

**Fifty-fifth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Monday, the sixth day of January,
one thousand nine hundred and ninety-seven**

SENATE BILL NO. 2238
(Senators Thompson, W. Stenehjem)
(Representatives Mahoney, Poolman)

AN ACT relating to performing rights societies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act:

1. "Copyright laws of the United States" means those laws specified pursuant to title 17 of the United States Code [Pub. L. 94-553; 17 U.S.C. 101 et seq.].
2. "Copyright owner" means the owner of a copyright of a musical work other than a motion picture or other audiovisual work or part of a motion picture or other audiovisual work, which is recognized and enforceable under the copyright laws of the United States.
3. "Performing rights society" means an association or corporation that licenses the public performance of nondramatic musical works on behalf of copyright owners, including the American Society of Composers, Authors, and Publishers; Broadcast Music, Incorporated; and SESAC, Incorporated.
4. "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 musical works may be performed, broadcast, or otherwise transmitted for the enjoyment of the members of the public in that place.
5. "Royalties" means the license fees payable by a proprietor to a performing rights society for the nondramatic public performance of musical works.

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

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

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

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

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

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

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

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-fifth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2238.

Senate Vote: Yeas 46 Nays 0 Absent 3

House Vote: Yeas 91 Nays 2 Absent 4

Secretary of the Senate

Received by the Governor at _____ M. on _____, 1997.

Approved at _____ M. on _____, 1997.

Governor

Filed in this office this _____ day of _____, 1997,

at _____ o'clock _____ M.

Secretary of State