

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 advertise or conduct a live musical performance or
11 production in this state through the use of a false, deceptive, or misleading
12 affiliation, connection, or association between the performing group and a
13 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.

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.

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 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)

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.