

E2SHB 1763 - S COMM AMD

By Committee on Commerce & Labor

ADOPTED 03/03/2016

1 Strike everything after the enacting clause and insert the
2 following:

3 NEW SECTION. **Sec. 1.** The definitions in this section apply
4 throughout this chapter unless the context clearly requires
5 otherwise.

6 (1) "Copyright owner" means the owner of a copyright of a
7 nondramatic musical work recognized and enforceable under the
8 copyright laws of the United States pursuant to Title 17 of the
9 United States Code (17 U.S.C. Sec. 101 et seq.). "Copyright owner"
10 does not include the owner of a copyright in a motion picture or
11 audiovisual work, or in part of a motion picture or audiovisual work.

12 (2) "Music licensing agency" means a performing rights society.

13 (3) "Performing rights society" means an association or
14 corporation that licenses the public performance of non-dramatic
15 musical works on behalf of copyright owners, such as the American
16 Society of Composers, Authors and Publishers (ASCAP), Broadcast
17 Music, Inc. (BMI), and SESAC, Inc.

18 (4) "Proprietor" means the owner of a retail establishment,
19 restaurant, inn, bar, tavern, sports or entertainment facility, or
20 any other similar place of business or professional office located in
21 this state in which the public may assemble and in which nondramatic
22 musical works or similar copyrighted works may be performed,
23 broadcast, or otherwise transmitted for the enjoyment of members of
24 the public there assembled.

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

28 NEW SECTION. **Sec. 2.** A performing rights society that licenses
29 the performing rights to music may not license or attempt to license
30 the use of or collect or attempt to collect any compensation on

1 account of any sale, license, or other disposition regarding the
2 performance rights of music unless the performing rights society:

3 (1) Registers and files annually with the department of licensing
4 an electronic copy of each performing rights form agreement providing
5 for the payment of royalties made available from the performing
6 rights society to any proprietor within the state; and

7 (2) Has a valid Washington unified business identifier number.

8 NEW SECTION. **Sec. 3.** A performing rights society must make
9 available electronically to business proprietors the most current
10 available list of members and affiliates represented by the
11 performing rights society and the most current available list of the
12 performed works that the performing rights society licenses.

13 NEW SECTION. **Sec. 4.** A person who willfully violates any of the
14 provisions of this chapter may be liable for a civil penalty of not
15 more than one thousand dollars per violation. Multiple violations on
16 a single day may be considered separate violations. The attorney
17 general, acting in the name of the state, may seek recovery of all
18 such penalties in a civil action. The attorney general may issue
19 civil investigative demands for the inspection of documents,
20 interrogatory responses, and oral testimony in the enforcement of
21 this section.

22 NEW SECTION. **Sec. 5.** (1) Before seeking payment or a contract
23 for payment of royalties for the use of copyrighted works by that
24 proprietor, a representative or agent for a performing rights society
25 must:

26 Identify himself or herself to the proprietor or the proprietor's
27 employees, disclose that he or she is acting on behalf of a
28 performing rights society, and disclose the purpose for being on the
29 premises.

30 (2) A representative or agent of a performing rights society must
31 not:

32 (a) Use obscene, abusive, or profane language when communicating
33 with the proprietor or his or her employees;

34 (b) Communicate by telephone or in-person with a proprietor other
35 than at the proprietor's place of business during the hours when the
36 proprietor's business is open to the public. However, such
37 communications may occur at a location other than the proprietor's

1 place of business or during hours when the proprietor's business is
2 not open to the public if the proprietor or the proprietor's agents,
3 employees, or representatives so authorizes;

4 (c) Engage in any coercive conduct, act, or practice that is
5 substantially disruptive to a proprietor's business;

6 (d) Use or attempt to use any unfair or deceptive act or practice
7 in negotiating with a proprietor; or

8 (e) Communicate with an unlicensed proprietor about licensing
9 performances of musical works at the proprietor's establishment after
10 receiving notification in writing from an attorney representing the
11 proprietor that all further communications related to the licensing
12 of the proprietor's establishment by the performing rights society
13 should be addressed to the attorney. However, the performing rights
14 society may resume communicating directly with the proprietor if the
15 attorney fails to respond to communications from the performing
16 rights society within sixty days, or the attorney becomes
17 nonresponsive for a period of sixty days or more.

18 NEW SECTION. **Sec. 6.** (1) The department of revenue shall inform
19 proprietors of their rights and responsibilities regarding the public
20 performance of copyrighted music as part of the business licensing
21 service.

22 (2) Performing rights societies are encouraged to conduct
23 outreach campaigns to educate existing proprietors on their rights
24 and responsibilities regarding the public performance of copyrighted
25 music.

26 NEW SECTION. **Sec. 7.** (1) No performing rights society may enter
27 into, or offer to enter into, a contract for the payment of royalties
28 by a proprietor unless at least seventy-two hours prior to the
29 execution of that contract it provides to the proprietor or the
30 proprietor's employees, in writing, the following:

31 (a) A schedule of the rates and terms of royalties under the
32 contract; and

33 (b) Notice that the proprietor is entitled to the information
34 contained in section 3 of this act.

35 (2) A contract for the payment of royalties executed in this
36 state must:

37 (a) Be in writing;

38 (b) Be signed by the parties; and

1 (c) Include, at least, the following information:
2 (i) The proprietor's name and business address;
3 (ii) The name and location of each place of business to which the
4 contract applies;
5 (iii) The duration of the contract; and
6 (iv) The schedule of rates and terms of the royalties to be
7 collected under the contract, including any sliding scale or schedule
8 for any increase or decrease of those rates for the duration of that
9 contract.

10 NEW SECTION. **Sec. 8.** Nothing in this act may be construed to
11 prohibit a performing rights society from conducting investigations
12 to determine the existence of music use by a proprietor's business or
13 informing a proprietor of the proprietor's obligations under the
14 copyright laws of the United States pursuant to Title 17 of the
15 United States Code (17 U.S.C. Sec. 101 et seq.).

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

18 NEW SECTION. **Sec. 10.** This act takes effect January 1, 2017."

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19 On page 1, line 1 of the title, after "agencies;" strike the
20 remainder of the title and insert "adding a new chapter to Title 19
21 RCW; prescribing penalties; and providing an effective date."

EFFECT: (1) Modifies and adds definitions, including changing the
term from "music licensing agency" to "performing rights society;"
(2) Changes filing with the Secretary of State to registering and
filing annually a form agreement with the Department of Licensing
(DOL);
(3) Removes licensing or license fees;
(4) Changes the fines to those for willful violations, fines may
be sought by the AGO, rather than the DOL, and deletes language
regarding private party claims and allows the AGO to issue civil
investigative demands for the inspection of documents, interrogatory
responses, and oral testimony in the enforcement actions;
(5) Removes the requirement for 24 hours' notice before entering
a proprietor's premises;

- (6) Modifies the provisions regarding communication with a proprietor;
- (7) Removes the provision for a Consumer Protection Act violation;
- (8) Requires the Department of Revenue to inform proprietors of their rights and responsibilities regarding playing copyrighted music, rather than requiring a consumer awareness campaign by the AGO and the DOL;
- (9) Provides information to be provided to a proprietor at least 72 hours before execution of the contract and provides contract requirements;
- (10) Provides that nothing in the act may be construed to prevent the agency from investigating about or informing about the federal copyright laws; and
- (11) Other technical changes.

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