

CS FOR SENATE BILL NO. 263(JUD) am H

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Amended: 5/2/96

Offered: 4/9/96

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to copyright licensing and royalties; and providing for an
2 effective date."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. AS 45.45 is amended by adding new sections to read:

5 ARTICLE 7A. COPYRIGHT ROYALTIES AND LICENSING.

6 Sec. 45.45.500. NOTICE REQUIRED BEFORE CONTRACT. A copyright
7 owner or a performing rights society may not enter into, or offer to enter into, a
8 contract for the payment of royalties by a business proprietor unless at the time of the
9 offer, or within 72 hours before entering into the contract, the copyright owner or
10 performing rights society provides to the business proprietor a notice containing
11 (1) the rates and terms of the royalties under the contract, including any
12 sliding scale, discounts, or reductions in rates on any basis, for which the business
13 proprietor may be eligible, and any scheduled increases or decreases in rates during
14 the term of the contract;

1 (2) in the case of a performing rights society, a toll free number from
2 which the business proprietor may obtain answers to inquiries concerning musical
3 works and copyright owners represented by the performing rights society; and

4 (3) in the case of a performing rights society, notice that the most
5 recent available list of the members or affiliates represented by the performing rights
6 society and the most recent available list of the copyrighted musical works in the
7 performing rights society's repertoire will be available on electronic media through the
8 Cabaret Hotel and Restaurant Retail Association at the expense of the performing
9 rights society.

10 Sec. 45.45.510. MINIMUM CONTENTS OF ROYALTIES CONTRACTS.

11 (a) A royalties contract entered into, issued, or renewed in this state must be in
12 writing and signed by the parties. The contract must include at least the

13 (1) business proprietor's name and business address, and the name and
14 location of each place of business of the business proprietor to which the contract
15 applies;

16 (2) duration of the contract; and

17 (3) terms for the collection of the royalties and a rate schedule for the
18 royalties, including any sliding scale, discount, or schedule for an increase or decrease
19 of the rates during the term of the contract.

20 (b) A contract for the payment of royalties entered into, issued, or renewed in
21 this state may not exceed one year at a time, unless the contract is under the terms of
22 a national agreement. When each year of the contract ends, the contract is
23 automatically renewed on the same terms and conditions unless either party to the
24 contract provides the other party with written notice of the party's desire to terminate
25 the contract or to change the terms and conditions. The notice must be given at least
26 30 days before the termination of the current term.

27 Sec. 45.45.520. COLLECTION OF ROYALTIES. A copyright owner, a
28 performing rights society, or an agent or employee of a copyright owner or performing
29 rights society may not collect or attempt to collect a payment or another fee under a
30 royalties contract between the copyright owner or performing rights society and a
31 business proprietor unless the contract complies with AS 45.45.500 - 45.45.590.

1 Sec. 45.45.530. PROHIBITED PRACTICES. (a) A performing rights society,
2 or an agent or employee of a performing rights society, may not collect or attempt to
3 collect a royalty payment or another fee from a business proprietor licensed by the
4 performing rights society, unless the collection or collection attempt is made under a
5 contract entered into in accordance with AS 45.45.500 - 45.45.590.

6 (b) An agent or employee of a performing rights society may not enter a
7 business proprietor's premises to discuss a contract for the performance of copyrighted
8 works or payment of royalties unless the agent or employee immediately discloses the
9 purpose of the discussion and that the agent or employee is an agent or employee of
10 a performing rights society.

11 Sec. 45.45.550. PRIVATE ACTION. A person who suffers a loss as a result
12 of another person knowingly engaging in conduct that violates AS 45.45.500 -
13 45.45.590 may bring a civil action to recover actual damages and reasonable attorney
14 fees, to enjoin the violation, and to seek any other remedy available at law or equity
15 for the violation. In this section, "knowingly" has the meaning given in AS 11.81.900.

16 Sec. 45.45.560. EXEMPTIONS. The provisions of AS 45.45.500 - 45.45.590
17 do not apply to

18 (1) a royalties contract between copyright owners, or performing rights
19 societies, and

20 (A) broadcasters licensed by the Federal Communications
21 Commission; or

22 (B) a cable television operator, a cable television programmer,
23 or another transmission service;

24 (2) an investigation by a law enforcement agency or other persons
25 concerning a suspected violation of AS 45.50.900(a)(2);

26 (3) contracts between copyright owners, or performing rights societies,
27 and software publishers.

28 Sec. 45.45.570. CONSTRUCTION. AS 45.45.500 - 45.45.590 may not be
29 construed to prevent a performing rights society from informing a business proprietor
30 of the business proprietor's obligations under 17 U.S.C. (federal copyright law) or
31 from exercising any exclusive rights preempted under 17 U.S.C. 301(a).

1 Sec. 45.45.590. DEFINITIONS. In AS 45.45.500 - 45.45.590,

2 (1) "business proprietor" means a person who owns a place of business
3 in which the public may assemble and in which copyrighted musical works may be
4 performed, broadcasted, or otherwise transmitted; in this paragraph, "place of business"
5 includes a store, professional office, sports facility, entertainment facility, restaurant,
6 hotel, or an alcoholic beverage establishment licensed under AS 04.11;

7 (2) "copyright owner" means the owner of a copyright of a musical
8 work if the copyright is recognized and enforceable under 17 U.S.C.; "copyright
9 owner" does not include the owner of a copyright in all or part of a motion picture or
10 an audiovisual work;

11 (3) "musical work" means a nondramatic musical or similar work;

12 (4) "performing rights society" means an association or corporation that
13 licenses the public performance of musical works on behalf of copyright owners, and
14 includes Broadcast Music, Inc., SESAC, Inc., and The American Society of
15 Composers, Authors, and Publishers;

16 (5) "royalties" means the fees payable to a copyright owner or a
17 performing rights society for the public performance of a musical work;

18 (6) "royalties contract" means a contract for the payment of royalties.

19 * **Sec. 2.** AS 45.45.500 - 45.45.530, enacted by sec. 1 of this Act, do not apply to a
20 contract entered into, issued, or renewed before the effective date of this Act.

21 * **Sec. 3.** SEVERABILITY. If a provision of AS 45.45.500 - 45.45.590 or its application
22 to a person or circumstance is held invalid, the invalidity does not affect other provisions or
23 applications of this Act that can be given effect without the invalid provision or application
24 and, to this end, the provisions of this Act are declared to be severable.

25 * **Sec. 4.** This Act takes effect July 1, 1996.