

Fifty-fifth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2238

Introduced by

Senators Thompson, W. Stenehjem

Representatives Mahoney, Poolman

1 A BILL for an Act relating to performing rights societies.

2 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

3 **SECTION 1. Definitions.** As used in this Act:

- 4 1. "Copyright laws of the United States" means those laws specified pursuant to
5 title 17 of the United States Code [Pub. L. 94-553; 17 U.S.C. 101 et seq.].
- 6 2. "Copyright owner" means the owner of a copyright of a nondramatic musical other
7 than a motion picture or other audiovisual work or part of a motion picture or other
8 audiovisual work, which is recognized and enforceable under the copyright laws of
9 the United States.
- 10 3. "Nondramatic" means the public performance of a recorded, broadcast, or live
11 musical work. The term does not include the performance of a dramatic work
12 including a play.
- 13 4. "Performing rights society" means an association or corporation that licenses the
14 public performance of nondramatic musical works on behalf of copyright owners,
15 including the American society of composers, authors, and publishers; broadcast
16 music, incorporated; and SESAC, incorporated.
- 17 5. "Proprietor" means the owner of a retail establishment, restaurant, inn, bar, tavern,
18 sports or entertainment facility, not for-profit organization, or any other place of
19 business or professional office located in this state in which the public may
20 assemble and in which nondramatic musical works may be performed, broadcast,
21 or otherwise transmitted for the enjoyment of the members of the public in that
22 place.
- 23 6. "Royalties" means the license fees payable by a proprietor to a performing rights
24 society for the public performance of nondramatic musical works.

1 **SECTION 2. Notice and information.** A performing rights society may not enter, or
2 offer to enter, a contract for the payment of royalties by a proprietor unless it agrees to provide
3 to the proprietor upon request at the proprietor's place of business, by electronic means or
4 otherwise, information as to whether specific copyrighted musical works are in its repertoire and
5 the opportunity to review the most current available list of the performing rights society's
6 members or affiliates.

7 **SECTION 3. Contract requirements.** Every contract for the payment of royalties
8 between a proprietor and a performing rights society executed, issued, or renewed in this state
9 must be signed by both parties to the contract and must include the following information:

- 10 1. The proprietor's name and business address and the name and location of each
11 place of business to which the contract applies;
- 12 2. The name and business address of the performing rights society;
- 13 3. The duration of the contract; and
- 14 4. The schedule of rates and terms of royalties to be collected under the contract,
15 including any sliding scale, discount, or schedule for any increase or decrease of
16 those rates for the duration of the contract.

17 **SECTION 4. Prohibited conduct.** A performing rights society, or any agent,
18 employee, or representative of a performing rights society, may not:

- 19 1. Enter onto the premises of a proprietor's business for the purpose of discussing or
20 inquiring about a contract for the payment of royalties with the proprietor or the
21 proprietor's employees, without first providing identification to the proprietor or the
22 proprietor's employees, providing photographic identification from the society if
23 requested, and making known to the proprietor or the proprietor's employees the
24 purpose of the discussion or inquiry;
- 25 2. Engage in any coercive conduct, act, or practice that is substantially disruptive to a
26 proprietor's business;
- 27 3. Use or attempt to use any unfair or deceptive act or practice in negotiating with a
28 proprietor; or
- 29 4. Fail to comply with or fulfill the obligations imposed by sections 2 and 3 of this Act.
30 However, this Act does not prohibit a performing rights society from conducting
31 investigations to determine the existence of music use by a proprietor or informing

1 a proprietor of the proprietor's obligation under the copyright laws of the United
2 States.

3 **SECTION 5. Remedies.** Any person suffering a violation of this Act has a claim for
4 relief to recover actual damages and reasonable attorney's fees and seek an injunction or any
5 other remedy available.

6 **SECTION 6. Application.** This Act does not apply to contracts between copyright
7 owners or performing rights societies and broadcasters licensed by the federal communications
8 commission or to contracts with cable operators, programmers, or other transmission services.
9 In addition, this Act does not apply to musical works performed in synchronization with an
10 audiovisual film or tape. This Act does not apply to investigations by law enforcement officers
11 or other persons concerning a suspected violation of section 47-21.1-03.