



1995 SENATE BILL 379

October 18, 1995 - Introduced by Senators RUDE, BRESKE, FITZGERALD, RISSER, BUETTNER, HUELSMAN, ANDREA, ZIEN, SCHULTZ, GEORGE, FARROW, MOEN, PETAK, ROSENZWEIG, WINEKE, CLAUSING and SHIBILSKI, cosponsored by Representatives GREEN, JENSEN, MUSSER, VRAKAS, HOVEN, HANDRICK, ZIEGELBAUER, SERATTI, MEYER, GOETSCH, PORTER, FOTI, OURADA, KAUFERT, FREESE, AINSWORTH, SILBAUGH, HUBER, OTT, NASS, TRAVIS, GUNDERSON, HUEBSCH, LAZICH, ALBERS, GROBSCHMIDT, PLOMBON, BRANDEMUEHL, DOBYNS, HUTCHISON, LEHMAN, DUFF, KLUSMAN, BALDUS, HAHN, KELSO, WALKER, ZUKOWSKI, RUTKOWSKI, F. LASEE, GRONEMUS, LADWIG, RYBA, URBAN, OWENS, KREUSER, MURAT, OLSEN, HASENOHRL, WILDER and KREIBICH. Referred to Committee on Business, Economic Development and Urban Affairs.

- 1 **AN ACT to create** 134.24 of the statutes; **relating to:** regulation of performing
2 rights societies.

Analysis by the Legislative Reference Bureau

This bill imposes regulation on the practices of associations that license public performances of nondramatic musical works on behalf of copyright owners in the associations' dealings with proprietors of retail establishments and restaurants. The bill defines "restaurants" to include inns, bars and facilities such as night clubs where nondramatic musical works are presented. Under current law, there are no statutory regulations covering these associations. The bill imposes certain requirements on these associations, including the following:

1. It requires these associations to have certain information, such as copies of the contract documents they use and current lists of the copyright owners that they represent, on file with the department of agriculture, trade and consumer protection.
2. It requires these associations to provide written disclosures as to the information that they are required to give proprietors upon request and as to whether these associations are in compliance with any applicable federal law or court orders.
3. It prohibits agents of these associations from engaging in any coercive conduct that disrupts the business premises of proprietors or using any deceptive act or practice in negotiating a contract.

In addition, the bill provides that any person damaged by a violation of this provision may sue and receive damages, court costs and reasonable attorney fees.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 134.24 of the statutes is created to read:

2 **134.24 Music royalty collections; fair practices. (1) DEFINITIONS.** In this
3 section:

4 (a) “Copyright owner” means the owner of a copyright that is of a musical work
5 and that is recognized and enforceable under 17 USC 101, et seq.

6 (b) “Department” means the department of agriculture, trade and consumer
7 protection.

8 (c) “Musical work” means a nondramatic musical work or a work of a similar
9 nature.

10 (d) “Performing rights society” means an association or corporation that
11 licenses the public performance of musical works on behalf of one or more copyright
12 owners.

13 (e) “Proprietor” means the owner of a retail establishment or a restaurant.

14 (f) “Restaurant” includes an inn, bar, tavern or sports or entertainment facility
15 in which the public may assemble and in which musical works may be performed or
16 otherwise transmitted for the enjoyment of the public.

17 (g) “Royalties” means the fees payable to a copyright owner or performing
18 rights society for the public performance of a musical work.

19 **(2) DUTIES.** A performing rights society shall do all of the following:

20 (a) File for public inspection with the department all of the following:

1 1. A certified copy of each document used by the performing rights society to
2 enter into a contract with a proprietor doing business in this state.

3 2. A list of the copyright owners who are represented by the performing rights
4 society and a list of the musical works licensed under the contracts with the copyright
5 owners.

6 (b) Maintain current the documents that are required to be filed under par. (a).

7 (c) Make available, upon request of a proprietor, information as to whether a
8 specific musical work is licensed under a contract entered into by the performing
9 rights society and a copyright owner. A proprietor may request this information by
10 telephone or other electronic means.

11 (d) Make available, upon written request of a proprietor and at the sole expense
12 of a proprietor, any of the information required to be on file under par. (a).

13 **(3) DISCLOSURE REQUIREMENTS.** (a) No performing rights society may enter into,
14 or offer to enter into, a contract for the payment of royalties by a proprietor unless
15 the performing rights society, no later than 72 hours before the execution of the
16 contract, provides to the proprietor a written notice of all of the obligations of the
17 performing rights society as specified under sub. (2). The written notice shall also
18 contain a statement as to whether the performing rights society is in compliance with
19 any applicable federal law or court order that relates to the rates and terms of
20 royalties to be paid by the proprietor or that relates to the circumstances or methods
21 under which contracts subject to this section are offered to the proprietor.

22 (b) No performing rights society may make an incomplete or false disclosure in
23 the written notice required under par. (a).

1 **(4) CONTRACT REQUIREMENTS.** (a) A contract entered into or renewed in this
2 state by a proprietor and a performing rights society for the payment of royalties
3 shall be in writing and signed by the parties.

4 (b) The information in the contract shall include all of the following:

5 1. The proprietor's name and business address and the name and location of
6 each retail establishment and restaurant to which the contract applies.

7 2. The name of the performing rights society.

8 3. The length of the contract.

9 4. The schedule of rates and terms of the royalties to be collected under the
10 contract, including any sliding scale or schedule for any increase or decrease of the
11 rates during the term of the contract.

12 **(5) PROHIBITED PRACTICES.** No employe or agent of a performing rights society
13 may do any of the following:

14 (a) Enter the business premises of a proprietor to discuss a contract under this
15 section with the proprietor or his or her employes, without identifying himself or
16 herself and making known the purpose of the visit before commencing any further
17 communication with the proprietor or the proprietor's employes.

18 (b) Engage in any coercive conduct, act or practice that disrupts the business
19 premises of a proprietor in a substantial manner.

20 (c) Use or attempt to use any deceptive act or practice in negotiating a contract
21 with a proprietor or in collecting royalties from a proprietor.

22 (d) Fail to comply with the requirements imposed under subs. (2), (3) and (4).

23 **(6) CIVIL REMEDY.** Any person damaged as a result of a violation of this section
24 may bring a civil action to recover damages, court costs and, notwithstanding s.

1 814.04 (1), reasonable attorney fees. The person may also request in the action any
2 other legal or equitable relief.

3 **(7) OTHER RIGHTS AND REMEDIES.** This section does not limit any other right or
4 remedy provided by law.

5 **SECTION 2. Initial applicability.**

6 (1) The treatment of section 134.24 (3) and (4) of the statutes first applies to
7 contracts entered into or renewed on the effective date of this subsection.

8 (END)