

SENATE BILL NO. 318

BY SENATOR FOIL

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**
18 **to cause confusion among members of the public.**

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

23 **(3) "Sound recording" means a work that results from the fixation of a**
24 **series of musical, spoken, or other sounds, regardless of the nature of the**
25 **material object, such as phonograph, disc, tape, wire, digital storage, or other**

1 medium, in which the sounds are embodied.

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

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

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

12 (2) At least one member of the performing group was a member of the
13 recording group and that member has a legal right to use or operate under the
14 name of the recording group without having abandoned the name or affiliation
15 with the recording group.

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

20 (4) The performance or production is expressly authorized by the
21 recording group.

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

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

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

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

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

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

 PRESIDENT OF THE SENATE

 SPEAKER OF THE HOUSE OF REPRESENTATIVES

 GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____