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SENATE BILL 5845

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State of Washington

54th Legislature

1995 Regular Session

By Senator Sutherland

Read first time 02/09/95. Referred to Committee on Energy,  
Telecommunications & Utilities.

1 AN ACT Relating to collection of broadcast copyright royalty fees  
2 from Washington businesses; adding a new chapter to Title 19 RCW;  
3 prescribing penalties; and declaring an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** (1) Under the copyright laws of the United  
6 States, owners of copyrights in nondramatic musical works are entitled  
7 to royalties for certain performances of these works, including  
8 performances broadcast over radio and television to the public. The  
9 laws exempt from copyright royalty obligations those businesses that  
10 use television and radio equipment of a kind commonly used in private  
11 homes, so long as no direct charge is made to customers to see or hear  
12 the transmission and so long as no transmission received by the  
13 business is retransmitted. The legislature believes that the federal  
14 copyright law and its exemptions fairly reward artistic endeavor and  
15 compensate artists for the use of their intellectual property.

16 (2) The legislature finds that there is significant confusion over  
17 the extent to which retailers, restaurants, taverns, and other  
18 businesses are required to pay licensing fees for copyright material

1 broadcast to the public and received by television sets or radio  
2 receivers in their stores.

3 (3) The legislature finds that performing rights companies acting  
4 as agents for composers and publishers often demand payment from these  
5 businesses beyond that required by copyright law, use unfounded threats  
6 of legal action to persuade businesses to enter into unfavorable  
7 contracts with them, fail to supply businesses with true information  
8 regarding their rights under the copyright laws, and set unreasonable  
9 terms and conditions in licensing contracts on such matters as  
10 arbitration and rates.

11 NEW SECTION. **Sec. 2.** Unless the context clearly requires  
12 otherwise, the definitions in this section apply throughout this  
13 chapter.

14 (1) "Copyright owner" means the owner of a copyright of a  
15 nondramatic musical work or similar work recognized and enforceable  
16 under the copyright laws of the United States.

17 (2) "Performing rights society" means an association or corporation  
18 that licenses the public performance of nondramatic musical works on  
19 behalf of copyright owners.

20 (3) "Proprietor" means the owner of a retail establishment,  
21 restaurant, inn, bar, tavern, professional office, or other business in  
22 the state of Washington in which the public may assemble and to which  
23 nondramatic musical works or similar copyrighted works may be  
24 broadcast.

25 (4) "Royalty" or "royalties" means the fees payable to a copyright  
26 owner or performing rights society for the public performance of  
27 nondramatic musical or other similar works.

28 NEW SECTION. **Sec. 3.** A copyright owner or performing rights  
29 society, or agent or employee thereof, who requests, demands, or  
30 otherwise seeks payment of royalties from a proprietor for playing  
31 broadcast programming from radio or television stations in the  
32 proprietor's establishment shall provide to the proprietor at least  
33 forty-eight hours before the execution of a contract or the collection  
34 of royalties, the following written information:

35 (1) The name, address, and telephone number of the agent or  
36 employee of the performing rights society, and the name and address of  
37 each location to which the contract applies;

- 1 (2) The duration of the contract;
- 2 (3) A copy of all pertinent sections of the United States Code  
3 that:
- 4 (a) Set forth the basis for the performing rights society's or the  
5 copyright owner's claim that the proprietor is or would be liable for  
6 copyright infringement but for either entering a licensing agreement or  
7 paying a royalty fee, or both;
- 8 (b) Set forth exemptions from copyright infringement for certain  
9 categories of persons or uses of copyrighted works;
- 10 (4) A schedule of rates and terms of the royalties to be collected  
11 under the contract, including any sliding scale or schedule for an  
12 increase or decrease of those rates for the duration of the contract;
- 13 (5) A list of the highest, lowest, and mean licensing fees charged  
14 to similar businesses within the county and within the state in which  
15 the proprietor is located; and
- 16 (6) A list of all song titles licensed by the performing rights  
17 society that may be transmitted on a broadcast radio and television  
18 station the coverage area of which includes the proprietor's  
19 establishment.

20 NEW SECTION. **Sec. 4.** A copyright owner or performing rights  
21 society, or agent or employee thereof, may not knowingly misrepresent  
22 to a proprietor the performing rights society's or its members' or  
23 licensees' legal rights under the copyright act, or knowingly  
24 misrepresent to the proprietor the proprietor's obligations under the  
25 copyright act. For purposes of this section, a material omission is  
26 deemed a misrepresentation.

27 NEW SECTION. **Sec. 5.** A copyright owner or performing rights  
28 society, or agent or employee thereof, may not request, demand, or  
29 otherwise seek a royalty payment from a proprietor that is unreasonable  
30 in comparison to royalties for similar licenses in the state.

31 NEW SECTION. **Sec. 6.** A contract between a copyright owner or  
32 performing rights society and a proprietor for payment of royalties for  
33 playing broadcast programming in an establishment may not require the  
34 proprietor to be subject to binding arbitration by an arbitrator  
35 residing outside the state of Washington, an arbitration panel the

1 majority of whose members reside outside the state of Washington, or an  
2 arbitration proceeding taking place outside the state of Washington.

3 NEW SECTION. **Sec. 7.** A copyright owner or performing rights  
4 society, or agent or employee thereof, may not contract with a  
5 proprietor in a manner that would constitute the proprietor's agreement  
6 to waive the rights enumerated in this chapter.

7 NEW SECTION. **Sec. 8.** (1) A violation of any part of this chapter  
8 is a matter vitally affecting the public interest, and is not  
9 reasonable in relation to the development or preservation of business.  
10 A violation of this chapter is an unfair or deceptive act or practice  
11 in trade and commerce for the purpose of applying the consumer  
12 protection act, chapter 19.86 RCW, and shall be in addition to the  
13 provisions in RCW 19.86.020 and 19.56.030.

14 (2) The attorney general or the commission may bring action against  
15 a copyright owner, performing rights society, or agent or employee  
16 thereof, who violates this chapter.

17 (3) For purposes of penalties and remedies established under RCW  
18 19.86.020, 19.86.030, and 19.86.140, a violation of a section of this  
19 chapter as it applies to each proprietor is deemed a separate  
20 violation.

21 (4) The penalties and remedies set forth under this chapter and in  
22 RCW 19.86.020, 19.86.030, and 19.86.140, are in addition to any other  
23 right, remedy, or prohibition accorded by common law, federal law, or  
24 the statutes of this state, and nothing in this chapter may be  
25 construed to deny, abrogate, or impair such a common law or statutory  
26 right, remedy, or prohibition.

27 NEW SECTION. **Sec. 9.** Sections 1 through 8 of this act shall  
28 constitute a new chapter in Title 19 RCW.

29 NEW SECTION. **Sec. 10.** This act is necessary for the immediate  
30 preservation of the public peace, health, or safety, or support of the  
31 state government and its existing public institutions, and shall take  
32 effect immediately.

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