

2022 Regular Session

SENATE BILL NO. 318

BY SENATOR FOIL

ADVERTISING. Provides relative to the advertising, promoting, and conducting of certain live musical performances. (8/1/22)

1 AN ACT
2 To enact Chapter 62 of Title 51 of the Louisiana Revised Statutes of 1950, to be comprised
3 of R.S. 51:3221, relative to advertising; to provide for the advertisement, promotion,
4 and conduction of live musical performances in a deceptive manner; to provide for
5 injunctions; to provide for penalties; to provide for terms, conditions, and
6 procedures; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Chapter 62 of Title 51 of the Louisiana Revised Statutes of 1950,
9 comprised of R.S. 51:3221, is hereby enacted to read as follows:

10 **CHAPTER 62. LIVE MUSICAL PERFORMANCES**

11 **§3221. Advertising, promoting and conducting certain live music**
12 **performances; penalties**

13 **A. As used in this Section, the following words and phrases shall have the**
14 **following meanings:**

15 **(1) "Performing group" means a vocal or instrumental group of one or**
16 **more members that intends to advertise or perform under the name of a**
17 **recording group or a name similar to a recording group.**

1 **(2) "Recording group" means a vocal or instrumental group of one or**
2 **more members, with at least one of the members having previously released a**
3 **commercial sound recording under the group's name and the legal rights to the**
4 **recording have not been abandoned.**

5 **(3) "Sound recording" means a work that results from the fixation of a**
6 **series of musical, spoken, or other sounds, regardless of the nature of the**
7 **material object, such as phonograph, disc, tape, wire, digital storage, or other**
8 **medium, in which the sounds are embodied.**

9 **B. No person shall advertise or conduct a live musical performance or**
10 **production in this state through the use of a false, deceptive, or misleading**
11 **affiliation, connection, or association between the performing group and a**
12 **recording group.**

13 **C. The provisions of this Section shall not apply to any of the following:**

14 **(1) The performing group is the authorized registrant and owner of a**
15 **federal service mark or trademark for the recording group that is registered in**
16 **the United States, or is a licensee of or otherwise authorized to use the service**
17 **mark or trademark by such registrant and owner.**

18 **(2) At least one member of the performing group was a member of the**
19 **recording group and that member has a legal right to use or operate under the**
20 **name of the recording group without having abandoned the name or affiliation**
21 **with the recording group.**

22 **(3) The live musical performance or production is identified in all**
23 **advertising and promotion as a salute or tribute and the name of the performing**
24 **group is not similar to the name used by the recording group.**

25 **(4) The performance or production is expressly authorized by the**
26 **recording group.**

27 **D.(1)The attorney general or a district attorney of this state may bring**
28 **an action on behalf of the state, for a permanent or temporary injunction,**
29 **against a person advertising, conducting, or intends to advertise or conduct, a**

1 live musical performance or production in violation of Subsection B of this
2 Section.

3 (2) In connection with the permanent injunction issued pursuant to this
4 Subsection, a person in violation of this Section shall be ordered to restore
5 actual damages or property that may have been acquired.

6 E.(1) A person who violates Subsection B of this Section shall be liable
7 to the state for a civil penalty of not less than five thousand dollars, and not
8 more than fifteen thousand dollars for each violation. Each performance or
9 production in violation of Subsection B of this Section shall constitute a separate
10 violation.

11 (2) The civil penalties provided in this Section are in addition to any
12 injunctive relief or any other remedy that may be available.

13 F.(1) Any party, or assignee, authorized agent, or licensee who is injured
14 as a result of a person's violation of the provisions of Subsection B of this
15 Section of that party, may bring a civil action for damages, reasonable attorney
16 fees, and court costs. Each performance or production in violation of Subsection
17 B of this Section shall constitute a separate violation.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Xavier I. Alexander.

DIGEST

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Proposed law defines the following:

- (1) "Performing group" means a vocal or instrumental group of one or more members that intends to advertise or perform under the name of a recording group or a name similar to a recording group.
- (2) "Recording group" means a vocal or instrumental group of one or more members, with at least one of the members having previously released a commercial sound recording under the group's name and the legal rights to the recording have not been abandoned.
- (3) "Sound recording" means a work that results from the fixation of a series of musical, spoken, or other sounds, regardless of the nature of the material object, such as phonograph, disc, tape, wire, digital storage, or other medium in which the sounds are embodied.

Proposed law provides that no person shall advertise or conduct a live musical performance

or production through false, deceptive, or misleading affiliation, connection, or association between the performing group and recording group.

Proposed law provides that a recording group can advertise or conduct a live musical performance or production affiliated, connected, or associated with a recording group under certain circumstances.

Proposed law provides that the attorney general or a district attorney can bring a civil action, for permanent or temporary injunction against a person that violates proposed law.

Proposed law provides for a civil penalty in the amount of not less than \$5,000 and not more than \$15,000 for any violation of proposed law, in addition to any injunctive relief.

Proposed law provides that any aggrieved party under this Section may bring a civil action for damages.

Effective August 1, 2022.

(Adds R.S. 51:3221)