

ENROLLED HOUSE
BILL NO. 1254

By: Kirby and Widener of the
House

and

Shurden, Long (Lewis)
and Littlefield of the
Senate

An Act relating to contracts; providing definitions; prohibiting certain contracts under certain circumstances; requiring certain contracts of copyright owners or performing rights societies to contain certain provisions and meet certain requirements; prohibiting certain actions by copyright owners or performing rights societies; providing penalties; permitting certain proprietors to bring legal action; permitting a court to void certain contracts; providing for recovery of damages; clarifying rights and remedies; providing exceptions; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 790 of Title 15, unless there is created a duplication in numbering, reads as follows:

A. As used in this section:

1. "Area" means a circular geographical region having a twenty-five-mile radius surrounding the business location of a proprietor. In the case of a proprietor with more than one business location, there shall be a separate area for each location for the purposes of this section;

2. "Copyright owner" means the owner of a copyright of a nondramatic musical or similar work recognized and enforceable under the copyright laws of the United States pursuant to Title 17 of the United States Code, Pub. L. 94-553 (17 U.S.C., Section 101 et seq.). "Copyright owner" shall not include the owner of a copyright in a motion picture or audiovisual work, but shall include, but not be limited to, the owner of a copyright in a karaoke machine or similar device;

3. "Performing rights society" means an association or corporation that licenses the public performance of nondramatic musical works on behalf of copyright owners, such as the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and SESAC, Inc.;

4. "Proprietor" means the owner of a retail establishment, restaurant, inn, bar, tavern, sports or entertainment facility, or any other similar place of business or professional office located in this state in which the public may assemble and in which

nondramatic musical works or similar copyrighted works may be performed, broadcast, or otherwise transmitted for the enjoyment of the members of the public there assembled; and

5. "Royalty" or "royalties" means the fees payable to a copyright owner or performing rights society for the public performance of nondramatic musical or other similar work.

B. No copyright owner or performing rights society shall enter into, or offer to enter into, a contract for the payment of royalties by a proprietor unless at the time of the offer, or any time thereafter, but no later than seventy-two (72) hours prior to the execution of that contract, it provides to the proprietor, in writing, the following:

1. A schedule of the rates and terms of royalties under the contract; and

2. Annual notice, in a form prescribed by the Attorney General, that the proprietor is entitled to the information contained in paragraph 1 of this subsection.

C. Every contract for the payment of royalties executed in this state shall:

1. Be in writing;

2. Be signed by the parties;

3. Contain a provision requiring notification of any rate change thirty (30) days prior to expiration date of the contract; and

4. Include at least the following information:

a. the proprietor's name and business address and the name and location of each place of business to which the contract applies,

b. the duration of the contract, and

c. 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.

D. No performing rights society, or any agent or employee thereof, shall:

1. Enter beyond the usual customer area of a proprietor's business for the purpose of investigating as to the use of copyrighted works by that proprietor or for the purpose of discussing or inquiring about a contract for the payment of royalties with the proprietor or employees of the proprietor, without first presenting proper identification as an agent or employee of a performing rights society to the proprietor or employees of the proprietor and making known to them the purpose of the investigation, discussion or inquiry;

2. Collect or attempt to collect a royalty payment or any other fee, except as provided in a contract executed pursuant to the provisions of this section;

3. Charge or collect a royalty which is unreasonable in comparison to the royalties for similar licenses in the same area;

4. Engage in any coercive conduct, act or practice that is substantially disruptive of a proprietor's business;

5. Use or attempt to use any unfair or deceptive act or practice in negotiating with a proprietor; or

6. Fail to comply with or fulfill any obligations imposed by this section.

E. Any person who violates any provision of this section shall be liable to pay a penalty of not more than Two Thousand Five Hundred Dollars (\$2,500.00) for a first violation and a penalty of not more than Ten Thousand Dollars (\$10,000.00) for a second and each subsequent offense. The penalty shall be collected and

enforced in the name of the state by the Attorney General in a court of competent jurisdiction.

F. A proprietor may bring an action or assert a counterclaim in a court of competent jurisdiction against a copyright owner or performing rights society, or both, to enjoin any violation of this act and to recover any damages sustained by the proprietor as a result of a violation of this section. The proprietor may petition the court to terminate a contract which violates the provisions of this section, and the court in its discretion may void the contract. If successful, the proprietor shall be entitled to recover damages sustained by the proprietor, together with reasonable attorney fees, filing fees and reasonable costs of suit, in addition to any other legal or equitable relief.

G. The rights, remedies and prohibitions accorded by the provisions of this section shall be in addition to and cumulative of any other right, remedy or prohibition accorded by common law, federal law or the statutes of this state, and nothing contained in this section shall be construed to deny, abrogate or impair any such common law or statutory right, remedy or prohibition.

H. This section shall not apply to:

1. 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. However, if a copyright owner or performing rights society is licensed by the Federal Communications Commission, this section shall apply to contracts between that copyright owner or performing rights society and a proprietor as otherwise provided;

2. Any conduct engaged in for the enforcement of Sections 1979 and 1980 of Title 21 of the Oklahoma Statutes; and

3. Any performing philharmonic.

SECTION 2. This act shall become effective November 1, 1995.

Passed the House of Representatives the 17th day of May, 1995.

Speaker of the House of
Representatives

Passed the Senate the 18th day of May, 1995.

President of the Senate