

JAN 17 2020

A BILL FOR AN ACT

RELATING TO DECEPTIVE PRACTICES.

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

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

9 The purpose of this Act is to adopt provisions of the model
10 TIMA law to provide protections for Hawaii's performing artists
11 and to protect the public from deceptive acts.

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

15 "CHAPTER

16 RELATING TO THE ADVERTISING OF LIVE MUSICAL PERFORMANCES



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

3 § -2 **Definitions.** As used in this chapter, unless the
4 context clearly requires otherwise:

5 "Performing group" means a vocal or instrumental group of
6 one or more members that intends to advertise or perform under
7 the name of a recording group or a name substantially similar to
8 a recording group.

9 "Recording group" means a vocal or instrumental group of
10 one or more members, at least one of whose members has
11 previously released a commercial sound recording under that
12 group's name and in which the member or members have a legal
13 right by virtue of use or operation under the group name without
14 having abandoned the name or affiliation with the group.

15 "Sound recording" means a work that results from the
16 fixation of a series of musical, spoken, or other sounds,
17 regardless of the nature of the material object, such as a
18 phonograph, disc, take, wire, digital storage, or other medium,
19 in which the sounds are embodied.

20 § -3 **Prohibited acts.** A person may not advertise or
21 conduct a live musical performance or production in this State



1 through the use of a false, deceptive or misleading affiliation,
2 connection, or association between a performing group and a
3 recording group. This section does not apply if:

4 (1) The performing group is the authorized registrant and
5 owner of a federal service mark for the recording
6 group that is registered in the United States;

7 (2) At least one member of the performing group was a
8 member of the recording group and that member has a
9 legal right to use or operate under the name of the
10 recording group without having abandoned the name or
11 affiliation with the recording group;

12 (3) The live musical performance or production is
13 identified in all advertising and promotion as a
14 salute or tribute and the name of the performing group
15 is not so closely related or similar to the name used
16 by the recording group that it would tend to confuse
17 or mislead the public;

18 (4) The advertising does not relate to a live musical
19 performance or production taking place in, or streamed
20 or broadcast into, this State; or



1 (5) The performance or production is expressly authorized
2 by the recording group.

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

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

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

18 § -5 Private right of action. Any party, or assignee,
19 authorized agent, or licensee of that party, who is injured as a
20 result of the person's violation of section -3 may bring a
21 civil action for appropriate legal and equitable relief,



1 including injunctive relief, and for treble damages, reasonable
2 attorney's fees, filing fees, and costs for the injured party."

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

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S.B. NO. 2354

Report Title:

Truth in Music Advertising; Deceptive Advertising; Musical Performance; Right of Action; Musical Production; TIMA

Description:

Prohibits a person from advertising or conducting a live musical performance through the use of deceptive affiliation under certain conditions. Enables action against deceptive practices by imposing penalties and private right of action.

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