

CHAPTER 82

[Senate Bill No. 2055]

COPYRIGHT PROTECTION—RATES

AN ACT Relating to enforcement of anti-monopoly statutes; and amending section 9, chapter 218, Laws of 1937 and RCW 19.24.140.

Be it enacted by the Legislature of the State of Washington:

Section 1. Section 9, chapter 218, Laws of 1937 and RCW 19.24.140 are each amended to read as follows:

In the event any person, or groups of persons, or any combination or pool as aforesaid, whether a nonresident corporation, person, or an association, or domestic, refuse to abide by the provisions hereof, or attempt to evade or render ineffectual the true enforcement of any provision of this chapter, then the prosecuting attorney of any county where complaint is made of any violation, shall institute injunction proceedings against said persons in the superior court, and valid personal service may be had upon any nonresident defendant as set forth in RCW 19.24-.100; and the court shall enjoin all persons from violating the provisions of this chapter and the constitutional provisions prohibiting price fixing, monopolies, and combinations, and all copyrighted works and the public performance rights thereto when sold or used for profit are hereby declared to be a commercial commodity, and all persons, aiders and abettors, and agents, shall be enjoined by the court from aiding or furthering in any way a continuation of any violation of this chapter, either by the payment of money to said defendants or in any way; and if any defendant or defendants persist in defying the judgment of the court, the court shall, in order to effectuate its judgment and orders, order three days' notice be given said defendant or defendants, as the case may be, by having a copy of such notice served on the secretary of state as heretofore provided if defendants are without the state, or served personally if within the state, and have the same published in some daily paper in the state of general circulation, and at the end of said period, if any defendant or defendants refuse to obey the order of the court, then the court shall appoint the county auditor as receiver for the copyrighted works and property of defendants, tangible or intangible, and of all other effects and moneys derived therefrom, and the receiver shall take over and preserve the commercial rights to all of said copyrighted works, together with such other property of any defendant, combination, pool, corporation, or entity through which they are acting, that he can locate within the state, and the receiver shall administer the same under the direction of the court, and said receivership shall be considered only as an incident to the main injunction suit of the prosecutor, and for the purpose of enforcing the court's orders; the said receiver shall seize the copyrighted works of all of the copyright holders and owners in said defendant combination, including all of the rights to suits for infringement and damages in both state and federal courts, and all choses of action, and all sums due on contracts and licenses, and hold the same subject to the order of the court; and all persons holding licenses or contracts with any defendant combination or entity, shall pay the fees and sums due thereon to the receiver for such time as the court may need to effectuate the provisions of this chapter, and to compel any defendant to abide herewith: PROVIDED, Any sums

paid on licenses violating this chapter shall only be continued in the court's discretion or until such time as the court can award defendants complete and full due process of law before entering a final order thereon, or until such time as a legal and equitable system of licensing can be determined according to the subsequent provisions of this chapter: PROVIDED, FURTHER, In the event any defendant or defendants attempt to withdraw their said copyright works or property from the state in order to violate and render this chapter or the court's order ineffectual, or to deprive the citizens of this state of such commodity, or to hamper the enforcement of any provision of this chapter, or to injure any citizen or user of music in any way, then the court shall immediately order the receiver to compile a complete list of all of the copyrighted works of said defendants which have been used in this state, and the court shall then ~~((convene the state anti-monopoly board, as herein now created, consisting of the state treasurer and the state auditor, and said board shall meet in the county where the suit is filed, and the superior judge hearing the cause shall be an advisory member of said board; and said board, of which the state treasurer shall be chairman, shall have only one function, the discouragement of price fixing and monopolies, and the court shall then submit to said board the single question of the establishment of))~~ call on the state treasurer and the state auditor who shall jointly establish license rates for the use of those copyrighted works controlled by the defendants so proceeded against; and for the purpose of aiding in the abolition of monopolies and price fixing, and preventing violations of this chapter, ((the board)) they shall determine a fair and just rate that the receiver should charge for the single and separate public performance for profit of each copyrighted work or works of said defendants, on a per piece system and basis of licensing((; and the court shall not be deemed thereby to have divested itself of any of its jurisdiction by so doing)); after determining such rate, ~~((the said anti-monopoly board))~~ they shall immediately advise the receiver of its findings, and of its fair rate, and the same shall be filed of record in the cause, and the receiver may then, if said finding is approved by the court, issue licenses for the use of said music at such approved rate on a basis of so much money per each time a piece of music is played or used in a public performance for profit; that said property shall be thus administered by the receiver for a period of one year, or until such time as the defendants, or the individual copyright owners of any combination so proceeded against take oath that they will abide by the rulings of the court and the provisions of this chapter; and all fees and funds collected by the receiver shall be turned over to the state treasurer, and no receiver's fees or attorney's fees shall be allowed, and the prosecuting attorney shall be the attorney for the receiver, and the state treasurer shall keep said money in a separate and special fund, subject to the order of the court only for whatever portion thereof that the court may order used to defray the actual expenses ((of the board and the receivership)) incurred by any prosecuting attorney or county auditor in connection with this action; at the end of one year, if the defendants and copyright owners or holders in any combination thus proceeded against, continue to wilfully disobey the court's orders, then the court shall issue an order, which shall be published in three public places, to the effect that unless the defendants obey all of the orders of the court within ten days from the date of said order, that the court will proceed to permanently deprive said defendants and each of them of their property; and the court shall then order said

defendants to show cause within ten days why they should not be involuntarily compelled to assign all of their copyrighted works to the receiver forthwith, and to show cause why all of the funds as collected in the manner aforesaid from licenses, together with all of the copyrighted works including the performing rights thereto of said defendants and members of said combine, should not escheat and be forfeited forever to the state of Washington, and be subject thereafter to administration by the state in the same manner as all other personal property belonging to the state of Washington; if any of said defendants and copyright holders, or owners, do appear before the end of said ten day period, and take oath that they will abide by the future orders of the court and the provisions of this chapter, then the court shall release their copyrighted works and order the state treasurer to return any and all of their money which has been received or seized: PROVIDED, HOWEVER, The court shall retain such jurisdiction over their persons for such time as the court may deem necessary to insure strict compliance with the terms of the court's judgment and the provisions of this chapter; if any of said defendants or copyright owners or holders shall ignore or refuse to obey the show cause order, as aforesaid, or fail to appear at the end of ten days as ordered and abide by the court's judgment, then the court shall make an order and enter judgment to the effect that all of the copyrighted works, including the performing rights thereto, of said defendants and the members of any defendant combination, shall be construed as having been escheated and forfeited to the state of Washington, and the court shall thereupon appoint some officer of the court to execute an involuntary assignment of all the legal and equitable titles to all of the copyrighted works of each of said defendants and members of any defendant combination to the receiver, in the event the defendants or any of their members fail to execute a voluntary assignment, and the receiver shall immediately file said involuntary assignment at the United States Copyright Office at Washington, D.C.; and the court shall then order the receiver to close the estate, and turn the titles to said copyrighted works over by proper assignment from the receiver to the state treasurer of the state of Washington, who shall thereafter administer, issue licenses for the use of the same in a manner consistent with this chapter, and conserve the same as state personal property in his possession, and according to law; and any funds left in the state treasury from said receivership shall escheat and be forfeited to the state and become part of the general fund(~~(: PROVIDED, FURTHER, The state treasurer shall make a report to the legislature on each biennium of the amount of money received from such licensing and the amount of property he has on hand through the enforcement of this chapter)~~).

Passed the Senate May 17, 1977.

Passed the House May 16, 1977.

Approved by the Governor May 26, 1977.

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