

**House File 2304 - Introduced**

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BY UPMEYER

**A BILL FOR**

1 An Act relating to the advertising, promoting, and conducting  
2 of certain live musical performances, and providing civil  
3 penalties.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 549A.1 Title.

2 This chapter shall be known and may be cited as the "*Truth in*  
3 *Music Advertising Act*".

4 Sec. 2. NEW SECTION. 549A.2 Definitions.

5 As used in this chapter, unless the context otherwise  
6 requires:

7 1. "*Performing group*" means a vocal or instrumental group of  
8 one or more individuals that intends to advertise or perform  
9 under the name of a recording group or performer or a name  
10 substantially similar to a recording group or performer.

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

18 3. "*Sound recording*" means a work that results from the  
19 fixation of a series of musical, spoken, or other sounds,  
20 regardless of the nature of the material object, such as a  
21 phonograph, disc, tape, wire, digital storage, or other medium  
22 in which the sounds are embodied.

23 Sec. 3. NEW SECTION. 549A.3 Production.

24 1. A person shall not advertise or conduct a live musical  
25 performance or production in this state through the use of a  
26 false, deceptive, or misleading affiliation, connection, or  
27 association between a performing group and a recording group.

28 2. This section does not apply if any of the following  
29 conditions are met:

30 a. The performing group is the authorized registrant and  
31 owner of a federal service mark for the recording group that is  
32 registered in the United States patent and trademark office.

33 b. At least one member of the performing group was a member  
34 of the recording group, and that member has a legal right to  
35 use or operate under the name of the recording group without

1 having abandoned the name or affiliation with the recording  
2 group.

3 *c.* The live musical performance or production is identified  
4 in all advertising and promotion as a salute or tribute.

5 *d.* The name of the performing group is not so closely  
6 related or similar to the name used by the recording group that  
7 it would tend to confuse or mislead the public.

8 *e.* The advertising does not relate to a live musical  
9 performance or production taking place in, streamed into, or  
10 broadcast into this state.

11 *f.* The performance or production is expressly authorized by  
12 the recording group.

13 **Sec. 4. NEW SECTION. 549A.4 Enforcement.**

14 1. If the attorney general, a county attorney, district  
15 attorney, or any attorney charged with responsibility of  
16 prosecution of violation of state laws has reason to believe  
17 that a person is advertising or conducting or intends to  
18 advertise or conduct a live musical performance or production  
19 in violation of section 549A.3, the attorney general,  
20 county attorney, district attorney, or attorney charged with  
21 responsibility of prosecution of violation of state laws may  
22 bring an action in the name of this state against the person to  
23 restrain the violation by temporary or permanent injunction.

24 2. A court may make additional orders or judgments as  
25 necessary to restore money or other property that may have  
26 been lost due to the violation of section 549A.3 when the  
27 court issues a permanent injunction to restrain and prevent a  
28 violation of section 549A.3.

29 3. In addition to any other penalties provided for in this  
30 chapter, a civil penalty of not less than five thousand dollars  
31 and not more than fifteen thousand dollars shall be imposed,  
32 for each offense, upon a person who violates section 549A.3.  
33 Each performance or production constitutes a separate offense.

34 4. Any person who is injured as a result of a person's  
35 violation of section 549A.3 may bring an action for a violation

1 of section 549A.3. Each performance or production constitutes  
2 a separate violation. If a court finds a violation of section  
3 549A.3, the court shall award to the injured person treble  
4 damages, appropriate equitable relief, costs of the action, and  
5 shall award reasonable fees to the injured person's attorney.

6 EXPLANATION

7 The inclusion of this explanation does not constitute agreement with  
8 the explanation's substance by the members of the general assembly.

9 This bill relates to the advertising, promoting, and  
10 conducting of certain live musical performances.

11 The bill contains a definitions section, which defines  
12 "performing group" as a vocal or instrumental group intending  
13 to advertise or perform under the name of, or a name  
14 substantially similar to, a recording group or performer. The  
15 bill defines "recording group" to mean a vocal or instrumental  
16 group, at least one of whose members has previously released  
17 a commercial sound recording under that group's name, and in  
18 which the individual or individuals have a legal right by  
19 virtue of use or operation under the group name without having  
20 abandoned the name or affiliation with the group. Finally,  
21 the bill defines "sound recording" as a work that results from  
22 the fixation of a series of musical, spoken, or other sounds,  
23 regardless of the nature of the material object in which the  
24 sounds are embodied.

25 The bill prohibits a person from advertising or conducting a  
26 live musical performance or production in this state through  
27 the use of a false, deceptive, or misleading affiliation,  
28 connection, or association between a performing group and a  
29 recording group.

30 There are six exceptions to this prohibition. First, when  
31 the performing group is the authorized registrant and owner of  
32 a federal service mark for the recording group. Second, when  
33 at least one member of the performing group was a member of the  
34 recording group, and that member has a legal right to use or  
35 operate under the name of the recording group without having

1 abandoned the name or affiliation with the recording group.  
2 Third, when the live performance or production is identified  
3 in all advertising as a salute or tribute. Fourth, when the  
4 name of the performing group is not so closely related to the  
5 name of the recording group that it would tend to confuse the  
6 public. Fifth, when the advertising does not relate to a  
7 live musical performance taking place in, streamed into, or  
8 broadcast into this state. Sixth, when the performance is  
9 expressly authorized by the recording group.

10 The bill also provides for civil penalties for the violation  
11 of the prohibition on advertising or conducting a live musical  
12 performance or production in this state through the use of a  
13 false, deceptive, or misleading affiliation, connection, or  
14 association between a performing group and a recording group.  
15 A court may enter a temporary or permanent injunction to stop  
16 such violation. If a court enters a permanent injunction, the  
17 court may make additional orders or judgments as necessary to  
18 restore money or other property that may have been lost due to  
19 the violation. In addition, a civil penalty of not less than  
20 \$5,000 and not more than \$15,000 shall be imposed, for each  
21 offense, upon a person who violates such prohibition. Finally,  
22 the bill also provides a private cause of action to any person  
23 who is injured as a result of a person's violation of such  
24 prohibition. If a court finds a violation of such prohibition,  
25 the court shall award to the injured person treble damages,  
26 appropriate equitable relief, costs of the action, and shall  
27 award reasonable fees to the injured person's attorney.