

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext. 103 or <mailto:refdesk@njstatelib.org>.

REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

RWH 4/25/08

Title 2A.
Chapter 32B.
Deceptive
Practices in
Musical
Performances
(New)
§§1-3 –
C.2A:32B-1 to
2A:32B-3

P.L. 2007, CHAPTER 88, *approved May 4, 2007*
Assembly, No. 3102 (*Second Reprint*)

1 AN ACT concerning 'certain' deceptive practices in the advertising
2 or '**[conduction]** conducting' of certain musical performances
3 and supplementing '**[P.L. 1960, c. 39 (C.56:8-1 et seq.)]** Title
4 2A of the New Jersey Statutes'¹.

5
6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

8
9 1. As used in this act:
10 "Performing group" means a vocal or instrumental group seeking
11 to use the name of another group that has previously released a
12 commercial sound recording under that name.

13 "Recording group" means a vocal or instrumental group, at least
14 one of whose members has previously released a commercial sound
15 recording under that group's name and in which the member or
16 members have a legal right by virtue of use or operation under the
17 group name without having abandoned the name or affiliation with
18 the group.

19 "Sound recording" means a work that results from the fixation on
20 a material object of a series of musical, spoken or other sounds
21 regardless of the nature of the material object, such as a disk, tape
22 or other phono-record, in which the sounds are embodied.

23
24 2. '**[It shall be an unlawful practice for any]** A' person '**[to]**
25 shall not'¹ advertise or conduct a live musical performance or
26 production through the use of an affiliation, connection or
27 association between the performing group and the recording group
28 unless:

29 a. The performing group is the authorized registrant and owner
30 of a federal service mark for the group registered in the United
31 States Patent and Trademark Office; or

32 b. At least one member of the performing group was a member
33 of the recording group and has a legal right by virtue or use of

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ATG committee amendments adopted December 7, 2006.

²Assembly floor amendments adopted January 8, 2007.

1 operation under the group name without having abandoned the
2 name of affiliation of the group; or

3 c. The live musical performance or production is identified in all
4 advertising and promotion as a salute or tribute; or

5 d. The advertising does not relate to a live musical performance
6 or production taking place in this State; or

7 e. The performance or production is expressly authorized by the
8 recording group.

9

10 ¹3. a. A person who violates the provisions of section 2 of this
11 act shall be subject to a civil action brought by a party in the
12 Superior Court or any other court of competent jurisdiction:

13 (1) for appropriate legal and equitable relief, including
14 injunctive relief, and for treble damages, reasonable attorney's fees,
15 filings fees, and costs for the injured party; and

16 (2) additionally, for a civil penalty of:

17 (a) not more than \$10,000 for the first offense; and

18 (b) not more than \$20,000 for the second and each subsequent
19 offense.

20 b. The civil penalty prescribed by paragraph (2) of subsection
21 a. of this section shall be collected and enforced by summary
22 proceedings pursuant to the provisions of the "Penalty Enforcement
23 Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).¹

24 ²c. A violation of the provisions of section 2 of this act shall
25 also be an unlawful practice in violation of P.L.1960, c.39 (C.56:8-
26 1 et seq.), and subject the violator to all available State or private
27 actions, remedies, damages, and penalties under that act, including,
28 but not limited to, the Attorney General seeking and obtaining an
29 injunction pursuant to section 8 of P.L.1960, c.39 (C.56:8-8) and
30 the assessment of a civil penalty pursuant to section 1 of P.L.1966,
31 c.39 (C.56:8-13).²

32

33 ¹[3.] 4. This act shall take effect immediately.

34

35

36

37

38 Prohibits certain deceptive advertising or concert performance
39 practices with respect to live musical performances or productions.

ASSEMBLY, No. 3102

STATE OF NEW JERSEY

212th LEGISLATURE

INTRODUCED MAY 18, 2006

Sponsored by:

Assemblyman JEFF VAN DREW

District 1 (Cape May, Atlantic and Cumberland)

Assemblywoman NILSA CRUZ-PEREZ

District 5 (Camden and Gloucester)

Assemblyman NELSON T. ALBANO

District 1 (Cape May, Atlantic and Cumberland)

Assemblyman NEIL M. COHEN

District 20 (Union)

Co-Sponsored by:

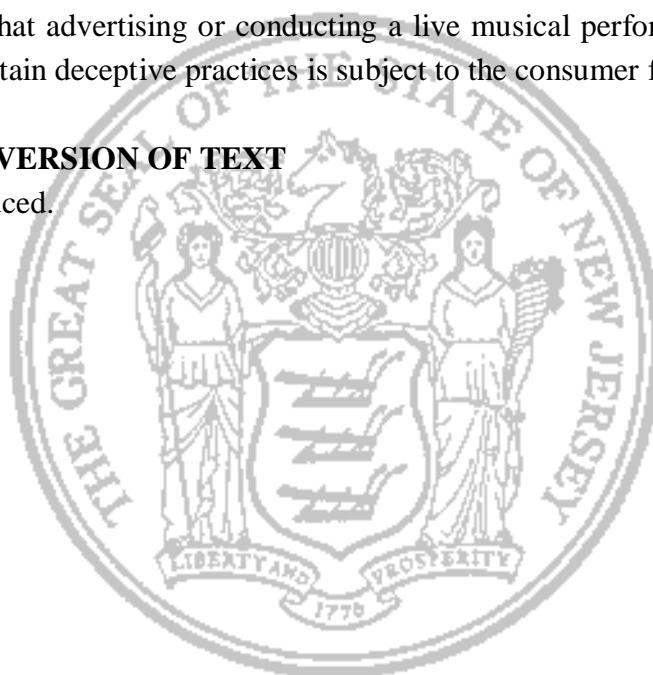
Assemblyman Johnson

SYNOPSIS

Provides that advertising or conducting a live musical performance through the use of certain deceptive practices is subject to the consumer fraud act.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/5/2006)

A3102 VAN DREW, CRUZ-PEREZ

2

1 AN ACT concerning deceptive practices in the advertising or
2 conduction of certain musical performances and supplementing
3 P.L.1960, c.39 (C.56:8-1 et seq.).

4

5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7

8 1. As used in this act:

9 "Performing group" means a vocal or instrumental group seeking
10 to use the name of another group that has previously released a
11 commercial sound recording under that name.

12 "Recording group" means a vocal or instrumental group, at least
13 one of whose members has previously released a commercial sound
14 recording under that group's name and in which the member or
15 members have a legal right by virtue of use or operation under the
16 group name without having abandoned the name or affiliation with
17 the group.

18 "Sound recording" means a work that results from the fixation on
19 a material object of a series of musical, spoken or other sounds
20 regardless of the nature of the material object, such as a disk, tape
21 or other phono-record, in which the sounds are embodied.

22

23 2. It shall be an unlawful practice for any person to advertise or
24 conduct a live musical performance or production through the use
25 of an affiliation, connection or association between the performing
26 group and the recording group unless:

27 a. The performing group is the authorized registrant and owner
28 of a federal service mark for the group registered in the United
29 States Patent and Trademark Office; or

30 b. At least one member of the performing group was a member
31 of the recording group and has a legal right by virtue or use of
32 operation under the group name without having abandoned the
33 name of affiliation of the group; or

34 c. The live musical performance or production is identified in all
35 advertising and promotion as a salute or tribute; or

36 d. The advertising does not relate to a live musical performance
37 or production taking place in this State; or

38 e. The performance or production is expressly authorized by the
39 recording group.

40

41 3. This act shall take effect immediately.

42

43

44

STATEMENT

45

46 This bill makes it a violation of the consumer fraud act,
47 P.L.1960, c.39 (C.56:8-1 et seq.), for any person to advertise a live
48 musical performance or production through the use of an affiliation,

1 connection or association between the performing group and the
2 recording group, unless, (1) the performing group is the authorized
3 registrant and owner of a federal service mark for that group
4 registered in the U.S. Patent and Trademark Office; (2) at least one
5 member of the performing group was a member of the recording
6 group and has a legal right by virtue of use or operation under the
7 group name without having abandoned the name or affiliation with
8 the group; (3) the live musical performance or production is
9 identified in all advertising and promotion as a salute or tribute; (4)
10 the advertising does not relate to a live musical performance or
11 production taking place in the State; or (5) the performance or
12 production is expressly authorized by the recording group.

13 An "unlawful practice" under the consumer fraud act is
14 punishable by a monetary penalty of not more than \$10,000 for a
15 first offense and not more than \$20,000 for a second or any
16 subsequent offense. In addition, a violation can result in cease and
17 desist orders issued by the Attorney General, the assessment of
18 punitive damages and the awarding of treble damages and costs to
19 the injured party.

ASSEMBLY TOURISM AND GAMING COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3102

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 7, 2006

The Assembly Tourism and Gaming Committee reports favorably and with committee amendments Assembly, No. 3102.

As amended by the committee, this bill prohibits any person from advertising a live musical performance or production through the use of an affiliation, connection or association between the performing group and the recording group, unless: (1) the performing group is the authorized registrant and owner of a federal service mark for that group registered in the U.S. Patent and Trademark Office; (2) at least one member of the performing group was a member of the recording group and has a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation with the group; (3) the live musical performance or production is identified in all advertising and promotion as a salute or tribute; (4) the advertising does not relate to a live musical performance or production taking place in the State; or (5) the performance or production is expressly authorized by the recording group.

As amended, the bill establishes a specific private cause of action with enhanced liabilities, including treble damages, reasonable attorney's fees, filings fees, and costs, and civil penalties which parallel the liabilities and penalties applicable to violations of the consumer fraud act, P.L.1960, c.39 (C.56:8-1 et seq.). The civil penalties would amount to not more than \$10,000 for a first offense and not more than \$20,000 for a second or any subsequent offense.

COMMITTEE AMENDMENTS

The committee amended the bill to remove the bill's provisions from the consumer fraud act, P.L.1960, c.39 (C.56:8-1 et seq.), and instead establish a separate, specific private cause of action with enhanced liabilities, including treble damages, reasonable attorney's fees, filings fees, and costs, and civil penalties which parallel the liabilities and penalties applicable to violations of the consumer fraud act. The amendments are intended to allow specific private causes of action for violations of the bill which can complement any private or State causes of action already available under the broader scope of the State's consumer fraud act.

STATEMENT TO
[First Reprint]
ASSEMBLY, No. 3102

with Assembly Floor Amendments
(Proposed By Assemblyman VAN DREW)

ADOPTED: JANUARY 8, 2007

This floor amendment clarifies that a violation of any of the bill's provisions also constitutes an unlawful practice under the State's consumer fraud act, P.L.1960, c.39 (C.56:8-1 et seq.), and subjects the violator to all State or private actions and remedies available under that act. Those actions and remedies include, but are not limited to, the obtaining of an injunction by the Attorney General to stop any violation, and the assessment and collection of civil penalties established under that act.

SENATE, No. 310

STATE OF NEW JERSEY 212th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2006 SESSION

Sponsored by:

Senator NICHOLAS ASSELTA

District 1 (Cape May, Atlantic and Cumberland)

Senator WILLIAM L. GORMLEY

District 2 (Atlantic)

SYNOPSIS

Provides that advertising or conducting a live musical performance through the use of certain deceptive practices are subject to the consumer fraud act.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning deceptive practices in the advertising or
2 conduction of certain musical performances and supplementing
3 P.L. 1960, c. 39 (C.56:8-1 et seq.).
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. As used in this act:

9 "Performing group" means a vocal or instrumental group seeking
10 to use the name of another group that has previously released a
11 commercial sound recording under that name.

12 "Recording group" means a vocal or instrumental group, at least
13 one of whose members has previously released a commercial sound
14 recording under that group's name and in which the member or
15 members have a legal right by virtue of use or operation under the
16 group name without having abandoned the name or affiliation with
17 the group.

18 "Sound recording" means a work that results from the fixation on
19 a material object of a series of musical, spoken or other sounds
20 regardless of the nature of the material object, such as a disk, tape
21 or other phono-record, in which the sounds are embodied.
22

23 2. It shall be an unlawful practice for any person to advertise or
24 conduct a live musical performance or production through the use
25 of an affiliation, connection or association between the performing
26 group and the recording group unless:

27 a. The performing group is the authorized registrant and owner
28 of a federal service mark for the group registered in the United
29 States Patent and Trademark Office; or

30 b. At least one member of the performing group was a member
31 of the recording group and has a legal right by virtue or use of
32 operation under the group name without having abandoned the
33 name of affiliation of the group; or

34 c. The live musical performance or production is identified in all
35 advertising and promotion as a salute or tribute; or

36 d. The advertising does not relate to a live musical performance
37 or production taking place in this State; or

38 e. The performance or production is expressly authorized by the
39 recording group.
40

41 3. This act shall take effect immediately.
42
43

44 STATEMENT
45

46 This bill makes it a violation of the consumer fraud act for any
47 person to advertise a live musical performance or production
48 through the use of an affiliation, connection or association between

1 the performing group and the recording group, unless, (1) the
2 performing group is the authorized registrant and owner of a federal
3 service mark for that group registered in the U.S. Patent and
4 Trademark Office; (2) at least one member of the performing group
5 was a member of the recording group and has a legal right by virtue
6 of use or operation under the group name without having abandoned
7 the name or affiliation with the group; (3) the live musical
8 performance or production is identified in all advertising and
9 promotion as a salute or tribute; (4) the advertising does not relate
10 to a live musical performance or production taking place in the
11 State; or (5) the performance or production is expressly authorized
12 by the recording group.

13 An "unlawful practice" under the consumer fraud act is
14 punishable by a monetary penalty of not more than \$10,000 for a
15 first offense and not more than \$20,000 for a second or any
16 subsequent offense. In addition, a violation can result in cease and
17 desist orders issued by the Attorney General, the assessment of
18 punitive damages and the awarding of treble damages and costs to
19 the injured party.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 310

STATE OF NEW JERSEY

DATED: NOVEMBER 27, 2006

The Senate Commerce Committee reports favorably Senate Bill No. 310.

This bill prohibits certain deceptive advertising or concert performance practices with respect to live musical performances. It concerns the relationship between a “performing group,” defined as any vocal or instrumental group seeking to use the name of another group that has previously released a commercial sound recording under that name, and that other group, known under the bill as the “recording group.” The recording group is more specifically defined under the bill as the group, at least one of whose members previously released a commercial sound recording under that group’s name and in which the member has a legal right by virtue of use or operation under that group name.

Under the bill, a person shall not advertise or conduct a live musical performance or production through the use of an affiliation, connection, or association between a performing group and a recording group, unless: (1) the performing group is the authorized registrant and owner of a federal service mark for that group registered in the U.S. Patent and Trademark Office; (2) at least one member of the performing group was a member of the recording group and has a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation with the group; (3) the live musical performance or production is identified in all advertising and promotion as a salute or tribute; (4) the advertising does not relate to a live musical performance or production taking place in the State; or (5) the performance or production is expressly authorized by the recording group.

Any violation of the bill’s provisions constitutes an unlawful practice in violation of the consumer fraud act, P.L.1960, c.39 (C.56:8-1 et seq.). Such violation is punishable by a monetary penalty of not more than \$10,000 for a first offense and not more than \$20,000 for a second or any subsequent offense. In addition, a violation can result in cease and desist orders issued by the Attorney General, the assessment of punitive damages and the awarding of treble damages and costs to the injured party.

This bill was pre-filed for introduction in the 2006-2007 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

STATEMENT TO

SENATE, No. 310

with Senate Floor Amendments
(Proposed By Senator ASSELTA)

ADOPTED: DECEMBER 11, 2006

The underlying bill prohibits certain deceptive advertising or concert performance practices with respect to live musical performances, making such practices unlawful under the consumer fraud act, P.L.1960, c.39 (C.56:8-1 et seq.). The floor amendments to the bill remove the bill's provisions from the consumer fraud act, and instead establish a separate, specific private cause of action with enhanced liabilities, including treble damages, reasonable attorney's fees, filings fees, and costs, and civil penalties which parallel the liabilities and penalties applicable to violations of the consumer fraud act. These amendments are intended to allow specific private causes of action for violations of the bill which can complement any private or State causes of action already available under the broader scope of the State's consumer fraud act.

STATEMENT TO
[First Reprint]
SENATE, No. 310

with Senate Floor Amendments
(Proposed By Senator ASSELTA)

ADOPTED: JANUARY 8, 2007

These floor amendments clarify that a violation of any of the bill's provisions also constitutes an unlawful practice under the State's consumer fraud act, P.L.1960, c.39 (C.56:8-1 et seq.), and subjects the violator to all State or private actions and remedies available under that act. Those actions and remedies include, but are not limited to, the obtaining of an injunction by the Attorney General to stop any violation, and the assessment and collection of civil penalties established under that act.

These amendments make this bill identical to Assembly No. 3102 (2R) of 2006.