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SENATE BILL NO. 858

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Commerce and Labor
on February 6, 1995)

(Patron Prior to Substitute—Senator Benedetti)

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 59.1-465, relating to the Virginia Music Licensing Fees Act.

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 59.1-465, 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 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. § 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 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, notice that such performing rights society:

1. Has filed in the Office of the Secretary of the Commonwealth for public inspection: (i) a certified copy of each form of performing rights contract or license agreement providing for the payment of royalties made available from such performing rights society to a Virginia proprietor; (ii) the most current available list of such performing rights society's members or affiliates; and (iii) the most current available listing of the copyrighted musical works in such performing rights society's repertory; and

2. Makes available, by electronic means or otherwise, information as to whether specific copyrighted musical works are in its repertory.

§ 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, unless a longer term is agreed to by both parties;

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. Certification by the performing rights society that the copyrights in the licensed works are valid and subsisting and not in the public domain, and that the performing rights society is authorized to enter into the license on the copyright owner's 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.

§ 59.1-463. Prohibited conduct.

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

60 1. Enter onto the premises of a proprietor's business for the purpose of discussing with or inquiring
61 of the proprietor or his employees regarding a contract for the payment of royalties with that proprietor
62 without first identifying himself to the proprietor or his employees and making known to them the
63 purpose of the discussion or inquiry.

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

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

68 § 59.1-464. Remedies cumulative.

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

73 § 59.1-465. Exceptions.

74 This chapter shall not apply to contracts between copyright owners or performing rights societies
75 and broadcasters licensed by the Federal Communications Commission, except that if a copyright owner
76 or performing rights society is licensed by the Federal Communications Commission, this chapter shall
77 apply to contracts between that copyright owner or performing rights society and a proprietor as
78 otherwise provided herein. This chapter shall apply only to performing rights societies. This chapter
79 shall not apply to musical works performed in synchronization with an audiovisual film or tape, or to
80 the gathering of information for determination of compliance with, or activities related to the
81 enforcement of, Chapter 3.1 (§ 59.1-41.1 et seq.) of Title 59.1.