

# SENATE BILL REPORT

## E2SHB 1763

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As of February 23, 2016

**Title:** An act relating to regulating music licensing agencies.

**Brief Description:** Regulating music licensing agencies.

**Sponsors:** House Committee on General Government & Information Technology (originally sponsored by Representatives Van De Wege, Lytton, Riccelli and Tharinger).

**Brief History:** Passed House: 3/05/15, 92-6; 2/10/16, 72-25.

**Committee Activity:** Commerce & Labor: 3/20/15, 3/30/15 [DPA, DNP]; 2/24/16.

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### SENATE COMMITTEE ON COMMERCE & LABOR

**Staff:** Susan Jones (786-7404)

**Background:** Music Licensing Agencies. Music licensing agencies, also known as performing rights organizations, license the music of songwriters and music publishers for a fee. These music licensing agencies may collect royalties or license fees on the performance rights whenever the music is played in a public setting. Venues that are subject to the license fees include bars, nightclubs, funeral parlors, grocery stores, sports arenas, skating rinks, fitness centers, and others. The annual license fees may vary depending on the type of business; the manner in which music is performed – live, recorded, audio only, or audio/visual; the size of the establishment or potential audience for the music; and other factors. The music licensing agencies may file a legal action to enforce the copyright claims on behalf of the persons that they represent.

Licensing. The Department of Licensing (Department) licenses certain businesses and professions, and may investigate complaints or reports of unprofessional conduct, hold administrative hearings, discipline, and fine licensees under the Uniform Regulation of Business and Professions Act.

Consumer Protection Act (CPA). The CPA prohibits unfair methods of competition and unfair or deceptive practices in commerce. The act may be enforced by private legal action, or through a civil action brought by the Office of the Attorney General. A court may award private individuals injured by an unfair or deceptive practice actual damages, court costs, and additional damages up to triple the actual damages' amount. A court may enjoin a business from conducting further unfair practices.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Summary of Bill:** Licensing Requirements for Music Licensing Compensation. A music licensing agency that licenses the performing rights to music may not license or attempt to license the use of; or collect, or attempt to collect, any compensation for any sale or license of the performance rights of music unless the music licensing agency:

- files annually with the Secretary of State an electronic copy of each performing rights contract or license form agreement providing for the payment of royalties made available from the music licensing agency or copyright owner to any proprietor within the state;
- completes an initial or renewal application;
- pays the initial or renewal licensing fees; and
- has a valid Washington unified business identifier number.

Requirements and Prohibited Conduct. Before seeking payment or a contract for payment of royalties for the use of copyrighted works by that proprietor, a representative or agent for a music licensing agency (representative) must:

- provide at least 24 hours' notice before entering the proprietor's premises;
- identify himself or herself to the proprietor or the proprietor's employees;
- disclose that the representative is acting on behalf of a music licensing agency; and
- disclose the purpose for the visit.

A representative must communicate with the proprietor at least once in person before investigating to substantiate a claim for the use of copyrighted music and must not:

- use obscene, abusive, or profane language when communicating with the proprietor or the employees;
- communicate at an unusual time or place that is known, or should be known, to be inconvenient to the proprietor;
- engage in any coercive act that is substantially disruptive to a proprietor's business; or
- use, or attempt to use, any unfair or deceptive act or practice in negotiating with a proprietor.

A music licensing agency must make available electronically to business proprietors the most current available list of its represented members and affiliates and the most current available list of the its licensed performed works.

Penalties for Violations. Separate from any fines imposed under the Uniform Regulation of Business and Professions Act, a music licensing agency is subject to a civil penalty of not more than \$1,000 for each separate violation of this act. Multiple violations on a single day may be considered separate violations. The penalty may be imposed by the Department or in any court and may be imposed separately and in addition to any private party claims for violations.

CPA Violation and Consumer Awareness. A violation of this act is a violation of the CPA. With the Office of the Attorney General, the Department must conduct a consumer awareness campaign to inform proprietors of their rights and responsibilities regarding the public performance of copyrighted music. The consumer awareness campaign must be paid for with fees collected and penalties imposed.

Rules and Licensing. The director may adopt reasonable rules for the proper operation and enforcement of these laws. The director must set all license and renewal fees.

Definitions are provided.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** The bill takes effect on January 1, 2016.

**Staff Summary of Public Testimony on Engrossed Second Substitute House Bill: Testimony from 2015 Regular Session.** PRO: This legislation is not keeping people from paying the amount they legitimately owe. This bill regulates the tactics the music licensing companies use and how they interface with small business owners. The bill prevents the music licensing companies from using abusive language and acting like bullies, and requires that they give notice and lists of music that they own so bars and restaurants can choose to play other music. They go into everywhere music is played, including bars, restaurants, farmers' markets, churches, and nonprofit dance schools. Restaurants don't doubt that they have to pay for copyrighted music. The bill lets restaurant owners know what their responsibilities are and clearly identifies who are the good actors and bad actors. We need to weed out the bad actors. There needs to be a licensing component and a way to notify owners of their responsibilities.

CON: Music writers are entitled to be paid royalties for the public performance of their work under federal copyright laws. The music licensing companies collect the royalties and protect the music writers' rights. Without their work, the writers could not track, contact, and collect from the establishments that pay the songs. Owners of bars and venues benefit and attract customers through playing the music. This is a cost of doing business. There is no difference between paying for music as paying for the liquor. This is the business of the songwriter and they should be paid. Passing a law that makes it harder to collect the royalties will adversely affect songwriters. Under U.S. copyright laws, music and songs are the legal property of the creator just like software and movies. Accordingly, songwriters have the exclusive right to perform their music in public. Before any others can perform the music, they must obtain permission or they are violating copyright law. There are some exceptions. The licensing companies obtain that permission through a blanket license. This is done effectively and efficiently. The fees charged are low and reasonable for the licenses. Proposed amendments will help the bill especially with respect to conduct, preemption of federal copyright law, private rights of action, and Consumer Protection Act violations.

**Persons Testifying:** Persons Testifying From 2015 Regular Session. PRO: Representative Van De Wege, prime sponsor; Trent House, WA Restaurant Assn.

CON: Branden Daniel; songwriter; Lisa Thatcher, Broadcast Music Inc.; Holli Johnson, American Society of Composers, Authors and Publishers; Bryan Case, Riddell Williams, citizens.

**Persons Signed in to Testify But Not Testifying:** No one.