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SENATE WEST VIRGINIA

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995



## ENROLLED

*Committee Substitute for*  
SENATE BILL NO. 499

(By Senator CRAYG, ET AL)



PASSED MARCH 11, 1995  
In Effect 90 DAYS FROM Passage

**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR  
**Senate Bill No. 499**

(SENATORS CRAIGO, ANDERSON AND CHAFIN,  
*original sponsors*)

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[Passed March 11, 1995; in effect ninety days from passage.]

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AN ACT to amend chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-a, relating to copyrighted works; legislative findings; definitions; applicability; contracts between proprietors and copyright owners; publication requirement; defense in civil action; and applicability.

*Be it enacted by the Legislature of West Virginia:*

That chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article two-a, to read as follows:

**ARTICLE 2A. COPYRIGHT PROTECTION.**

**§47-2A-1. Legislative findings.**

1 The Legislature finds and declares that:

2 (a) Under the copyright laws of the United States, a  
3 copyright owner may enforce the rights thereof against  
4 the owners of restaurants, bars, retail establishments,  
5 entertainment and sports facilities and similar places of  
6 business where members of the public may assemble for  
7 the public performance of music and other similar  
8 copyrighted works, whether it be in person by a per-  
9 forming artist hired by the proprietor or on radio sta-  
10 tions or other electronic media transmitted, received and  
11 rebroadcast by the proprietor at those places of business;

12 (b) The rights and responsibilities regarding copy-  
13 righted works are set forth in clause eight, section VIII,  
14 article I of the constitution of the United States and  
15 governed statutorily by Title 17 of the United States  
16 code. The Legislature believes it is important that the  
17 state of West Virginia assist its business owners who  
18 utilize copyrighted materials and the creative artists of  
19 this state and elsewhere by ensuring that the holders of  
20 copyrights and those who use such materials are equita-  
21 bly treated.

#### §47-2A-2. Definitions.

1 As used in this article:

2 (1) "Copyright owner" means the owner of a copyright  
3 of a nondramatic musical or similar work, other than a  
4 motion picture or other audiovisual work, recognized  
5 and enforceable under the copyright laws of the United  
6 States pursuant to Title 17 of the United States Code,  
7 Public Law 94-553.

8 (2) "Performing rights society" means an association or  
9 corporation that licenses the public performance of  
10 nondramatic musical works on behalf of copyright  
11 owners, such as the American society of composers,  
12 authors and publishers, broadcast music, inc., and  
13 SESAC, inc.

14 (3) "Proprietor" means the owner of a retail establish-  
15 ment, restaurant, inn, bar, tavern, sports or other enter-

16 tainment facility or any other similar place of business  
17 located in this state in which the public may assemble to  
18 hear nondramatic musical works or similar copyrighted  
19 works be performed, broadcast or otherwise transmitted  
20 for the enjoyment of the members of the public there  
21 assembled.

22 (4) "Royalty" or "royalties" means the fees payable to  
23 the copyright owner or performing rights society for the  
24 public performance of nondramatic musical or other  
25 similar work.

**§47-2A-3. Publication of royalty rates; notice requirement;  
sanctions for failure to publish.**

1 (a) Any copyright owner or performing rights society  
2 seeking to charge a proprietor or proprietors a royalty or  
3 fee for the performance for the public of nondramatic  
4 musical or similar works, shall, at least annually provide  
5 notice of the royalty or fee rate and the means of its  
6 computation to said proprietor or proprietors.

7 (b) The notice referred to in subsection (a) of this  
8 section shall be satisfied if the copyright owner or  
9 performing rights society publishes the required infor-  
10 mation in a Class II-0 legal advertisement in a qualified  
11 newspaper published in this state with a bona fide  
12 circulation of forty thousand or more, or if the copyright  
13 owner or performing rights society files copies of its  
14 license agreements containing the information required  
15 under subsection (a) of this section with the secretary of  
16 state's office.

17 (c) Failure of a copyright owner or performing rights  
18 society to meet the publication requirements of this  
19 section shall constitute a complete defense to any civil  
20 action brought by a copyright owner or performing  
21 rights society seeking to recover royalties in circum-  
22 stances where no contract exists between such parties  
23 regarding royalties.

**§47-2A-4. Applicability.**

1 This article does not apply to contracts between  
2 copyright owners or performing rights societies and  
3 broadcasters licensed by the federal communications  
4 commission, except that if a copyright owner or per-  
5 forming rights society is licensed by the federal commu-  
6 nications commission, this article shall apply to con-  
7 tracts between that copyright owner or performing  
8 rights society and a proprietor as otherwise provided  
9 herein. This article does not apply to any conduct  
10 engaged in for the enforcement of section fifty, article  
11 three, chapter sixty-one of this code.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Randy Scheonover*  
.....  
Chairman Senate Committee

*Ernest C Moore*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Darrell Atkins*  
.....  
Clerk of the Senate

*Donald L. Kapp*  
.....  
Clerk of the House of Delegates

*Earl Ray Tomblin*  
.....  
President of the Senate

*Bill Rubin*  
.....  
Speaker House of Delegates

The within *is approved* this the *24<sup>th</sup>*  
*March*  
day of ....., 1995.

*Garston Caperton*  
.....  
Governor



PRESENTED TO THE

GOVERNOR

Date

3/23/95

Time

3:58 pm