

SUBJECT: Restricting musical performances by imposter groups

COMMITTEE: Business and Industry — favorable, with amendment

VOTE: 8 ayes — Giddings, Elkins, Darby, Bohac, Castro, Martinez, Solomons, Zedler

0 nays

1 absent — Bailey

WITNESSES: For — Geoff Connor, Mary Wilson/the Supremes

Against — None

On — Casey Monahan, Office of the Governor; Ballard Shapleigh, for Jaime Esparza, District Attorney of El Paso County; (*Registered, but did not testify*: Paul Carmona, Office of the Attorney General)

DIGEST: HB 54, as amended, would amend the Business and Commerce Code to prohibit a person from advertising, promoting, or conducting a live musical performance through the use of a false, deceptive, or misleading affiliation, connection, or association between a recording group and a performing musical group. The bill would provide for both injunctive relief and restitution.

A “performing musical group” would mean a vocal or instrumental group seeking to engage in a live musical performance.

A “recording group” would mean a vocal or instrumental group of which one or more members:

- had released a sound recording under that group's name for commercial purposes; and
- had a legal right to use or operate under the group's name without abandoning the name or affiliation with the group.

Permissible conduct. An act would not be considered a violation if:

- the performing musical group was the authorized registrant and owner of a federal service mark for the recording group;
- at least one member of the performing musical group was or had been a member of the recording group and that member had a legal right to use or operate under the name of the recording group;
- the live musical performance was identified in all advertisements or other promotions as a "salute" or "tribute" to the recording group;
- the advertisement or promotion related to a live musical performance that was to take place outside of Texas; or
- the live musical performance was expressly authorized by each member of the recording group.

Injunctive relief. If the attorney general had reason to believe that a person was, had, or was about to be engaged in an act or practice that was a violation, the attorney general could bring an action in the name of the state against the person to restrain the act or practice by temporary or permanent injunction.

The prosecuting attorney in the county in which a violation occurred, with the prior written notice to the attorney general, could institute and prosecute an action for injunctive relief. The prosecuting attorney would make a full report, including the final disposition, to the attorney general regarding an action prosecuted under these provisions.

Civil penalty. A person in violation would be liable to the state for a civil penalty of not less than \$5,000 or more than \$15,000 for each violation. Each performance that did not comply with the provisions in HB 54 would constitute a separate violation. The attorney general or the prosecuting attorney could bring suit to recover the civil penalty. A civil penalty would be in addition to injunctive relief or any other remedy that could be granted under the bill.

The bill would take effect September 1, 2007.

SUPPORTERS
SAY:

HB 54 would help protect original recording groups and individual performers from imposter bands or performers who professed to be originals. The bill would be a safeguard for the performers, the music, and

the genres of original recording groups or artists from copycat bands and imposters. Further, the bill would protect the public from paying to see a band that was posing as an original – and frequently nationally known – group.

Last year in Texas, the Coasters played Lubbock on February 25th. They also were performing in Fort Meyers, Florida on the same night. As it turned out, the real Coasters were in Florida, while imposters performed the show in Texas.

Frequently, phony musical groups mislead audiences by performing complete acts of songs made popular by bands that originated in the 1950s and 1960s, such as the Coasters, the Platters, and the Drifters. Typically, none of the members of the imposter group has any connection with the original group. In the case of the Platters, more than 75 groups at one time were pretending to be the popular group and performing under a similar name. Last year, the "21st Century Platters," whose members were not born when the original Platters made their hits, were hired to appear with the Pittsburgh Symphony.

Some musicians, members of original recording groups or individual recording artists, have launched a national movement to resist this form of identity theft. Nine states have passed "Truth-in-Music" laws that would stop imposters from profiting from the names of established recording groups. HB 54 would be part of this effort.

The bill would not allow a performing musical group to use the name of a recording group unless the performing group owned the right to the name or included at least one original member who had continuously used its name. The bill also would grant the attorney general or the prosecuting attorney in the county in which unauthorized advertising, promotion, or a live musical performance occurred the authority to seek injunctive relief. By authorizing injunctive relief, HB 54 could enjoin fakes before they duped the manager of an entertainment venue or an audience. The provision for a civil penalty of not less than \$5,000 or more than \$15,000 per violation would offer additional protection against pretenders.

HB 54 would not preclude legitimate tributes to original recording groups. The bill would contain an exception for a live musical performance identified in all advertising and promotion as a "salute" or "tribute," permitting performances by obvious tribute groups, such as the nationally

known Beatlemania or a popular Austin group, the EggMen, who advertise and perform as a Beatles tribute band.

OPPONENTS
SAY:

While the Truth-in-Music effort seems well intentioned, the exception in HB 54 for “salute” or “tribute” performances, as long as they were identified in all advertisements or promotions as such, could be too broad. The exception could create a loophole for imposter bands to use an established group's name improperly. One imposter group has promoted shows under the confusing title "A Tribute to the Platters, Featuring the Platters." The bill should prohibit the use of a performing musical group's name from being too similar to the name of the actual recording group. This would reduce confusion and be less likely to mislead the public.

The bill's exception for a live musical performance expressly authorized by each member of the recording group would be a difficult standard to meet. In many cases, former band members have long-standing feuds or are deceased. A more practical approach would be to require at least one member of the recording group expressly to authorize the live performance.

NOTES:

The original version of the bill would have authorized “a district attorney” to bring an action for injunctive relief. The bill as amended would give that authority to “the prosecuting attorney in the county in which a violation occurred.”

Two companion bills, SB 219 by Deuell and SB 253 by Ellis, which are identical to HB 54 as introduced, have been referred to the Senate Business and Commerce Committee.