Fifty-fifth Legislative Assembly of North Dakota SENATE BILL NO. 2238

Introduced by

Senators Thompson, W. Stenehjem

Representatives Mahoney, Poolman

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

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

| 3 | SE | CTION 1. Definitions. As used in this Act: |
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| 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 or |
| 7 | | similar work recognized and enforceable under the copyright laws of the United |
| 8 | | States. |
| 9 | 3. | "Nondramatic" means the public performance of a recorded, broadcast, or live |
| 10 | | musical work. The term does not include the performance of a dramatic work |
| 11 | | including a play. |
| 12 | 4. | "Performing rights society" means an association or corporation that licenses the |
| 13 | | public performance of nondramatic musical works on behalf of copyright owners, |
| 14 | | including the American society of composers, authors, and publishers; broadcast |
| 15 | | music, incorporated; and SESAC, incorporated. |
| 16 | 5. | "Proprietor" means the owner of a retail establishment, restaurant, inn, bar, tavern, |
| 17 | | sports or entertainment facility, not for-profit organization, or any other place of |
| 18 | | business or professional office located in this state in which the public may |
| 19 | | assemble and in which nondramatic musical works may be performed, broadcast, |
| 20 | | or otherwise transmitted for the enjoyment of the members of the public in that |
| 21 | | place. |
| 22 | 6. | "Royalties" means the fees payable by a proprietor to a performing rights society |
| 23 | | for the public performance of nondramatic musical or other similar works. |

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| 1 | SE | CTION 2. Notice and information. A performing rights society may not enter, or | | |
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| 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 | SEC | CTION 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 | SEC | CTION 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 | | |

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.

- 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.