

**SUBSTITUTE FOR  
HOUSE BILL NO. 5576**

A bill to provide for the regulation of contracts between persons publicly performing or broadcasting copyrighted nondramatic musical works under certain circumstances; to provide for recognition of certain agents and employees of performing rights societies; to impose certain fees; to provide for certain powers and duties for certain state agencies and departments; and to prescribe penalties and provide remedies.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 1. This act shall be known and may be cited as the  
2 "music royalty practices act".

3       Sec. 2. As used in this act:

4       (a) "Copyright owner" means the owner of a copyright of a  
5 nondramatic musical work recognized and enforceable under the  
6 copyright laws of the United States pursuant to title 17 of the  
7 United States Code, 17 U.S.C. 101 to 1101. Copyright owner does

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1 not include the owner of a copyright in a motion picture or  
2 audiovisual work or in any portion of a motion picture or audio-  
3 visual work.

4 (b) "Copyright laws" means those laws specified pursuant to  
5 title 17 of the United States Code, 17 U.S.C. 101 to 1101.

6 (c) "Department" means the department of consumer and indus-  
7 try services.

8 (d) "Performing rights society" means an association, corpo-  
9 ration, or other entity that licenses the public performance,  
10 broadcast, or transmittal of nondramatic musical works on behalf  
11 of copyright owners including, but not limited to, the American  
12 society of composers, authors, and publishers; broadcast music,  
13 inc.; and SESAC, inc.

14 (e) "Proprietor" means the owner of a retail establishment,  
15 restaurant, inn, bar, tavern, sports or entertainment facility,  
16 not-for-profit organization, or any other place of business or  
17 professional office located in this state in which the public may  
18 assemble and in which nondramatic musical works are publicly per-  
19 formed, broadcast, or transmitted for the enjoyment of the mem-  
20 bers of the public assembled in that place.

21 (f) "Royalties" means the fees payable by a proprietor to a  
22 performing rights society for the public performance, broadcast,  
23 or transmittal of nondramatic musical works.

24 Sec. 3. (1) A performing rights society doing business in  
25 this state shall maintain an electronic computer database of its  
26 repertoire. The performing rights society shall make available,  
27 in electronic form, a current list of at least the titles and the

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1 names of its authors and publishers of all its copyrighted  
2 nondramatic musical works and the copyrighted musical works that  
3 have been publicly performed, if known by the performing rights  
4 society, or for which the performing rights society has collected  
5 royalties on behalf of copyright owners within the past 5 years  
6 from the date such list is made available under this act. The  
7 performing rights society shall update the list at least weekly  
8 and shall provide the electronic address to the department.

9       (2) Upon request, any person may review the list of copy-  
10 righted works and a list of members and affiliates, in electronic  
11 form, through the department.

12       (3) The list established under subsection (1) that is in  
13 electronic form at the time a proprietor enters into a contract  
14 with a performing rights society and as supplemented by subse-  
15 quent additions and deletions to that list is binding between the  
16 parties for the period of the contract.

17       (4) A performing rights society shall provide a copy of its  
18 most current lists of copyrighted musical works and members at  
19 cost to any person upon request. As used in this subsection,  
20 "cost" does not include the cost of maintaining the database or  
21 any other overhead.

22       (5) A performing rights society licensing nondramatic musi-  
23 cal works in this state shall establish and maintain a toll-free  
24 telephone number that can be used to answer inquiries regarding  
25 specific nondramatic musical works licensed by that performing  
26 rights society and the copyright owners represented by that  
27 performing rights society.

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1       Sec. 4. A performing rights society shall not enter into,  
2 or offer to enter into, a contract for the payment of royalties  
3 by a proprietor unless, at the time of the offer or any time  
4 thereafter but at least 72 hours before the execution of the con-  
5 tract, it provides all of the following to the proprietor in  
6 writing:

7       (a) A schedule of the rates and terms of royalties under the  
8 contract including, but not limited to, any sliding scale, dis-  
9 counts, or reductions in fees on any basis for which the propri-  
10 etor may be eligible and any schedule increases or decreases in  
11 fees during the term of the contract.

12       (b) Notice that the performing rights society shall, upon  
13 request of a proprietor and before entering into a contract with  
14 that proprietor, provide a schedule of the rates and terms of  
15 royalties under contracts executed by the performing rights soci-  
16 ety and proprietors of comparable businesses in the same county  
17 within the past 12 months. If the performing rights society has  
18 not contracted with proprietors of comparable businesses within  
19 the past 12 months, the performing rights society shall provide a  
20 schedule of the rates and terms of the most recent contracts in  
21 the same county.

22       (c) Notice of the provisions required under section 3  
23 including the electronic address and toll-free telephone number.

24       (d) An explanation of any exception or exemption to the  
25 copyright laws that may exclude that proprietor from coverage of  
26 those copyright laws, including the "home-style exemption".

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1 (e) Upon request of the proprietor, the opportunity to  
2 review the most current available list of the members or  
3 affiliates represented by the performing rights society at the  
4 premises of the proprietor.

5 (f) Notice that the proprietor is entitled to the informa-  
6 tion required under this act and that failure of the performing  
7 rights society to provide that information is a violation of this  
8 act.

9 Sec. 5. (1) A contract for the payment of royalties between  
10 a proprietor and a performing rights society executed, issued, or  
11 renewed in this state shall comply with all of the following:

12 (a) Be in writing.

13 (b) Be signed by both parties to the contract.

14 (c) Include at least the following information:

15 (i) The proprietor's name and business address and the name  
16 and location of each place of business to which the contract  
17 applies.

18 (ii) The name and business address of the performing rights  
19 society.

20 (iii) The duration of the contract.

21 (iv) The schedule of rates and terms of royalties to be col-  
22 lected under the contract including, but not limited to, any  
23 sliding scale, discount, or schedule for any increase or decrease  
24 of those rates for the duration of the contract.

25 (2) A contract for the payment of royalties entered into,  
26 issued, or renewed in this state shall not exceed 1 year at a  
27 time unless the contract is under the terms of a national

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1 agreement to which both parties agree to be bound or unless both  
2 parties otherwise agree. When each year of a multiyear contract  
3 ends, the contract shall provide that it is automatically renewed  
4 on the same terms and conditions unless either party to the con-  
5 tract provides the other party with written notice of the party's  
6 desire to terminate the contract or to change the terms and  
7 conditions. The notice under this subsection shall be given at  
8 least 30 days before the termination of the current term.

9 (3) A contract shall not contain a provision regarding venue  
10 unless required under federal law or pursuant to federal court  
11 order.

12 [Sec. 6. (1) A performing rights society shall issue a pocket  
13 card to each individual agent, employee, or representative doing  
14 business in this state. The pocket card shall include a photograph  
15 of the individual and state the name of the individual, the  
16 performing rights societies represented by that individual, and the  
17 effective date of the individual's relationship with the performing  
18 rights society or societies.

19 (2) A performing rights society doing business in this state  
20 shall maintain an electronic computer database of each of the  
21 society's individual agents, employees, representatives, or other  
22 persons doing business in this state. The performing rights society  
23 shall make available, in electronic form, a current list of the  
24 names of all of its individual agents, employees, representatives,  
25 and other persons doing business in this state.

26 (3) Upon request, any proprietor may review the list of a

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1 performing rights society's individual agents, employees,  
2 representatives, or other persons doing business in this state, in  
3 electronic form, through the department.

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21       Sec. 7. (1) A performing rights society or any agent,  
22 employee, representative, or other person acting on behalf of the  
23 performing rights society shall not do any of the following:

24       (a) Enter onto the premises of a proprietor's business for  
25 [the purpose of

26                               ], discussing a contract for payment

27 of royalties for the use of copyrighted works by that proprietor,

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1 without first identifying himself or herself to the proprietor or  
2 to the proprietor's management employees. Such identification  
3 includes, but is not limited to, showing his or her pocket iden-  
4 tification card issued under this act, disclosing that he or she  
5 is acting on behalf of the performing rights society, and dis-  
6 closing the purpose of the entry.

7 (b) Collect or attempt to collect a royalty payment or any  
8 other fee except as provided in a contract executed pursuant to  
9 and in compliance with this act.

10 (c) Use or attempt to use any act or practice in negotiating  
11 with a proprietor, or in retaliation for a proprietor's failure  
12 or refusal to negotiate, with respect to a contract for the pay-  
13 ment of royalties, that includes, but is not limited to, any of  
14 the following:

15 (i) Engaging in any coercive act or practice that is disrupt-  
16 tive of a proprietor's business.

17 (ii) Threatening to commence a legal action in connection  
18 with an alleged copyright violation with the intent of coercing  
19 the proprietor to negotiate or enter into a contract for the pay-  
20 ment of royalties. This subparagraph does not prohibit the per-  
21 forming rights society or its agent, employee, or representative  
22 from informing the proprietor of obligations imposed under the  
23 copyright laws.

24 (d) Fail to provide written notice to a proprietor or his or  
25 her employees within [5 business days] after entering the  
proprietor's  
26 business for the purpose of investigating the possible

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1 performance, broadcasting, or transmission of nondramatic musical  
2 works that discloses all of the following:

3 (i) The name of the performing rights society.

4 (ii) The date on which the performing rights society or its  
5 agent, employee, or representative conducted the investigation.

6 (iii) The copyrighted nondramatic musical works in the per-  
7 forming rights society's repertoire performed, broadcast, or  
8 transmitted at the business during the investigation.

9 (2) This section does not prevent the performing rights  
10 society from exercising any exclusive rights protected under the  
11 copyright laws.

12 Sec. 8. A person suffering injury by a violation of this  
13 act may bring a civil action in a court of competent jurisdiction  
14 to recover treble damages and reasonable attorney's fees or seek  
15 injunctive or any other relief available at law or in equity.

16 Sec. 9. This act does not apply to either of the  
17 following:

18 (a) Contracts between performing rights societies not  
19 licensed by the federal communications commission and broadcas-  
20 ters licensed by the federal communications commission.

21 (b) Investigations by a law enforcement agency or other  
22 person regarding a suspected violation of 1994 PA 210,  
23 MCL 752.1051 to 752.1057.