

# SENATE BILL REPORT

## E2SHB 1763

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As Reported by Senate Committee On:  
Commerce & Labor, February 26, 2016

**Title:** An act relating to regulating music licensing agencies.

**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).

**Brief History:** Passed House: 3/05/15, 92-6; 2/10/16, 72-25.

**Committee Activity:** Commerce & Labor: 3/20/15, 3/30/15 [DPA, DNP]; 2/26/16 [DPA].

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### SENATE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** Do pass as amended.

Signed by Senators Baumgartner, Chair; Braun, Vice Chair; Hasegawa, Ranking Minority Member; Conway, Keiser, King and Warnick.

**Staff:** Susan Jones (786-7404)

**Background:** Performing Rights Societies/Music Licensing Agencies. Music licensing agencies, also known as performing rights societies, license the music of songwriters and music publishers for a fee. These music licensing agencies may collect royalties or license fees on the performance rights whenever the music is played in a public setting. Venues that are subject to the license fees include bars, nightclubs, funeral parlors, grocery stores, sports arenas, skating rinks, fitness centers, and others. The annual license fees may vary depending on the type of business; the manner in which music is performed – live, recorded, audio only, or audio/visual; the size of the establishment or potential audience for the music; and other factors. The music licensing agencies may file a legal action to enforce the copyright claims on behalf of the persons that they represent.

Licensing. The Department of Licensing (Department) licenses certain businesses and professions, and may investigate complaints or reports of unprofessional conduct, hold administrative hearings, discipline, and fine licensees under the Uniform Regulation of Business and Professions Act.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Consumer Protection Act (CPA). The CPA prohibits unfair methods of competition and unfair or deceptive practices in commerce. The act may be enforced by private legal action, or through a civil action brought by the Office of the Attorney General. A court may award private individuals injured by an unfair or deceptive practice actual damages, court costs, and additional damages up to triple the actual damages' amount. A court may enjoin a business from conducting further unfair practices.

**Summary of Bill (Recommended Amendments):** Performing Rights Society Registration and Filing. 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 it registers and files annually with the Department an electronic copy of each performing rights form agreement and has a valid unified business identifier number.

Available Lists. A performing rights society must make available electronically to proprietors the most current available list of its represented members and affiliates and the most current available list of its licensed performed works.

Violations. A person who willfully violates any of provisions of this act 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 Attorney General may seek recovery of all such penalties in a civil action. The Attorney General may issue civil investigative demands for the inspection of documents, interrogatory responses, and oral testimony in the enforcement of this section.

Requirements and Prohibited Conduct. Before seeking payment or a contract for payment of royalties by a proprietor, a representative or agent for a performing rights society must: identify himself or herself to the proprietor or the proprietor's employees, disclose that he or she is acting on behalf of a performing rights society, and disclose the purpose for being on the premises and must not:

- use obscene, abusive, or profane language when communicating with the proprietor or his or her 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 at the proprietor's establishment after receiving notification in writing from an attorney that all further communications should be addressed to the attorney. There are exceptions.

Information to Proprietors. The Department of Revenue shall inform proprietors of their 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.

Performing Rights Society Contracts. No performing rights society may enter into, or offer to enter into, a contract unless at least 72 hours before the execution of that contract it provides to the proprietor, in writing, a schedule of the rates and terms, and notice that the proprietor is entitled to the information contained in this act.

A contract for the payment of royalties must be in writing; be signed by the parties; and include, at least, the following information:

- the proprietor's name and business address;
- the name and location of each place of business to which the contract applies;
- the contract duration; and
- the schedule of rates and terms, including any sliding scale or schedule for any increase or decrease.

U.S. Copyright Laws. Nothing in the act may be construed to prohibit a performing rights society 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 the U.S. copyright laws.

Definitions are provided.

**EFFECT OF CHANGES MADE BY COMMERCE & LABOR COMMITTEE (Recommended Amendments):** (1) Modifies and adds definitions, including changing the term from "music licensing agency" to "performing rights society;" (2) changes filing with the Secretary of State to registering and filing annually a form agreement with the Department of Licensing (DOL); (3) removes licensing or license fees; (4) changes the fines to those for willful violations, fines may be sought by the AGO, rather than the DOL, and deletes language regarding private party claims and allows the AGO to issue civil investigative demands for the inspection of documents, interrogatory responses, and oral testimony in the enforcement actions; (5) removes the requirement for 24 hours' notice before entering a proprietor's premises; (6) modifies the provisions regarding communication with a proprietor; (7) removes the provision for a Consumer Protection Act violation; (8) requires the Department of Revenue to inform proprietors of their rights and responsibilities regarding playing copyrighted music, rather than requiring a consumer awareness campaign by the AGO and the DOL; (9) provides information to be provided to a proprietor at least 72 hours before execution of the contract and provides contract requirements; (10) provides that nothing in the act may be construed to prevent the agency from investigating about or informing about the federal copyright laws; and (11) other technical changes.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** The bill takes effect on January 1, 2016.

**Staff Summary of Public Testimony on Engrossed Second Substitute House Bill: Testimony from 2015 Regular Session.** PRO: This legislation is not keeping people from paying the amount they legitimately owe. This bill regulates the tactics the music licensing companies use and how they interface with small business owners. The bill prevents the music licensing companies from using abusive language and acting like bullies, and requires that they give notice and lists of music that they own so bars and restaurants can choose to play other music. They go into everywhere music is played, including bars, restaurants, farmers' markets, churches, and nonprofit dance schools. Restaurants don't doubt that they have to pay for copyrighted music. The bill lets restaurant owners know what their responsibilities are and clearly identifies who are the good actors and bad actors. We need to weed out the bad actors. There needs to be a licensing component and a way to notify owners of their responsibilities.

CON: Music writers are entitled to be paid royalties for the public performance of their work under federal copyright laws. The music licensing companies collect the royalties and protect the music writers' rights. Without their work, the writers could not track, contact, and collect from the establishments that pay the songs. Owners of bars and venues benefit and attract customers through playing the music. This is a cost of doing business. There is no difference between paying for music as paying for the liquor. This is the business of the songwriter and they should be paid. Passing a law that makes it harder to collect the royalties will adversely affect songwriters. Under U.S. copyright laws, music and songs are the legal property of the creator just like software and movies. Accordingly, songwriters have the exclusive right to perform their music in public. Before any others can perform the music, they must obtain permission or they are violating copyright law. There are some exceptions. The licensing companies obtain that permission through a blanket license. This is done effectively and efficiently. The fees charged are low and reasonable for the licenses. Proposed amendments will help the bill especially with respect to conduct, preemption of federal copyright law, private rights of action, and Consumer Protection Act violations.

**Persons Testifying:** Persons Testifying From 2015 Regular Session. PRO: Representative Van De Wege, Prime Sponsor; Trent House, WA Restaurant Assn.

CON: Branden Daniel; songwriter; Lisa Thatcher, Broadcast Music Inc.; Holli Johnson, American Society of Composers, Authors and Publishers; Bryan Case, Riddell Williams, citizens.

**Persons Signed In To Testify But Not Testifying:** No one.