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SENATE BILL NO. 858

Offered January 20, 1995

A *BILL to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 38, consisting of sections numbered 59.1-460 through 59.1-464, relating to the Virginia Music Licensing Fees Act.*

Patron—Benedetti

Referred to the Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 59.1 a chapter numbered 38, consisting of sections numbered 59.1-460 through 59.1-464 as follows:

CHAPTER 38.

VIRGINIA MUSIC LICENSING FEES ACT.

§ 59.1-460. *Definitions.*

As used in this chapter:

"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 chapter.

"Copyright owner" means the owner of a copyright of a nondramatic musical of 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. § 101 et seq.).

"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.

"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 the Commonwealth 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 members of the public there assembled.

"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.

§ 59.1-461. *Notice and schedule to be provided.*

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 hours prior to the execution of that contract, it provides to the proprietor, in writing, the following:

1. *Schedule of the rates and terms of royalties under the contract;*

2. *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 works licensed under the contract;*

4. *Notice that the proprietor is entitled to the information contained in subdivisions 1, 2 and 3 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 chapter.*

§ 59.1-462. *Royalty contract requirements.*

Every contract for the payment of royalties executed in the Commonwealth shall be:

1. *In writing;*

2. *Signed by the parties;*

3. *Written for a term not exceeding one year;*

4. *Written to Include 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 such rates for the duration of the contract.*

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§ 59.1-463. *Prohibited conduct.*

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

1. Enter onto the premises of a proprietor's business for the purpose of investigating the use of copyrighted works by that proprietor without first identifying himself 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 chapter.

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; or

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

§ 59.1-464. *Civil actions; damages.*

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 any violation of this chapter. The proprietor may petition the court to terminate a contract which violates the provisions of this chapter, 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's fees and costs, in addition to any other legal or equitable relief to which the proprietor may be entitled.

§ 59.1-465. *Remedies cumulative.*

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

§ 59.1-466. *Exceptions.*

This chapter 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 chapter shall apply to contracts between that copyright owner or performing rights society and a proprietor as otherwise provided herein.