

[First Reprint]
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.

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;

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

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:

¹ Senate SCM committee amendments adopted May 2, 1996.

1 nondramatic musical work.

2

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

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

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

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

18

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

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

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

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

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

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

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

39

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

43

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

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

12
13 7. No performing rights society, or any agent or employee thereof
14 shall:

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

31
32 8. Nothing in this act shall be construed to prevent a performing
33 rights society from informing the proprietor of the proprietor's
34 obligations under the federal copyright law pursuant to Title 17 of the
35 United States Code.

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

44
45 10. a. A proprietor may bring an action in a court of competent
46 jurisdiction or assert a counterclaim against a performing rights society

1 to enjoin a violation of this act and to recover any damages sustained
2 as a result of that violation.

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

5

6 ¹11. a. This act shall not apply to contracts between performing
7 rights societies and broadcasters licensed by the Federal
8 Communications Commission, except that if a performing rights
9 society is licensed by the Federal Communications Commission, this
10 act shall apply to contracts between that performing rights society and
11 a proprietor as otherwise provided herein.

12 b. This act shall not apply to any conduct engaged in for the
13 enforcement of section 1 of P.L.1991, c.125 (C.2C:21-21).¹

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15 ¹[11.] 12.¹ This act shall take effect immediately.

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Regulates certain music licensing practices.