

A SUMMARY OF HOUSE BILL 4937 AS INTRODUCED 9-30-99

Performing rights societies protect the rights of composers, songwriters, lyricists, and music publishers by licensing businesses for the public performance of copyrighted works and collecting and paying royalties to their members. House Bill 4937 would create the Music Royalty Practices Act to regulate contracts between owners of certain bars, restaurants, and retail stores and performing rights societies (e.g., ASCAP and BMI) for the rights to publicly perform or broadcast copyrighted nondramatic works. The bill would apply to proprietors of retail or food establishments, bars, inns, taverns, sports or entertainment facilities, not-for-profit organizations, or any other place of business or professional office “in which musical works are publicly and nondramatically performed, broadcast, or transmitted for the enjoyment of the members of the public assembled in that place.” The “nondramatic public performance, broadcast, or transmittal of musical works” is not defined in the bill, but, according to industry literature, would apply to live performances as well as the use of music transmitted over radio and television and would also apply to the use of tapes, CDS, records, and videos. The bill would not apply to contracts between performing rights societies and broadcasters licensed by the Federal Communications Commission such as radio and television stations, nor would it apply to investigations by law enforcement agencies or others regarding violations of Public Act 210 of 1994, which prohibits the unauthorized duplication of recordings for commercial advantage or financial gain. Specifically, the bill would do the following:

Contracts. A contract for the payment of royalties between a proprietor and a performing rights company would have to be in writing, be signed by both parties, and include the duration of the contract, the name and business address or addresses of both parties, and the schedule of rates and terms of royalties to be collected under the contract. Unless otherwise agreed to, contracts would be for a term of one year. Contracts between a performing rights society and a bona fide trade association representing a substantial percentage of proprietors of the same type would not be affected by the bill’s requirements.

At least 72 hours before entering into a contract for royalties, a performing rights society would have to provide written information to a proprietor, including a schedule of the rates and terms of royalties, and a statement that a proprietor may be exempt from liability under federal copyright laws, that the proprietor may review in electronic form the most current available list of members or affiliates represented by the performing rights society, and that failure by the performing rights society to provide the required information would be a violation of the bill. (Note: Under federal copyright law, certain retail businesses, such as small businesses or those with only a few speakers or television sets, do not have to be licensed to play music over a radio or television.)

Duties of a performing rights society. A performing rights society that conducted business within the state would have to maintain an electronic computer database of its repertoire. A current list, updated monthly, of the names of its authors, publishers, and titles of all of its copyrighted musical works would have to be available for review in electronic form. The list in existence at the time of a contract with a proprietor, including subsequent additions and deletions, would be binding for the period of the contract. The performing rights society would also have to establish and maintain a toll-free telephone number to answer inquiries regarding musical works and copyright owners represented by that society. A copy of the list would have to be provided at cost to anyone requesting it.

Prohibited conduct. A performing rights society or its agents, employees, or representatives could not do any of the following:

- Enter a business to discuss a contract for payment of royalties without first identifying himself or herself to the proprietor or his or her employees. Identification would include a business photo-i.d. card issued by the performing rights society, disclosing that he or she was acting on behalf of the society, and disclosing the purpose of the visit.
- Collect or attempt to collect a royalty payment or any other fee except as provided in a contract that was executed in compliance with the bill.
- In negotiations with respect to a contract for the payment of royalties, engage in unfair or deceptive acts or practices; engage in coercive acts or practices that disrupt a proprietor's business; or commence or threaten to commence a legal action in connection with an alleged copyright violation unless the society had advised the proprietor that he or she could comply with copyright laws by obtaining a license from the performing rights society for the musical works in its repertoire, by discontinuing playing any musical works in the society's repertoire, or by obtaining authorization directly from the copyright owners.

The bill would not prohibit a performing rights society or its employees from informing a proprietor of obligations imposed by federal copyright laws, nor would it prevent a copyright owner from exercising any exclusive rights granted by the copyright laws.

Remedies. A person who suffered injury due to a violation of the bill could bring a civil action to recover actual damages and reasonable attorney's fees, or to seek injunctive or any other relief available at law or in equity.

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■ 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.