

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 so similar to the name used by a recording group as

1 to cause confusion among members of the public.

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

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

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

14 C. The provisions of this Section shall not apply if any of the following  
15 occurs:

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

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

24 (3) The live musical performance or production is identified in all  
25 advertising and promotion as a salute or tribute and the name of the performing  
26 group is not so similar to the name used by the recording group as to cause  
27 confusion among members of the public.

28 (4) The performance or production is expressly authorized by the  
29 recording group.

1            **D.(1) The attorney general or a district attorney of this state may bring**  
 2            **an action on behalf of the state, for a permanent or temporary injunction,**  
 3            **against a person advertising, conducting, or a person who intends to advertise**  
 4            **or conduct, a live musical performance or production in violation of Subsection**  
 5            **B of this Section.**

6            **(2) In connection with the permanent injunction issued pursuant to this**  
 7            **Subsection, the court shall order a person who violates the provisions of this**  
 8            **Section to restore actual damages and property that may have been acquired**  
 9            **as a result of a violation of this Section.**

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

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

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

22           **G. This Section shall not apply to a legislatively created tourist**  
 23           **commission, convention facility, or destination marketing organization.**

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The original instrument was prepared by Xavier Alexander. The following digest, which does not constitute a part of the legislative instrument, was prepared by Alan Miller.

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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

so similar to a name used by a recording group as to cause confusion among members of the public.

- (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 knowingly 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.

Proposed law provides that this Section shall not apply to a legislatively created tourist commission, convention facility, or destination marketing organization.

Effective August 1, 2022.

(Adds R.S. 51:3221)

#### Summary of Amendments Adopted by Senate

##### Committee Amendments Proposed by Senate Committee on Judiciary B to the original bill

1. Makes technical changes.
2. Changes the definition of "performing group" to mean 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 so similar to a name used by a recording group as to cause confusion among members of the public.

##### Senate Floor Amendments to engrossed bill

1. Provides that no person shall knowingly advertise or participate in false or deceptive activities.
2. Exempts a legislatively created tourist commission, convention facility, or destination marketing organization from proposed law.