness, Workforce Development, Technical Colleges and Consumer Protection.

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”). Under the bill, an advertisement, production, or performance is not false, deceptive, or misleading 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:

SENATE BILL 133**SECTION 1**

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. For purposes of this subsection, an advertisement, production, or
18 performance is not false, deceptive, or misleading if any of the following applies:

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

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

23 (c) The live musical performance or production is identified in all advertising
24 and promotion as a salute or tribute and the name of the performing group is not so

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1 closely related or similar to the name of the recording group as to be misleading or
2 confusing to a reasonable person.

3 (d) The performance or production is expressly authorized by the recording
4 group.

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

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

16 **SECTION 2. Effective date.**

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

19

(END)