

1 AN ACT

2 relating to the advertising, promoting, and conducting of certain
3 live musical performances; providing a civil penalty.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Chapter 17, Business & Commerce Code, is amended
6 by adding Subchapter J to read as follows:

7 SUBCHAPTER J. PROTECTION FROM MISLEADING OR DECEPTIVE LIVE MUSICAL
8 PERFORMANCES

9 Sec. 17.901. DEFINITIONS. In this subchapter:

10 (1) "Performing musical group" means a vocal or
11 instrumental group seeking to engage in a live musical performance.

12 (2) "Recording group" means a vocal or instrumental
13 group of which one or more members:

14 (A) has released a sound recording under that
15 group's name for commercial purposes; and

16 (B) has a legal right to use or operate under the
17 group's name without abandoning the name or affiliation with the
18 group.

19 (3) "Sound recording" means musical, spoken, or other
20 sounds recorded on a tangible medium, including a disc, tape, or
21 phonograph record.

22 Sec. 17.902. UNAUTHORIZED ADVERTISEMENT, PROMOTION, OR
23 CONDUCTION OF CERTAIN LIVE MUSICAL PERFORMANCES. A person may not
24 advertise, promote, or conduct a live musical performance in this

1 state through the use of a false, deceptive, or misleading
2 affiliation, connection, or association between a recording group
3 and a performing musical group. An act is not considered a violation
4 of this section if:

5 (1) the performing musical group is the authorized
6 registrant and owner of a federal service mark for the recording
7 group that is registered in the United States Patent and Trademark
8 Office;

9 (2) at least one member of the performing musical
10 group is or was a member of the recording group and that member has a
11 legal right to use or operate under the name of the recording group
12 without abandoning the name or affiliation with the recording
13 group;

14 (3) the live musical performance is identified in all
15 advertisements or other promotions for the event as being conducted
16 as a "salute" or "tribute" to the recording group;

17 (4) the advertisement or promotion relates to a live
18 musical performance that is to take place outside of this state; or

19 (5) the live musical performance is expressly
20 authorized by each member of the recording group.

21 Sec. 17.903. INJUNCTION; RESTITUTION. (a) If the attorney
22 general has reason to believe that a person is engaging in, has
23 engaged in, or is about to engage in an act or practice that
24 violates Section 17.902, and that proceedings would be in the
25 public interest, the attorney general may bring an action in the
26 name of the state against the person to restrain that act or
27 practice by temporary or permanent injunction.

1 (b) The prosecuting attorney in the county in which a
2 violation of Section 17.902 occurs, with prior written notice to
3 the attorney general, may institute and prosecute an action seeking
4 injunctive relief under this section. The prosecuting attorney
5 shall make a full report to the attorney general regarding any
6 action prosecuted by the prosecuting attorney under this
7 subsection. The report must include a statement regarding the
8 final disposition of the matter.

9 (c) When a court issues a permanent injunction to restrain
10 and prevent a violation of Section 17.902, the court may make
11 additional orders or judgments as necessary to restore money or
12 other property that may have been acquired because of a violation of
13 this subchapter.

14 Sec. 17.904. CIVIL PENALTY. (a) A person who violates
15 Section 17.902 is liable to the state for a civil penalty of not
16 less than \$5,000 or more than \$15,000 for each violation. Each
17 performance that violates Section 17.902 constitutes a separate
18 violation.

19 (b) The attorney general or the prosecuting attorney in the
20 county in which a violation occurs may bring suit to recover the
21 civil penalty imposed under Subsection (a).

22 (c) The civil penalty provided by this section is in
23 addition to injunctive relief or any other remedy that may be
24 granted under Section 17.903.

25 SECTION 2. This Act takes effect September 1, 2007.

President of the Senate

Speaker of the House

I certify that H.B. No. 54 was passed by the House on April 5, 2007, by the following vote: Yeas 135, Nays 0, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 54 was passed by the Senate on May 18, 2007, by the following vote: Yeas 30, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor