

ASSEMBLY, No. 1698

STATE OF NEW JERSEY

INTRODUCED MARCH 4, 1996

By Assemblymen BAGGER, DORIA, Cohen, Bateman, Gregg, Assemblywoman Wright, Assemblymen Bucco, Bodine, Assemblywoman Bark, Assemblymen Garrett, Corodemus, Green, Roma, Romano, Assemblywoman Allen, Assemblymen Kavanaugh, DeCroce, Assemblywomen Murphy, Heck, Assemblymen Kelly, Geist, Assemblywoman Farragher, Assemblymen T. Smith, Blee, LeFevre, Moran, DiGaetano, Assemblywoman J. Smith, Assemblyman Kramer, Assemblywoman Turner, Assemblymen Azzolina, Rocco, Impreveduto, Pascrell, Garcia, Suliga, Steele, Holzapfel, Asselta, Gibson, Connors, DeSopo, Zecker and Assemblywoman Vandervalk

1 AN ACT concerning the enforcement of certain music licenses and
2 supplementing Title 56 of the Revised Statutes.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. This act shall be known and may be cited as the "Music
8 Licensing Practices Act."

9

10 2. As used in this act:

11 "Area" means a circular geographic region having a 25 mile radius
12 surrounding each business location of a proprietor;

13 "Copyright owner" means the owner of a copyright of a
14 nondramatic musical work, other than a motion picture or audiovisual
15 work;

16 "Performing rights society" means an association or corporation
17 that licenses the public performance of nondramatic musical works on
18 behalf of copyright owners, such as the American Society of
19 Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc.
20 (BMI) and SESAC, Inc.;

21 "Proprietor" means the owner of a retail establishment, restaurant,
22 inn, bar, tavern or any other similar place of business or professional
23 office located in this State in which the public may assemble and in
24 which nondramatic musical works may be performed, broadcast, or
25 otherwise transmitted for the enjoyment of the members of the public
26 there assembled;

1 "Royalty" or "royalties" means the fees payable to a copyright
2 owner or performing rights society for the public performance of a
3 nondramatic musical work.

4
5 3. a. Every performing rights society doing business in this State
6 shall file a current list of the copyrighted nondramatic musical works
7 for which the performing rights society collects royalties on behalf of
8 copyright owners with the Secretary of State at least annually.

9 b. The list required by this section may be relied upon by a
10 proprietor in making an informed decision before entering into a
11 contract with a performing rights society and shall be binding between
12 the parties for the period of any contract once executed pursuant to
13 this act.

14 c. The list required by this section shall be provided at a reasonable
15 cost to any person upon request.

16 d. Every performing rights society doing business in this State shall
17 establish a toll free telephone number which can be used to answer
18 inquiries regarding specific nondramatic musical works licensed by that
19 performing rights society.

20
21 4. A performing rights society shall not enter into or execute a
22 contract for the payment of royalties by a proprietor unless, no later
23 than 72 hours prior to the execution of the contract, the performing
24 rights society provides to the proprietor, in writing, the following:

25 a. a schedule of the rates and terms of royalties under the contract;

26 b. a schedule of the rates and terms of royalties under agreements
27 executed by the performing rights society and proprietors of
28 comparable businesses in the area;

29 c. notice of its most recent filing with the Secretary of State
30 pursuant to section 3 of this act and the rights and responsibilities of
31 the performing rights society and the proprietor appurtenant thereto;

32 d. the toll free telephone number required by subsection d. of
33 section 3 of this act;

34 e. in the case of a performing rights society which offers discounts
35 to proprietors in the area on any basis, the amounts and terms of those
36 discounts; and

37 f. notice that the proprietor is entitled to the information required
38 under this act and that the failure of the performing rights society to
39 provide that information is a violation of this act and may render a
40 contract unenforceable under this act.

41
42 5. A contract between a performing rights society and a proprietor
43 for the payment of royalties shall be offered for a term of one year, but
44 the parties may agree to contract for a term other than one year.

45
46 6. Every contract between a performing rights society and a

1 proprietor for the payment of royalties executed or renewed in this
2 State shall:

- 3 a. be in writing;
- 4 b. be signed by the parties to the contract; and
- 5 c. include at least the following information:
 - 6 (1) the proprietors' name and business address and the name and
7 location of each place of business to which the contract applies;
 - 8 (2) the name and business address of the performing rights society;
 - 9 (3) the duration of the contract; and
 - 10 (4) the schedule of rates and terms of royalties to be collected
11 under the contract, including any sliding scale, discount or schedule
12 for any increase or decrease of those rates for the duration of the
13 contract.

14

15 7. No performing rights society, or any agent or employee thereof
16 shall:

- 17 a. enter onto the premises of a proprietor's business for the purpose
18 of discussing a contract for the payment of royalties by that proprietor
19 without first identifying himself to the proprietor or his employees and
20 disclosing that he is acting on behalf of the performing rights society
21 and disclosing the purpose of the discussion;
- 22 b. collect or attempt to collect a royalty payment or any other fee
23 except as provided in a contract executed pursuant to the provisions
24 of this act on or after the effective date of this act;
- 25 c. use or attempt to use any act or practice in negotiating with a
26 proprietor, or in retaliation for a proprietor's failure or refusal to
27 negotiate, with the intent of coercing the proprietor to negotiate or
28 enter into a contract for the payment of royalties, including, but not
29 limited to:
 - 30 (1) any act or practice that disrupts the proprietor's business; or
 - 31 (2) threatening to commence legal proceedings in connection with
32 an alleged copyright violation.

33

34 8. Nothing in this act shall be construed to prevent a performing
35 rights society from informing the proprietor of the proprietor's
36 obligations under the federal copyright law pursuant to Title 17 of the
37 United States Code.

38

39 9. A person who violates any provision of this act shall be liable to
40 pay a penalty of not more than \$2,500 for a first violation and not
41 more than \$10,000 for a second or subsequent violation. The penalty
42 shall be collected and enforced in the name of the State by the
43 Attorney General in a court of competent jurisdiction in a summary
44 proceeding pursuant to "the penalty enforcement law," N.J.S.2A:58-1
45 et seq.

1 executed; and that certain information be included in the contract.
2 Contracts must be offered for a term of one year, but the parties may
3 agree to a contract of another duration.

4 Finally, the bill prohibits certain unfair or coercive practices by
5 performing rights societies in their dealings with proprietors and
6 establishes penalties for violations of its provisions. The maximum
7 penalty for a first violation is \$2,500, and for subsequent violations,
8 \$10,000. The bill also establishes a private cause of action for
9 violation of its provisions.

10

11

12

13

14 _____
Regulates certain music licensing practices.