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# A BILL FOR AN ACT

RELATING TO ARTIST RECORDING CONTRACTS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that the recording  
2 industry is an important industry to the State of Hawaii.  
3 Artistic labor is vital to maintaining a healthy and vibrant  
4 recording industry and is an important resource to the people of  
5 Hawaii. Every recording artist should have the ability to  
6 conduct an audit to verify earnings and royalties reported under  
7 a recording contract.

8           The establishment of a set of basic audit practices will  
9 advance the interests of the artists, the recording industry,  
10 and the State as a whole. The purpose of this Act is to  
11 implement important public policy by establishing minimum audit  
12 procedures that apply to all royalty contracts in the recording  
13 industry in the State.

14           SECTION 2. Hawaii Revised Statutes is amended by adding a  
15 new section to be appropriately designated and to read as  
16 follows:

17           "§ - Action for an accounting. (a) For the purpose  
18 of this section:



1       "Participation contract" means an agreement pursuant to  
2 which a royalty payor is obligated to make royalty payments to a  
3 royalty recipient who furnishes services in the production of  
4 sound recordings or audiovisual works, or both, as defined in  
5 title 17 United States Code section 101, containing the musical  
6 performances of a royalty recipient.

7       "Royalty payment" means the payment of a percentage or  
8 share of revenues, proceeds, product, sales, or profits derived  
9 from a participation contract, whether referred to as a royalty  
10 payment in the participation contract or considered to be a  
11 royalty payment by the parties to the participation contract.

12       "Royalty payor" means a party to a participation contract  
13 who has the obligation to pay a royalty recipient under a  
14 participation contract.

15       "Royalty recipient" means a party to a participation  
16 contract who has the right to receive a royalty payment under  
17 the participation contract.

18       (b) Any person or entity who is a royalty recipient under  
19 a participation contract shall be entitled to a decree from a  
20 circuit court in the State compelling an accounting of all  
21 revenues and profits, if any, derived from the participation  
22 contract; provided that:



1       (1) Prior to the filing of a complaint under this section,  
2       the royalty recipient made a written demand upon the  
3       royalty payor to provide a written accounting of any  
4       revenues and profits, if any, derived from the  
5       participation contract during the preceding calendar  
6       year;

7       (2) The demand under paragraph (1) was made not less than  
8       one hundred days prior to the filing of the complaint;  
9       and

10      (3) The royalty payor refused or failed to provide a  
11      written accounting of the revenues and profits derived  
12      from the participation contract during the preceding  
13      calendar year within ninety days of the receipt of the  
14      royalty recipient's written demand.

15      (c) Upon the establishment that the royalty recipient is  
16      entitled to an accounting under this section, the court shall  
17      compel the royalty payor to produce to the royalty recipient all  
18      documents relating to the determination of the percentage of  
19      revenue and sales due to the royalty recipient under the  
20      participation contract.

21      (d) During the court compelled accounting, if it is  
22      determined that the amount due and owed to the royalty recipient



1 bringing the action is greater than the amount that has been  
2 paid by the royalty payor to the royalty recipient for the same  
3 calendar year, the royalty recipient shall be entitled to a  
4 money judgment in the amount of the difference.

5 (e) The prevailing party in any action for an accounting  
6 commenced under this section shall be entitled to an award of  
7 all of the prevailing party's costs, including reasonable  
8 attorneys' fees incurred in the prosecution or defense of the  
9 action. Specifically, if the compelled accounting establishes  
10 that the royalty recipient was entitled to an amount greater  
11 than the amount the royalty recipient had been paid by the  
12 royalty payor under the participation contract, the royalty  
13 recipient will be entitled to a reimbursement of all of the  
14 costs and fees incurred in performing the audit or professional  
15 review of the compelled accounting.

16 SECTION 3. New statutory material is underscored.

17 SECTION 4. This Act shall take effect upon its approval.



**Report Title:**

Recording Contracts; Royalties; Action for Accounting

**Description:**

Authorizes recording artist royalty recipients to audit books and records of royalty reporting party; establishes conditions. (SD1)

