

HOUSE BILL NO. 4937

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 musical work recognized and enforceable under the copyright
6 laws. Copyright owner does not include the owner of a copyright

1 in a motion picture or audiovisual work or in any portion of a
2 motion picture or audiovisual work.

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

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

11 (d) "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 musical works are publicly and nondramati-
16 cally performed, broadcast, or transmitted for the enjoyment of
17 the members of the public assembled in that place.

18 (e) "Royalties" means the fees payable by a proprietor to a
19 performing rights society for the nondramatic public performance,
20 broadcast, or transmittal of 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 rights society shall make available,
24 in electronic form, a current list of at least the names of its
25 authors and publishers of all its copyrighted musical works and
26 the titles of the copyrighted musical works in its repertoire.

1 The performing rights society shall update the list at least
2 monthly.

3 (2) Upon request, any person may review the list of copy-
4 righted works and a list of members and affiliates.

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

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

15 (5) A performing rights society licensing nondramatic per-
16 formance of musical works in this state shall establish and main-
17 tain a toll-free telephone number that can be used to answer
18 inquiries regarding specific musical works licensed by that per-
19 forming rights society and the copyright owners represented by
20 that performing rights society.

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

1 (a) A schedule of the rates and terms of royalties under the
2 contract including, but not limited to, any sliding scale,
3 discounts, or reductions in fees on any basis for which the pro-
4 prietor may be eligible and any schedule increases or decreases
5 in fees during the term of the contract.

6 (b) Notice that the performing rights society shall, upon
7 request of a proprietor and before entering into a contract with
8 that proprietor, provide a schedule of the rates and terms of
9 royalties under contracts executed by the performing rights soci-
10 ety and proprietors of comparable businesses in the state within
11 the past 12 months.

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

14 (d) Notice of the fact that there are exemptions that may
15 exclude that proprietor from liability under the copyright laws.

16 (e) Upon request of the proprietor, the opportunity to
17 review in electronic form the most current available list of the
18 members or affiliates represented by the performing rights
19 society.

20 (f) Notice that the proprietor is entitled to the informa-
21 tion required under this act and that failure of the performing
22 rights society to provide that information is a violation of this
23 act.

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

1 (a) Be in writing.

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

3 (c) Include at least the following information:

4 (i) The proprietor's name and business address and the name
5 and location of each place of business to which the contract
6 applies.

7 (ii) The name and business address of the performing rights
8 society.

9 (iii) The duration of the contract.

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

14 (2) A contract between a performing rights society and a
15 proprietor for the payment of royalties shall be offered for a
16 term of 1 year but the parties may agree to a contract for a term
17 other than 1 year. This section does not apply to a contract for
18 a term negotiated between a performing rights society and a bona
19 fide trade association representing a substantial percentage of
20 proprietors of the same type.

21 Sec. 6. (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 discussing a contract for payment of royalties for
26 the use of copyrighted works by that proprietor, without first
27 identifying himself or herself to the proprietor or to the

1 proprietor's management employees. Such identification includes,
2 but is not limited to, showing a business photo-identification
3 card issued by the performing rights society, disclosing that he
4 or she is acting on behalf of the performing rights society, and
5 disclosing the purpose of the entry.

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

9 (c) Use or attempt to use any act or practice in negotiating
10 with a proprietor, or in retaliation for a proprietor's failure
11 or refusal to negotiate, with respect to a contract for the pay-
12 ment of royalties, that includes any of the following:

13 (i) Using or attempting to use any unfair or deceptive act
14 or practice in dealing with a proprietor.

15 (ii) Engaging in any coercive act or practice that is dis-
16 ruptive of a proprietor's business.

17 (iii) Commencing or threatening to commence a legal action
18 in connection with an alleged copyright violation unless the per-
19 forming rights society shall have advised the proprietor that he
20 or she may comply with copyright laws with respect to copyrighted
21 musical works in the repertoire of the performing rights society
22 by doing any of the following:

23 (A) Obtaining a license from that performing rights
24 society.

25 (B) Discontinuing all nondramatic public performances of
26 musical works in that performing rights society's repertoire.

1 (C) Obtaining authorization for nondramatic public
2 performances of musical works directly from the copyright owners
3 who are members of that performing rights society.

4 (2) This section does not prevent any copyright owner from
5 exercising any exclusive rights granted by the copyright laws.

6 (3) This section does not prohibit the performing rights
7 society or its agents, employees, or representatives from inform-
8 ing the proprietor of obligations imposed under the copyright
9 laws.

10 Sec. 7. A person suffering injury by a violation of this
11 act may bring a civil action in a court of competent jurisdiction
12 to recover actual damages and reasonable attorney's fees or seek
13 injunctive or any other relief available at law or in equity.

14 Sec. 8. This act does not apply to either of the
15 following:

16 (a) Contracts between performing rights societies and broad-
17 casters licensed by the federal communications commission.

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