

STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

HOUSE BILL NO. 1412

By: Hutchison

AS INTRODUCED

An Act relating to contracts; declaring legislative intent; providing definitions; prohibiting certain contracts; requiring certain contracts between 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 exception; 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. The Legislature finds and declares that:

1. Under the copyright laws of the United States, a copyright owner may enforce the rights thereof against the owners of

restaurants, bars, retail establishments, entertainment and sports facilities, doctors' and other professionals' offices, and similar places of business where members of the public may assemble, for the public performance of music and other similar copyrighted works, whether it be in person by a performing artist hired by the proprietor, or on radio stations or other electronic media transmitted, received and rebroadcast by the proprietor at those places of business;

2. The proprietors of these establishments are frequently subject to arbitrary and capricious enforcement and collection practices by the owners of these copyrights or their agents, who may enter the premises without identification and question employees, collect fees on an irregular basis, arbitrarily increase and charge fees in excess of those agreed to by the proprietors under existing contracts, or charge similar businesses vastly differing fees for essentially the same use of copyrighted works;

3. These proprietors, usually small businessmen and women who through their businesses and professions contribute to the economy of this state and employ its citizens, recognize the copyright laws of the United States and the purposes for which they were enacted and should be enforced, and acknowledge their obligations thereunder for use of copyrighted works in their place of business;

4. These proprietors are entitled to certain safeguards in the operation of their businesses, which will protect them from such arbitrary, capricious and unfair trade practices, permit them to negotiate fairly with the copyright owners or their agents in arriving at appropriate terms and conditions for the use of the copyrighted work in their place of business, and thereafter will assure them, with some reasonable degree of certainty, the ability to ascertain their true obligations and rights in the future use of such copyrighted work; and

5. Although the rights and responsibilities regarding copyrighted works are founded in Article I, Section VIII, clause 8 of the United States Constitution and exclusively governed by Title 17 of the United States Code, it is nonetheless essential that the State of Oklahoma protect its business owners and citizens from the practices of those who would enforce their rights under the federal law in an arbitrary and capricious manner.

It is therefore in the best interest of the state, its business community and consumers alike, that such arbitrary, capricious and unfair trade practices be prohibited and the agreements under which such rights and responsibilities are established be regulated by this state.

B. 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.);

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.

C. 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;

2. A schedule of the rates and terms of royalties under agreements executed by the copyright owner or performing rights society and proprietors of comparable businesses in the area;

3. In the case of a performing rights society, the copyright owners represented by that society and the works licensed under the contract; and

4. Notice, in a form prescribed by the Attorney General, that the proprietor is entitled to the information contained in paragraphs 1, 2 and 3 of this subsection, and that the failure of the copyright owner or performing rights society to provide that information is a violation of, and may render a contract unenforceable under the provisions of this section.

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

1. Be in writing;

2. Be signed by the parties;

3. Not exceed one (1) year; 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 name and address of the copyright owner and any performing rights society authorized by him to act on his behalf,
- c. the copyrighted works licensed under the contract,
- d. the duration of the contract, and
- e. 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.

E. No copyright owner or performing rights society, or any agent or employee thereof shall:

1. Enter on the premise of a proprietor's business for the purpose of investigating as to the use of copyrighted works by that proprietor without first identifying himself or herself to the proprietor or his employees and making known to them the purpose of the investigation;

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; and

3. Use or attempt to use any act or practice in negotiating with a proprietor, or in retaliation for a proprietor's failure or refusal to negotiate, with respect to a contract for the payment of royalties, including, but not limited to:

- a. threatening to commence legal proceedings in connection with an alleged copyright violation with the intent of coercing the proprietor to negotiate or enter into a contract for the payment of royalties, and

- b. charging or collecting a royalty which is unreasonable in comparison to the royalties for similar licenses in the same area.

F. Any person who violates any provision of this section shall be liable to pay a penalty of not more than Ten Thousand Dollars (\$10,000.00) for a first violation and a penalty of not more than Twenty-five Thousand Dollars (\$25,000.00) 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.

G. 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 threefold the damages sustained by him, together with reasonable attorney fees, filing fees and reasonable costs of suit, in addition to any other legal or equitable relief.

H. 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 herein shall be construed to deny, abrogate or impair any such common law or statutory right, remedy or prohibition.

I. This section shall not apply to contracts between copyright owners or performing rights societies and broadcasters licensed by the Federal Communications Commission, except that if a copyright owner or performing rights society is licensed by the Federal Communications Commission, this act shall apply to contracts between

that copyright owner or performing rights society and a proprietor as otherwise provided herein.

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

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