

HOUSE BILL No. 5576

February 17, 1998, Introduced by Reps. Alley, Middaugh, Gernaat, Rhead, Gustafson, Mans, Schermesser, Callahan, Palamara, Walberg, Kukuk, Olshove, Middleton, Godchaux, Law, Galloway, Raczkowski and Perricone and referred to the Committee on Commerce.

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.

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

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

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

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

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

21 Sec. 3. (1) A performing rights society doing business in
22 this state shall maintain an electronic computer database of its
23 repertoire. The performing society rights shall make available,
24 in electronic form, a current list of at least the titles and the
25 names of its authors and publishers of all its copyrighted non-
26 dramatic musical works and the copyrighted musical works that
27 have been publicly performed, if known by the performing rights

1 society, or for which the performing rights society has collected
2 royalties on behalf of copyright owners within the past 5 years
3 from the date such list is made available under this act. The
4 performing rights society shall update the list at least weekly
5 and shall provide the electronic address to the department.

6 (2) Upon request, any person may review the list of copy-
7 righted works and a list of members and affiliates, in electronic
8 or printed form, through the department.

9 (3) The list established under subsection (1) that is in
10 electronic form at the time a proprietor enters into a contract
11 with a performing rights society is binding between the parties
12 for the period of the contract.

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

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

24 Sec. 4. A performing rights society shall not enter into,
25 or offer to enter into, a contract for the payment of royalties
26 by a proprietor unless, at the time of the offer or any time
27 thereafter but at least 72 hours before the execution of the

1 contract, it provides all of the following to the proprietor in
2 writing:

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

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

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

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

23 (e) Upon request of the proprietor, the opportunity to
24 review the most current available list of the members or affili-
25 ates represented by the performing rights society at the premises
26 of the proprietor.

1 (f) Notice that the proprietor is entitled to the
2 information required under this act and that failure of the
3 performing rights society to provide that information is a viola-
4 tion of this act.

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

8 (a) Be in writing.

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

10 (c) Include at least the following information:

11 (i) The proprietor's name and business address and the name
12 and location of each place of business to which the contract
13 applies.

14 (ii) The name and business address of the performing rights
15 society.

16 (iii) The duration of the contract.

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

21 (2) A contract for the payment of royalties entered into,
22 issued, or renewed in this state shall not exceed 1 year at a
23 time unless the contract is under the terms of a national agree-
24 ment to which both parties agree to be bound or unless both par-
25 ties otherwise agree. When each year of a multiyear contract
26 ends, the contract shall provide that it is automatically renewed
27 on the same terms and conditions unless either party to the

1 contract provides the other party with written notice of the
2 party's desire to terminate the contract or to change the terms
3 and conditions. The notice under this subsection shall be given
4 at least 30 days before the termination of the current term.

5 (3) A contract shall provide that all billings, invoices, or
6 other requests for payment include an itemization showing the
7 charge for each copyrighted nondramatic musical work and the
8 manner in which it is assessed.

9 (4) A contract shall not contain a provision regarding venue
10 unless required under federal law.

11 Sec. 6. (1) An agent, employee, representative, or any
12 other person shall not act on behalf of a performing rights soci-
13 ety or attempt to negotiate for, contact, or contract with any
14 proprietor without first applying to the department under this
15 act.

16 (2) An application under this act shall be in the form pre-
17 scribed by the department. The application shall include all of
18 the following:

19 (a) An application fee of \$50.00.

20 (b) The full name and business address of the applicant and
21 the society.

22 (c) Two recent photographs of the applicant.

23 (d) Proof of authority acceptable to the department to act
24 on behalf of 1 or more performing rights societies.

25 (e) Any other information as may be required by the
26 department.

1 (3) The department shall issue a pocket card to each
2 individual agent, employee, representative, or other person
3 seeking application. The pocket card shall state the name of the
4 individual, the performing rights societies represented by that
5 individual, and the effective date of the individual's
6 application. The pocket card is considered valid for 3 years
7 from the date of issuance.

8 (4) Upon a determination by the department that a person
9 regulated under this act has violated any provision of this act,
10 the department may suspend or revoke the person's application.

11 (5) Suspension, revocation, or nonrenewal of the application
12 does not preclude any other sanction or remedy provided by law
13 and does not prohibit the bringing of a proceeding for an act
14 committed before the application was suspended, revoked, or
15 denied.

16 Sec. 7. (1) A performing rights society or any agent,
17 employee, or representative of the performing rights society
18 shall not do any of the following:

19 (a) Enter onto the premises of a proprietor's business for
20 any purpose related to the performing rights society's business
21 including, but not limited to, discussing a contract for payment
22 of royalties for the use of copyrighted works by that proprietor,
23 without first identifying himself or herself to the proprietor or
24 to the proprietor's management employees. Such identification
25 includes, but is not limited to, showing his or her pocket iden-
26 tification card issued under this act, disclosing that he or she

1 is acting on behalf of the performing rights society, and
2 disclosing the purpose of the entry.

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

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

11 (i) Engaging in any coercive act or practice that is disrup-
12 tive of a proprietor's business.

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

20 (d) Fail to provide written notice to a proprietor or his or
21 her employees within 72 hours after entering the proprietor's
22 business for the purpose of investigating the possible per-
23 formance, broadcasting, or transmission of nondramatic musical
24 works that discloses all of the following:

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

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

1 (iii) The copyrighted nondramatic musical works in the
2 performing rights society's repertoire performed, broadcast, or
3 transmitted at the business during the investigation.

4 (e) Commence or threaten to commence a legal action in con-
5 nection with an alleged copyright violation without having
6 advised the proprietor that he or she may comply with the copy-
7 right law regarding copyrighted nondramatic musical works in that
8 performing rights society's repertoire by doing any of the
9 following:

10 (i) Obtaining contractual permission for the performance,
11 broadcast, or transmittal of nondramatic musical works from that
12 performing rights society.

13 (ii) Discontinuing a public performance, broadcast, or
14 transmittal of the nondramatic musical works in that performing
15 rights society's repertory.

16 (iii) Obtaining authorization for public performance, broad-
17 cast, or transmittal of a nondramatic musical work directly from
18 the copyright owners who are members of that performing rights
19 society.

20 (2) This section does not prevent the performing rights
21 society from exercising any exclusive rights protected under the
22 copyright laws.

23 Sec. 8. Upon conviction, a person, applicant, or performing
24 rights society that violates any provision of this act is guilty
25 of a misdemeanor punishable by a fine of not more than \$500.00
26 for a first violation and a penalty of not more than \$1,000.00
27 for a second or subsequent offense.

1 Sec. 9. A person suffering injury by a violation of this
2 act may bring a civil action in a court of competent jurisdiction
3 to recover actual damages and reasonable attorney's fees or seek
4 injunctive or any other relief available at law or in equity.

5 Sec. 10. This act does not apply to contracts between per-
6 forming rights societies not licensed by the federal communica-
7 tions commission and broadcasters licensed by the federal commu-
8 nications commission.