# SENATE BILL REPORT
## SB 5284

As Passed Senate, March 6, 2009

**Title**:  An act relating to truth in music advertising.

**Brief Description**:  Concerning truth in music advertising.

**Sponsors**:  Senators Keiser, Holmquist, Kohl-Welles, Pridemore, Marr and Kauffman.

**Brief History:**
   Committee Activity:  Labor, Commerce & Consumer Protection:  2/17/09, 2/19/09 [DP].
   Passed Senate: 3/06/09, 47-0.

## SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

**Majority Report**:  Do pass.
   Signed by Senators Kohl-Welles, Chair; Keiser, Vice Chair; Holmquist, Ranking Minority Member; Franklin, Honeyford, King and Kline.

**Staff**:  Alison Mendiola (786-7483)

**Background**:  A service mark is a word, phrase, symbol, or combination of words, phrases, or symbols that identify and distinguish the source of a service. The name of a musical recording or performing group could be a service mark.

Service marks are protected intellectual property. Service marks may, but are not required to be, registered with the U.S. Patent and Trademark Office and/or with the Washington Secretary of State. Registration provides certain advantages, including: (1) constructive notice to the public that the registrant owns the mark; and (2) a legal presumption that the registrant owns the mark and has exclusive right to use it. Ownership of a service mark may arise from use, registration, or both. A service mark owner may prevent others from using the mark for the same or similar service. An owner may also prevent others from using the mark for other services or products if such use could be confusing to consumers.

A service mark owner may lose that owner's rights to the exclusive use of a service mark if that owner abandons the service mark. Abandonment may be shown by the owner having notice of another using the service mark and failing to take action to stop the infringement.

To disseminate advertising in any form that is deceptive or misleading is a misdemeanor.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Summary of Bill**:  Promoting or conducting a live musical performance through advertising that claims or implies an affiliation between the performing musical group and a recording group is prohibited unless any of the following apply:

- the performance group is the owner and federal registrant of the service mark used;
- at least one member of the performing group was previously a member of the recording group and has a legal right to use the name of or affiliation to the recording group;
- the performance is promoted as a tribute to the recording group and the performance group's name is not so similar to the recording's group so as to mislead the public;
- the recording group authorized the performance; or
- the performance is not taking place in Washington.

Anyone who violates this prohibition is liable for a civil penalty of at least $5,000 up to $15,000 per violation. An action for the civil penalty or other injunctive relief may be brought by the Attorney General or a city or county prosecutor.

**Appropriation**:  None.

**Fiscal Note**:  Not requested.

**Committee/Commission/Task Force Created**:  No.

**Effective Date**:  Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony**:  PRO:  Similar bills have passed in 27 other states and many are currently considering such legislation.  This bill would prevent performers from misleading the public and claiming they are members of, or affiliated with, a musical group when really it's more of a tribute show.  This is a sophisticated form of identity theft, claiming to be a member of a group when you're really not. Enforcement has been good in other states with similar statutes.

OTHER:  The civil penalties should reflect the intentionality of the actor.

**Persons Testifying**:  PRO:  John Bowman, Sha Na Na; Gretchen Christopher, The Fleetwoods.

OTHER:  Richard May, citizen.