

MUSIC ROYALTY PRACTICES

House Bill 5576

Sponsor: Rep. Tom Alley

Committee: Commerce

Complete to 2-18-98

A SUMMARY OF HOUSE BILL 5576 AS INTRODUCED 2-17-98

House Bill 5576 would create a new act, to be known as the Music Royalty Practices Act, in order to create a statewide inventory for certain copyrighted music, to regulate royalty contracts, and to better identify agents and prescribe their business practices. Generally, it would regulate relationships between "performing rights societies" (associations that license the public performance or broadcast of nondramatic musical works on behalf of copyright holders, including organizations such as the American Society of Composers, Actors, and Publishers; Broadcast Music, Inc.; and SESAC, Inc.) and the proprietors of restaurants, bars, and concert halls where music is performed.

The bill would require a performing rights society to make available in electronic form, a current list of the titles and the names of its authors and publishers of all its copyrighted nondramatic musical works and the copyrighted musical works that have been publicly performed, or for which it has collected royalties on behalf of copyright owners within the past five years. The bill would require that the list be updated at least weekly, that it be provided to the Department of Consumer and Industry Services electronically, and that it be available for review upon request. Further, the bill would require a performing rights society to provide a copy of its most current copyright list at cost, and to maintain a toll-free telephone number that can be used to answer inquiries.

The bill would regulate royalty contracts to require that at the time of any offer of royalties, the proprietor would receive certain information in writing, including a) a schedule of rates and terms of royalties, b) upon request, a schedule of rates and terms of comparable businesses, c) notice of the state inventory including the electronic address and toll-free number, d) an explanation of any exemptions, and e) upon request, the opportunity to review the list of members or affiliates represented by the performing rights society. The bill also sets forth certain provisions of any contract for the payment of royalties.

House Bill 5576 also would require agents or other employees acting on behalf of a performing rights society to apply to the department for a pocket identification card that would be valid for three years. The application for the card would be on a form prescribed by the department, and accompanied by a \$50 fee. The agent would be required to show the pocket identification card to the proprietor of copyrighted works (or to the proprietor's management employees) whenever he or she entered onto the premises of a proprietor's business. (Under the bill "proprietor" means the owner of a retail establishment, restaurant, inn, bar, tavern, sports or entertainment facility, not-for-profit organization, or any other place of business or

professional office located in this state in which the public may assemble and in which
nondramatic musical

works are publicly performed, broadcast, or transmitted for the enjoyment of the members of the public assembled in that place.)

The bill also would proscribe an agent's practices in certain circumstances. Specifically, the agent would be prohibited from collecting a royalty payment or any other fee except as provided in a contract, and also from other negotiations, or retaliatory or coercive or disruptive acts, and from threatening to commence legal action in connection with copyright violations. The agent would be required to provide written notice to a proprietor within 72 hours of investigating a copyright violation. Before commencing or threatening legal action, the agent would be required to advise the proprietor that compliance with copyright law of nondramatic musical works could be met by a) obtaining contractual permission from the performing rights society; b) discontinuing performance of the musical works, or c) obtaining authorization from the copyright owners who are members of the performing rights society. The bill provides that convicted violators of the act are guilty of a misdemeanor, punishable by a fine of not more than \$500 for a first violation and not more than \$1,000 for second and subsequent offenses.

House Bill 5576 would not apply to contracts between performing rights societies not licensed by the Federal Communications Commission and broadcasters that are licensed by the FCC.

Analyst: J. Hunault

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.