

SENATE, No. 1004

STATE OF NEW JERSEY

INTRODUCED MARCH 21, 1996

By Senators BENNETT, ADLER, Ciesla, Kyrillos, Scott, Littell,
Haines, McNamara, Sinagra, Kosco, Ewing, Bubba, Kenny,
Casey, Gormley, Cardinale, Bassano, Lynch, Bryant,
O'Connor, Palaia and McGreevey

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

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

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

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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;

27 "Royalty" or "royalties" means the fees payable to a copyright
28 owner or performing rights society for the public performance of a
29 nondramatic musical work.

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31 3. a. Every performing rights society doing business in this State
32 shall file a current list of the copyrighted nondramatic musical works
33 for which the performing rights society collects royalties on behalf of
34 copyright owners with the Secretary of State at least annually.

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

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

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

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

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

18 b. a schedule of the rates and terms of royalties under agreements
19 executed by the performing rights society and proprietors of
20 comparable businesses in the area;

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

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

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

29 f. notice that the proprietor is entitled to the information required
30 under this act and that the failure of the performing rights society to
31 provide that information is a violation of this act and may render a
32 contract unenforceable under this act.

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

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38 6. Every contract between a performing rights society and a
39 proprietor for the payment of royalties executed or renewed in this
40 State shall:

41 a. be in writing;

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

43 c. include at least the following information:

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

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

1 (3) the duration of the contract; and

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

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

9 a. enter onto the premises of a proprietor's business for the purpose
10 of discussing a contract for the payment of royalties by that proprietor
11 without first identifying himself to the proprietor or his employees and
12 disclosing that he is acting on behalf of the performing rights society
13 and disclosing the purpose of the discussion;

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

17 c. use or attempt to use any act or practice in negotiating with a
18 proprietor, or in retaliation for a proprietor's failure or refusal to
19 negotiate, with the intent of coercing the proprietor to negotiate or
20 enter into a contract for the payment of royalties, including, but not
21 limited to:

22 (1) any act or practice that disrupts the proprietor's business; or

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

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

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

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39 10. a. A proprietor may bring an action in a court of competent
40 jurisdiction or assert a counterclaim against a performing rights society
41 to enjoin a violation of this act and to recover any damages sustained
42 as a result of that violation.

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

1 11. This act shall take effect immediately.

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STATEMENT

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6 This bill establishes certain rights and responsibilities between the
7 parties to contracts for the payment of royalties for the performance
8 of nondramatic musical works on certain business premises. The
9 owners of copyrighted music are usually represented by "performing
10 rights societies," such as ASCAP (the American Society of
11 Composers, Authors and Publishers) and BMI (Broadcast Music,
12 Inc.). Among their other activities on behalf of the copyright owners
13 they represent, these societies negotiate "blanket" contracts with
14 individual small businesses, such as restaurants, bars and retail
15 establishments, for the performance, either live or recorded, or
16 broadcast on television or radio, of the copyrighted works in their
17 respective repertoires. Because of the powerful position these
18 performing rights societies have assumed, the average small business
19 owner is at a disadvantage in negotiating a fair contract. Often times,
20 the proprietor is left feeling he has no choice but to contract with
21 several performing rights societies, just to be certain that he doesn't
22 run afoul of the federal copyright laws and open himself up to
23 litigation.

24 This bill requires performing rights societies to make certain
25 information regarding the musical works represented available so that
26 the proprietor may make an informed decision; and provides certain
27 safeguards and remedies once the contract is executed. Specifically,
28 the bill requires performing rights societies doing business in the State
29 to file a current list of songs for which they collect royalties on behalf
30 of copyright owners with the Secretary of State annually. The list may
31 be used by the proprietor of a business in making an informed decision
32 before entering into a contract with a performing rights society to use
33 music in his place of business. The required list must be provided at
34 a reasonable cost to anyone requesting it. A performing rights society
35 must also establish and maintain a toll free telephone number through
36 which inquiries regarding specific musical works may be made. The
37 bill requires that certain information, including information regarding
38 the list and the toll free telephone number, be provided to a proprietor
39 at least 72 hours before a contract for the payment of royalties is
40 executed; and that certain information be included in the contract.
41 Contracts must be offered for a term of one year, but the parties may
42 agree to a contract of another duration.

43 Finally, the bill prohibits certain unfair or coercive practices by
44 performing rights societies in their dealings with proprietors and
45 establishes penalties for violations of its provisions. The maximum
46 penalty for a first violation is \$2,500, and for subsequent violations,

1 \$10,000. The bill also establishes a private cause of action for
2 violation of its provisions.

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7 Regulates certain music licensing practices.