

SENATE BILL NO. 263

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Introduced: 2/7/96
Referred: Judiciary

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) A
7 copyright owner or a performing rights society may not enter into, or offer to enter
8 into, a contract for the payment of royalties by a business proprietor unless at the time
9 of the offer, or within 72 hours before entering into the contract, the copyright owner
10 or performing rights society provides to the business proprietor a notice containing

11 (1) the rates and terms of the royalties under the contract;

12 (2) the rates and terms of the royalties in other agreements executed by
13 the copyright owner or performing rights society with business proprietors of
14 comparable businesses in the area of the business proprietor;

1 (3) in the case of a performing rights society, a list of the copyright
2 owners represented by the society and of the works of those copyright owners licensed
3 by the performing rights society under a contract entered into on or after the effective
4 date of this Act or under a contract that does not prohibit the disclosure;

5 (4) in the case of a performing rights society, if agents or employees
6 responsible for enforcing the rights of copyright owners represented by the society are
7 paid in whole or in part on a commission basis, a list of the commission rates in effect
8 for the performing rights society in that area;

9 (5) in the case of a performing rights society that offers discounts to
10 business proprietors in the area on any basis, the amounts and terms of the discounts;
11 and

12 (6) a statement, in a form established by the Department of Law by
13 regulation, that the business proprietor is entitled to the information required by this
14 subsection, and that the failure of the copyright owner or performing rights society to
15 provide the information is a misdemeanor and that the failure may render the contract
16 unenforceable under AS 45.45.500 - 45.45.590.

17 (b) The notice required by (a) of this section shall be given in writing, except
18 that the information required under (a)(3) of this section may, at the option of the
19 business proprietor, be given electronically.

20 Sec. 45.45.510. MINIMUM CONTENTS OF ROYALTIES CONTRACTS.

21 (a) A royalties contract entered into, issued, or renewed in this state must be in
22 writing and signed by the parties and may not exceed one year. The contract must
23 include at least the

24 (1) business proprietor's name and business address, and the name and
25 location of each place of business of the business proprietor to which the contract
26 applies;

27 (2) name and address of the copyright owner and any performing rights
28 society authorized by the copyright owner to act on the copyright owner's behalf;

29 (3) copyrighted works licensed under the contract;

30 (4) duration of the contract; and

31 (5) terms for the collection of the royalties and a rate schedule for the

1 royalties, including any sliding scale, discount, or schedule for an increase or decrease
2 of the rates during the contract.

3 (b) A contract for the payment of royalties entered into, issued, or renewed in
4 this state may not exceed one year at a time. When each year of the contract ends,
5 the contract is automatically renewed on the same terms and conditions unless either
6 party to the contract provides the other party with written notice of the party's desire
7 to terminate the contract or to change its terms and conditions. The notice must be
8 given at least 45 days before the termination each year.

9 Sec. 45.45.520. DISCLOSURE REQUIRED. A copyright owner, performing
10 rights society, or an agent or employee of a copyright owner or performing rights
11 society may not discuss or inquire of a business proprietor, or the business proprietor's
12 employees, about a contract for the payment of royalties or about the use of
13 copyrighted works by the business proprietor without first identifying the owner,
14 society, agent, or employee and disclosing to the business proprietor the purpose of the
15 inquiry.

16 Sec. 45.45.530. COLLECTION OF ROYALTIES. A copyright owner,
17 performing rights society, or an agent or employee of a copyright owner or performing
18 rights society may not collect or attempt to collect a payment or another fee under a
19 royalties contract between the copyright owner or performing rights society and a
20 business proprietor unless the contract complies with AS 45.45.500 - 45.45.590.

21 Sec. 45.45.540. PROHIBITED NEGOTIATION AND RETALIATION
22 PRACTICES. (a) A copyright owner or performing rights society may not engage
23 in the following practices when the owner or society negotiates a royalties contract
24 with a business proprietor, or as retaliation for a business proprietor's failure or refusal
25 to negotiate a royalties contract with the owner or society:

26 (1) threatening to start a court action in connection with an alleged
27 copyright violation by the business proprietor if the intent of the threat is to coerce the
28 business proprietor to negotiate or enter into the contract; or

29 (2) charging or collecting royalties that are unreasonable in comparison
30 to the royalties for similar licenses in the area.

31 (b) In (a) of this section, "copyright owner or performing rights society"

1 includes an agent or employee of the copyright owner or performing rights society.

2 Sec. 45.45.550. PENALTY. A person who knowingly violates a provision of
3 AS 45.45.500 - 45.45.590 commits a class A misdemeanor. In this section,
4 "knowingly" has the meaning given in AS 11.81.900.

5 Sec. 45.45.560. PRIVATE ACTION. (a) In addition to any other remedies
6 available to the business proprietor under law, a business proprietor may bring a civil
7 action against a copyright owner or performing rights society, or both. In the action,
8 the business proprietor may seek

9 (1) to enjoin a violation of AS 45.45.500 - 45.45.590;

10 (2) to recover damages sustained by the business proprietor as a result
11 of the violation;

12 (3) to terminate a contract that violates AS 45.45.500 - 45.45.590; or

13 (4) to obtain a combination of two or more of the remedies listed in (1)
14 - (3) of this subsection.

15 (b) In addition to other legal or equitable relief ordered by the court, a court
16 shall award a business proprietor who is the prevailing party in an action under (a) of
17 this section three times the damages sustained by the business proprietor.

18 Sec. 45.45.570. EXEMPTION. The provisions of AS 45.45.500 - 45.45.590
19 do not apply to a royalties contract between copyright owners or performing rights
20 societies, and broadcasters licensed by the Federal Communications Commission,
21 except that, if a copyright owner or performing rights society is licensed by the Federal
22 Communications Commission, AS 45.45.500 - 45.45.590 apply to royalties contracts
23 between the copyright owner, or performing rights society, and the business proprietor.

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

25 (1) "area" means a circular geographical region having a 25-mile radius
26 surrounding the business location of a business proprietor;

27 (2) "business proprietor" means a person who owns a place of business,
28 including a store, restaurant, hotel, or bar, in which the public may assemble and in
29 which nondramatic musical works or similar copyrighted works may be performed,
30 broadcasted, or otherwise transmitted for the enjoyment of the members of the public
31 assembled on the premises;

1 (3) "copyright owner" means the owner of a copyright of a nondramatic
2 musical or similar work recognized and enforceable under 17 U.S.C.;

3 (4) "performing rights society" means an association or corporation that
4 licenses the public performance of nondramatic musical or similar works on behalf of
5 copyright owners;

6 (5) "royalties" means the fees payable to a copyright owner or a
7 performing rights society for the public performance of nondramatic musical or other
8 similar work;

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

10 * **Sec. 2.** AS 45.50.471(b) is amended by adding a new paragraph to read:

11 (41) violating AS 45.45.500 - 45.45.590 (copyright royalties and
12 licensing).

13 * **Sec. 3.** AS 45.45.500 - 45.45.510 and 45.45.530, enacted by sec. 1 of this Act, do not
14 apply to a contract entered into, issued, or renewed before the effective date of this Act.

15 * **Sec 4.** This Act takes effect immediately under AS 01.10.070(c).