

Honolulu, Hawaii

March 27, 2015

RE: S.B. No. 1287
S.D. 2
H.D. 1

Honorable Joseph M. Souki
Speaker, House of Representatives
Twenty-Eighth State Legislature
Regular Session of 2015
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred S.B. No. 1287, S.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO COPYRIGHTS,"

begs leave to report as follows:

The purpose of this measure is to:

- (1) Provide authors of sound recordings that were fixed prior to February 15, 1972, with an exclusive ownership interest in the original work until February 15, 2067; and
- (2) Add a fine of up to \$1,000 to the penalties under section 482C-5, Hawaii Revised Statutes, for violations of the law on copyrights in sound recordings.

Your Committee received testimony in support of this measure from one individual. Your Committee received testimony in opposition from KFVE, Hawaii Association of Broadcasters, KITV, Salem Media of Hawaii, and one individual.

Your Committee finds that the federal Copyright Act of 1976, specifically, 17 U.S.C. section 301(c), explicitly leaves to the



states the protection of sound recordings fixed prior to February 15, 1972, as follows:

"With respect to sound recordings fixed before February 15, 1972, any rights or remedies under the common law or statutes of any State shall not be annulled or limited by this title until February 15, 2067. The preemptive provisions of subsection (a) shall apply to any such rights and remedies pertaining to any cause of action arising from undertakings commenced on and after February 15, 2067. Notwithstanding the provisions of section 303, no sound recording fixed before February 15, 1972, shall be subject to copyright under this title before, on, or after February 15, 2067."

Accordingly, your Committee finds that Hawaii's current law governing copyright in sound recordings should be updated to reflect current developments in the distribution of sound recordings and provide recording artists with a public performance right in their sound recordings under state law, since Congress explicitly left this area of regulation to the states. Hawaii's artists should enjoy the same rights that artists in other states may enjoy, under court decisions such as *Flo & Eddie, Inc. v. Sirius XM Radio, Inc. et. al*, Case No. CV 13-5693 PSG (RZX) (Sept. 22, 2014), from the United States District Court for the Central District of California. Furthermore, your Committee finds that to date, the criminal enforcement provisions have been insufficient to provide artists with a means to enforce their rights against third parties.

Your Committee has amended this measure by:

- (1) Updating the purpose section of this measure to clarify the purpose and statutory basis for this measure;
- (2) Deleting the amendment to the penalties under section 482C-5, Hawaii Revised Statutes, since the courts may already impose fines for misdemeanors;
- (3) Adding language providing for a civil right of enforcement for infringement, including the right to request injunctive relief, money damages, and attorney's fees, in conformity with the judicial relief provided to the owners in this State of other intellectual property such as trademarks or trade secrets;



- (4) Conforming section 482C-4, Hawaii Revised Statutes, to allow for the new performance right and provide exemptions for non-commercial educational use, archival use, or fair use, or use based upon a negotiated or statutory license; and
- (5) Adding language that civil remedies for infringement will not be available unless sound recordings are made available for license through a collecting society or performing rights management organization.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1287, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1287, S.D. 2, H.D. 1, and be referred to the Committee on Consumer Protection & Commerce.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary,



KARL RHOADS, Chair



