

ACT 15

H.B. NO. 1678

A Bill for an Act Relating to Musical Performances.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that over thirty states have passed Truth in Music Advertising laws, and other states utilize general “deceptive acts” or consumer protection laws to prevent cover bands and imposter performers from misappropriating the intellectual property of other artists. These laws are also useful in enabling authorities, and in some cases individuals, to take action against performers who engage in deceptive advertising.

The purpose of this Act is to adopt provisions of the model Truth in Music Advertising law to provide protections for Hawaii’s performing artists and to protect the public from deceptive acts by:

- (1) Prohibiting a person from advertising or conducting a live musical performance through the use of false, deceptive, or misleading affiliation, connection, or association with a performing group; and
- (2) Allowing a court to grant restitution to aggrieved parties.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
RELATING TO THE ADVERTISING OF LIVE MUSICAL
PERFORMANCES**

§ -1 **Short title.** This chapter may be cited as the Hawaii Truth in Music Advertising Act.

§ -2 **Definitions.** As used in this chapter, unless the context clearly requires otherwise:

“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 substantially similar to a recording group.

“Recording group” means a vocal or instrumental group of one or more members, at least one of whose members has previously released a commercial sound recording under that group’s name and in which the member or members have a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation with the group.

“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 a phonograph, disc, tape, wire, digital storage, or other medium, in which the sounds are embodied.

§ -3 Prohibited acts. A person may not advertise or conduct a live musical performance or production in this State through the use of a false, deceptive or misleading affiliation, connection, or association between a performing group and a recording group. This section does not apply if:

- (1) The performing group is the authorized registrant and owner of a federal service mark for the recording group that is registered in the United States;
- (2) At least one member of the performing group was a member of the recording group and that member has a legal right to use or operate under the name of the recording group without having abandoned the name or affiliation with the recording group;
- (3) The live musical performance or production is identified in all advertising and promotion as a salute or tribute and the name of the performing group is not so closely related or similar to the name used by the recording group that it would tend to confuse or mislead the public;
- (4) The advertising does not relate to a live musical performance or production taking place in, or streamed or broadcast into, this State; or
- (5) The performance or production is expressly authorized by the recording group.

§ -4 Enforcement. (a) Each performance or production in violation of section -3 constitutes a separate violation and shall be treated as an unfair or deceptive act or practice under section 480-2.

(b) If the attorney general has reason to believe that a person is advertising or conducting, or intends to advertise or conduct, a live musical performance or production in violation of section -3, the attorney general may bring an action in the name of the State against the person to restrain the violation by temporary or permanent injunction.

(c) When a court issues a permanent injunction to restrain and prevent a violation of section -3, the court may make additional orders or judgments as necessary to restore money or other property that may have been acquired because of a violation of section -3.

§ -5 Private right of action. Any party, or assignee, authorized agent, or licensee of that party, who is injured as a result of the person's violation of section -3 may bring a civil action for appropriate legal and equitable relief, including injunctive relief, and for treble damages, reasonable attorney's fees, filing fees, and costs for the injured party."

SECTION 3. This Act shall take effect upon its approval.

(Approved September 10, 2020.)