

[First Reprint]  
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, Assemblywoman  
Vandervalk, Assemblymen Gusciora and Greenwald

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 <sup>1</sup>["Area" means a circular geographic region having a 25 mile radius  
12 surrounding each business location of a proprietor;]<sup>1</sup>

13 "Copyright owner" means the owner of a copyright of a  
14 <sup>1</sup>[nondramatic]<sup>1</sup> musical work, other than a motion picture or  
15 audiovisual work;

16 "Performing rights society" means an association or corporation  
17 that licenses the public performance of <sup>1</sup>[nondramatic]<sup>1</sup> musical works  
18 on behalf of copyright owners, such as the American Society of  
19 Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc.  
20 (BMI) and SESAC, Inc.;

**EXPLANATION** - Matter enclosed in bold-faced brackets [thus] in the above bill is not  
enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Assembly ACP committee amendments adopted May 20, 1996.

1 "Proprietor" means the owner of a retail establishment, restaurant,  
2 inn, bar, tavern or any other similar place of business or professional  
3 office located in this State in which the public may assemble and in  
4 which <sup>1</sup>[nondramatic]<sup>1</sup> musical works may be performed, broadcast,  
5 or otherwise transmitted for the enjoyment of the members of the  
6 public there assembled;

7 "Royalty" or "royalties" means the fees payable to a copyright  
8 owner or performing rights society for the public performance of a  
9 <sup>1</sup>[nondramatic]<sup>1</sup> musical work.

10  
11 3. a. Every performing rights society <sup>1</sup>[doing business] licensing  
12 music<sup>1</sup> in this State shall file a current list of not less than<sup>1</sup> the  
13 performed<sup>1</sup> copyrighted <sup>1</sup>[nondramatic]<sup>1</sup> musical works for which the  
14 performing rights society collects royalties on behalf of copyright  
15 owners with the Secretary of State at least annually.

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

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

23 d. Every performing rights society <sup>1</sup>[doing business] licensing  
24 music<sup>1</sup> in this State shall establish a toll free telephone number which  
25 can be used to answer inquiries regarding specific <sup>1</sup>[nondramatic]<sup>1</sup>  
26 musical works licensed by that performing rights society.

27  
28 4. A performing rights society shall not enter into or execute a  
29 contract for the payment of royalties by a proprietor unless, no later  
30 than 72 hours prior to the execution of the contract, the performing  
31 rights society provides to the proprietor, in writing, the following:

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

33 b. notice that the performing rights society shall, upon request by  
34 a proprietor, provide, before entering into a contract with that  
35 proprietor,<sup>1</sup> a schedule of the rates and terms of royalties under  
36 agreements executed by the performing rights society and proprietors  
37 of comparable businesses in the <sup>1</sup>[area] same county<sup>1</sup>;

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

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

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

46 f. notice that the proprietor is entitled to the information required

1 under this act and that the failure of the performing rights society to  
2 provide that information is a violation of this act <sup>1</sup>[and may render a  
3 contract unenforceable under this act]<sup>1</sup>.

4  
5 5. A contract between a performing rights society and a proprietor  
6 for the payment of royalties shall be offered for a term of one year, but  
7 the parties may agree to contract for a term other than one year. <sup>1</sup>The  
8 provisions of this section shall not apply to contracts which contain  
9 terms negotiated between a performing rights society and a bonafide  
10 national trade association representing a substantial percentage of  
11 proprietors of the same type.<sup>1</sup>

12  
13 6. Every contract between a performing rights society and a  
14 proprietor for the payment of royalties executed or renewed in this  
15 State shall:

16 a. be in writing;

17 b. be signed by the parties to the contract; and

18 c. include at least the following information:

19 (1) the proprietors' name and business address and the name and  
20 location of each place of business to which the contract applies;

21 (2) the name and business address of the performing rights society;

22 (3) the duration of the contract; and

23 (4) the schedule of rates and terms of royalties to be collected  
24 under the contract, including any sliding scale, discount or schedule  
25 for any increase or decrease of those rates for the duration of the  
26 contract.

27  
28 7. No performing rights society, or any agent or employee thereof  
29 shall:

30 a. enter onto the premises of a proprietor's business for the purpose  
31 of discussing a contract for the payment of royalties by that proprietor  
32 without first identifying himself to the proprietor or his employees and  
33 disclosing that he is acting on behalf of the performing rights society  
34 and disclosing the purpose of the discussion;

35 b. collect or attempt to collect a royalty payment or any other fee  
36 except as provided in a contract executed pursuant to the provisions  
37 of this act on or after the effective date of this act;

38 c. use or attempt to use any act or practice in negotiating with a  
39 proprietor, or in retaliation for a proprietor's failure or refusal to  
40 negotiate, with the intent of coercing the proprietor to negotiate or  
41 enter into a contract for the payment of royalties, including, but not  
42 limited to:

43 (1) any act or practice that <sup>1</sup>unduly<sup>1</sup> disrupts the proprietor's  
44 business; or

45 (2) threatening to commence legal proceedings in connection with  
46 an alleged copyright violation.

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

5  
6 9. A person who <sup>1</sup>willfully<sup>1</sup> violates any provision of this act shall  
7 be liable to pay a penalty of not more than \$2,500 for a first violation  
8 and not more than \$10,000 for a second or subsequent violation. The  
9 penalty shall be collected and enforced in the name of the State by the  
10 Attorney General in a court of competent jurisdiction in a summary  
11 proceeding pursuant to "the penalty enforcement law," N.J.S.2A:58-1  
12 et seq.

13  
14 10. a. A proprietor may bring an action in a court of competent  
15 jurisdiction or assert a counterclaim against a performing rights society  
16 to enjoin a violation of this act and to recover <sup>1</sup>[any] actual<sup>1</sup> damages  
17 sustained as a result of that violation.

18 b. The prevailing party in an action brought under this act shall be  
19 awarded reasonable attorney's fees and costs of suit.

20  
21 <sup>1</sup>11. a. This act shall not apply to contracts between performing  
22 rights societies and broadcasters licensed by the Federal  
23 Communications Commission, except that if a performing rights  
24 society is licensed by the Federal Communications Commission, this  
25 act shall apply to contracts between that performing rights society and  
26 a proprietor as otherwise provided herein.

27 b. This act shall not apply to any conduct by law enforcement  
28 officers or other persons engaged in for the enforcement of section 1  
29 of P.L. 1991, c. 125 (C. 2C:21-21).<sup>1</sup>

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31 <sup>1</sup>[11.] 12.<sup>1</sup> This act shall take effect <sup>1</sup>[immediately] on the 90th day  
32 following enactment<sup>1</sup>.

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37 Regulates certain music licensing practices.