

# FINAL BILL REPORT

## E2SHB 1763

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C 38 L 16  
Synopsis as Enacted

**Brief Description:** Regulating music licensing agencies.

**Sponsors:** House Committee on General Government & Information Technology (originally sponsored by Representatives Van De Wege, Lytton, Riccelli and Tharinger).

**House Committee on Business & Financial Services**  
**House Committee on General Government & Information Technology**  
**Senate Committee on Commerce & Labor**

### **Background:**

Music licensing agencies, also known as performing rights societies, license for a fee the music of songwriters and music publishers that the performing rights societies represent. Performing rights societies may collect royalties on the performance rights whenever the music is played in a public setting. Venues that are subject to the royalties include bars, nightclubs, funeral parlors, grocery stores, sports arenas, skating rinks, and fitness centers.

Three of the most prominent performing rights societies are the American Society of Composers, Authors and Publishers; Broadcast Music, Incorporated; and the Society of European Stage Authors and Composers. The license fees may range from amounts in the hundreds of dollars per year for smaller businesses into the thousands of dollars, per location per year, for larger operations. The performing rights societies may file legal action to enforce the copyright claims on behalf of the song writers and music publishers that they represent.

### **Summary:**

#### Registration and Filing Requirements.

A performing rights society that licenses the performing rights to music may not license or attempt to license the use of, or collect or attempt to collect any compensation on account of, any sale, license, or other disposition regarding the performance rights of music unless the performing rights society has a valid Washington unified business identifier number, registers with the Department of Licensing (DOL), and files annually with the DOL an electronic copy of each performing rights form agreement providing for the payment of royalties. A performing rights society must also make available to business proprietors, electronically, the

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most current list of members and affiliates represented by the performing arts society and the list of performed works that the performing rights society licenses.

Requirements and Prohibitions Concerning Contracts and Seeking Payment.

Before seeking payment or a contract for payment for the use of copyrighted works by a proprietor, a representative or agent of a performing rights society must identify himself or herself, disclose that the representative or agent is acting on behalf of a performing rights society, and disclose the purpose for being on the premises.

Additionally, a representative or agent of a performing rights society may not do any of the following:

- use obscene, abusive, or profane language when communicating with the proprietor or the proprietor's employees;
- communicate by telephone or in-person with a proprietor other than at the proprietor's place of business during the hours when the proprietor's business is open to the public;
- engage in any coercive conduct, act, or practice that is substantially disruptive to a proprietor's business;
- use or attempt to use any unfair or deceptive act or practice in negotiating with a proprietor; or
- communicate with an unlicensed proprietor about licensing performances of musical works at the proprietor's establishment after receiving notification in writing from an attorney representing the proprietor that all further communications related to the licensing of the proprietor's establishment by the performing rights society should be addressed to the attorney. However, the performing rights society may resume communicating directly with the proprietor if the attorney fails to respond to communications from the performing rights society within 60 days or the attorney becomes nonresponsive for a period of 60 days or more.

A performing rights society may not enter into, or offer to enter into, a contract for the payment of royalties by a proprietor unless at least 72 hours prior to the execution of the contract the performing rights society provides to the proprietor, in writing, a schedule of the rates and terms of royalties under the contract and notice that the proprietor is entitled to view, electronically, the most current available list of members and affiliates represented by the performing rights society and the most current available list of the performed works that the performing rights society licenses.

Additionally, a contract for the payment of royalties executed in Washington must be in writing, be signed by the parties, and include the proprietor's name and business address, the name and location of each place of business to which the contract applies, the duration of the contract, and the schedule of rates and terms of the royalties to be collected under the contract, including any sliding scale or schedule for any increase or decrease of those rates for the duration of the contract.

Penalties.

A person who willfully violates any requirements or prohibitions may be liable for a civil penalty of not more than \$1,000 per violation. Multiple violations on a single day may be considered separate violations. The Office of the Attorney General (AG), acting in the name

of the state, may seek recovery of all penalties in a civil action. The AG may issue civil investigative demands for the inspection of documents, interrogatory responses, and oral testimony in the AG's enforcement efforts.

Consumer Awareness.

The Department of Revenue must inform proprietors of proprietors' rights and responsibilities regarding the public performance of copyrighted music as part of the business licensing service. Performing rights societies are encouraged to conduct outreach campaigns to educate existing proprietors on their rights and responsibilities regarding the public performance of copyrighted music.

A performing rights society is not prohibited from conducting investigations to determine the existence of music use by a proprietor's business or informing a proprietor of the proprietor's obligations under federal copyright law.

**Votes on Final Passage:**

2015 Regular Session

House 92 6

2016 Regular Session

House 72 25

Senate 48 0 (Senate amended)

House 93 3 (House concurred)

**Effective:** January 1, 2017