

CHAPTER 218.

[H. B. 480.]

PROTECTION OF COPYRIGHTS.

AN ACT in aid of the Federal Copyright Laws, to assist in effectuating their true intent and their enforcement in the State of Washington by removing and declaring illegal certain monopolistic abuses and activities wrongfully practiced under the guise of copyrights within the state by price fixing combinations, monopolies, and pools; to enforce the Washington constitutional provisions prohibiting price fixing monopolies and combinations in restraint of commerce and trade; providing penalties for combining rights granted by the copyright laws where the effect of such combination results in the use of copyright privileges as instrumentalities of oppression and extortion within the state in violation of constitutional provisions; and encouraging the rendition, creation and production of copyrighted works among the school children and citizens of the State of Washington; encouraging the marketing and acceptance of copyrighted works, created by the citizens of this state; repealing certain acts; creating a State Anti-Monopoly Board for a particular function to be exercised only in the event of abuses and violations hereof; defining its duties, and the jurisdiction and duties of courts of record, the duties of the prosecuting attorneys, county auditors, the state treasurer and the secretary of state; and providing for the appointment of a receiver in certain instances; defining certain terms; providing for service of process on nonresidents; prohibiting certain acts; and providing penalties for violation hereof and repealing section 2690 of Remington's Revised Statutes.

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

SECTION 1. Section 2690 of Remington's Revised Statutes is hereby repealed.

SEC. 2. It shall be unlawful for any person who, without the consent of the owner thereof, shall cause to be publicly performed for profit any dramatic composition, or dramatic musical composition commonly called an opera, or other copyrighted works, or any substantial part thereof, which has been copyrighted under the laws of the United

Repeals
§ 2690, Rem.
Rev. Stat.
(§ 8919, P. C.)

Copyrighted
musical and
dramatic
compositions.

States, or for any person to knowingly participate in the performance or representation of any substantial part thereof, or by knowingly selling a substantial copy or any substantial part thereof.

SEC. 3. It shall be unlawful for two or more persons holding or claiming separate copyrighted works under the copyright laws of the United States, either within or without the state, to band together, or to pool their interests for the purpose of fixing the prices on the use of said copyrighted works, or to pool their separate interests or to conspire, federate, or join together, for the purpose of collecting fees in this state, or to issue blanket licenses in this state, for the right to commercially use or perform publicly their separate copyrighted works: *Provided, however,* Such persons may join together if they issue licenses on rates assessed on a per piece system of usage: *Provided, further,* This act shall not apply to any one individual author or composer or copyright holder or owner who may demand any price or fee he or she may choose for the right to use or publicly perform his or her individual copyrighted work or works: *Provided, further,* Such per piece system of licensing must not be in excess of any per piece system in operation in other states where any group or persons affected by this act does business, and all groups and persons affected by this act, are prohibited from discriminating against the citizens of this state by charging higher and more inequitable rates per piece for music licenses in this state than in other states: *Provided, further,* Where the owner, holder, or person having control of any copyrighted work has sold the right to the single use of said copyrighted work, where its sole value is in its use for public performance for profit, and has received any consideration therefor, either within or without the state, then said person or persons shall be deemed to have sold and parted with the right to

Price fixing combinations unlawful.

Per piece system of licensing.

further restrict the use of said copyrighted work or works.

Organization to file list with secretary of state.

SEC. 4. In the event two or more persons holding separate copyrighted musical works, or any rights flowing therefrom, whether by assignment, agency agreements, or by any form of agreement, pool their interests, or combine, or conspire, federate, or join together in any way, whether for a lawful purpose or otherwise, a complete list of their copyrighted works or compositions shall be filed once each year in the office of the secretary of state of the State of Washington, together with a list of the prices charged or demanded for their various copyrighted works; no payment or filing fee shall be required by the secretary of state, and said persons, corporations, or association, foreign or domestic shall state therein under oath, that said list is a complete catalogue of the titles of their claimed compositions, whether musical or dramatic or of any other classification, and in addition to stating the name and title of the copyrighted work it shall recite therein the date each separate work was copyrighted, and the name of the author, the date of its assignment, if any, or the date of the assignment of any interest therein, if any, and the name of the publisher, the name of the present owner, together with the addresses and residences of all parties who have at any time had any interest in such copyrighted work. The secretary of state shall require two copies of said list, one of which he shall keep on file, the other shall be forwarded to the office of the state treasurer at Olympia.

Public record.

SEC. 5. The foregoing list of names and titles, provided for in the preceding section, shall be made available by the secretary of state to all persons for examination, in order that any user of copyrighted works in this state may know the rights and the titles to such copyrighted works as may be claimed by any of said combinations, pools, associations, or

persons as aforesaid; said lists shall be prepared so that all persons may avoid using said copyrighted compositions, if they so desire, and may avoid conflict therewith, and avoid committing innocent infringements of said works; and in order to further effectuate the copyright laws of the United States, the secretary of state shall, if he deems it necessary to protect the citizens of this state from committing innocent violations of the copyright laws of the United States, publish such list once each year in a newspaper of general circulation, in order that all citizens of the state may respect any and all individual rights granted by the United States copyright laws.

SEC. 6. No person, corporation, or association, domestic or foreign, whether doing business in this state as hereinafter defined or not, shall be absolved from the foregoing duty of filing said list of holdings as required in the preceding sections of this act, if their music or copyrighted works are used commercially in this state, or have been used herein, whether originating from a point within the state or from without, and as long as any rendition thereof is received or heard within the state, or is intended to be so received by the originator of any musical program: *Provided, however,* Any individual owner of a copyrighted work or works, not a party to or not connected in any way with any pool, conspiracy, combination, or groups, or association of persons, as prohibited by this act, need not file any such list.

Filing
mandatory.

SEC. 7. It is hereby declared that the production and creation of music and the commercial use of music and of copyrighted works within this state, whether originating at a point from within or without the state, as long as the same shall be rendered and publicly received within the confines of this state, whether mechanically or by radio communication, is a business clothed and affected with the

Business
affected
with a public
interest.

public interest, and the adult educational advantages engendered by the public use of music and in its creation, makes this business one of public necessity, and necessary for the education and training of the youth of this state; that many abuses are practiced under a false guise of Federal protection which only the state with its police power can easily and lawfully restrain, and in order to prohibit, discourage, and prevent monopolistic practices, and to prevent extortion, to encourage free bargaining between the citizens of this state with each other and with those without the state, and in order to give greater effect to the constitutional provisions relating to monopoly and price fixing, and in the general interest of the public, therefore, the legislature in the interest of the peace and dignity of the state, in the interest of good morals and the general welfare of the people of this state, and for greater educational advantages to the public, declares that said business shall be subject to the police power and reasonable regulation of the state government, and such police and regulating power shall be administered by the courts and other officials of this state in a manner consistent with, in aid of, and never in conflict with, the copyright laws of the United States. The provisions of this act, and the administration thereof, shall at all times effectuate the enforcement, the true intent, and meaning of the United States copyright laws in order to prevent abuses from being practiced within this state from points within or from points without the state, by any individual, corporation, or organizations, who attempt to use the Federal courts as innocent instrumentalities in the furtherance of any systematic campaign or scheme designed to illegally fix prices for the commercial use of copyrighted works in this state through the use of extortionate means and terrorizing practices based on threats of suits, and an abuse of both state and Federal process, all of which are declared to be

in violation of this act and of the state constitution; it is further declared that any person or persons, or combines, as aforesaid, who shall violate this act shall be deemed to have used their property within this state in such a way that the same shall have acquired a legal situs, analogous to the situs of other personal tangible property within the state, even though separate from the domicile and residence of the owner: *Provided, further,* The legal situs of any copyrighted work is coextensive about the state, and a copyrighted work used or sold for public use or public performance for profit, if intended to be heard from a point without the state or from a point within the state, is hereby declared to be a commercial commodity, and its legal situs is hereby declared to be within the State of Washington.

Legal situs of copyrighted work.

SEC. 8. All persons, groups, corporations, associations, foreign or domestic, violating this chapter, shall be deemed to have been doing business within this state and amenable to the process of the state courts, when any such persons, combinations, or groups shall have issued licenses, either from within or from without the state, for the privilege of using commercially and publicly any copyrighted work or works pooled in a common group or entity, or when any of the functions of said entity, organization, pool, or combine, is or has been performed in this state; and the business of spying upon and the warning of users of the copyrighted works of such combinations, in addition to the presence within the state of such persons, and the activities of such persons or their agents at any time or occasion for the detection of infringements within this state, shall be conclusive evidence that such combinations and persons, even though nonresidents, have accepted the privileges of doing business within this state, and such persons, if they abide by the provisions of this act, shall be granted the privilege of conducting busi-

What constitutes doing business within state.

ness within this state in a legal manner, and may invoke the benefits of the state government and its political subdivisions in their behalf, and they may use all of the privileges available to the citizens of this state in general, and the use at any time of any general privilege available to any citizen of this state, by any of such agents, their attorneys, or representative, or investigator, or by any aider and abettor, or any nonresident person, group, entity, or combination as aforesaid, shall be deemed to be an acceptance of the provisions of this act; and all licensees of any violator of this act shall be deemed as aiders and abettors of said persons and subject to the provisions of this act unless they forthwith indicate their obedience herewith; and the acceptance of the general privileges of the State of Washington by any nonresident copyright holder or owner, or combination, defendant, or person, or organization of any kind, or entity, through an investigator, attorney, agent, representative, or through any aider and abettor as herein defined, and the acceptance by such persons of the rights, police protection, or of any general privilege conferred by the law of this state to any of its citizens, including the use of the roads and highways, or the privileges of any of its political subdivisions, as evidenced by their presence within the state at any time, shall be deemed equivalent to and construed to be an appointment by such nonresident or nonresidents, as the case may be, of the secretary of state of the State of Washington to be his or their true and lawful attorney upon whom may be served all summons and processes against him or them and growing out of a violation of this act, in which said nonresident may be involved, and said acceptance of the privileges of this state, as aforesaid, shall be a signification of his or their agreement that any summons or process against him or them which is so served shall be of the same legal force and

Secretary of
state legal
representative.

Service of
process.

validity as if served on him or them personally within the State of Washington. Service of such summons or process shall be made by leaving a copy thereof with a fee of two dollars (\$2) with the secretary of the State of Washington, or in his office, and such service shall be sufficient and valid personal service upon any such nonresident defendant, copy-right holder or owner, persons, or defendants, combination, entity, or organization, as aforesaid: *Provided*, That notice of such service and a copy of the summons of process shall be forthwith sent by registered mail requiring personal delivery, by the prosecutor bringing any action under this act, to any defendant at his last known address, and the defendant's return receipt and the prosecutor's affidavit of compliance herewith are appended to the process and entered as a part of the return thereof: *Provided, further*, The court in which any action is brought may order such continuances as may be necessary to afford any nonresident defendant or groups, or entity, a reasonable opportunity to defend the action: *Provided, further*, The secretary of state shall keep a record of all such summons and process which shall show the day and time of service; and valid personal service shall thus be had on nonresident persons or individuals, entities, firms, or corporations violating this act.

SEC. 9. 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 act, 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

Injunction
proceedings.

in the preceding section; and the court shall enjoin all persons from violating the provisions of this act 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 act, 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 (3) 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 monies 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 act, and to compel any defendant to abide herewith: *Provided*, Any sums paid on licenses violating this act 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 act: *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 act or the court's orders ineffectual, or to deprive the citizens of this state of such commodity, or to hamper the enforcement of any provision of this act, 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 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 act, the board 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 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 act; 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; 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 act, 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 act; 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 act, 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 act.

Appearance.

SEC. 10. That in the event any person, or any of the defendants, or nonresidents, or nonresident copyright owners or holders, are proceeded against as herein outlined, and are served with process according to law, or any nonresident is served with process as outlined in the preceding sections of this act, and if any of said defendants, or persons, or aiders and abettors named as defendants, appear in any such proceeding by counsel or otherwise, or institute any special proceeding attacking such proceeding, or make any motion therein, either special or general, or if any of them appear to obtain the judgment of the court solely upon the sufficiency of the service of the process upon them, or upon any

phase or particularity of said injunction proceedings, such special proceeding or appearance, or motion, or appearance, as the case may be, shall nevertheless be deemed as a general appearance even though the process may have been insufficient, and said parties and defendants as may thus appear in the action, for any reason or cause, whether they seek special or affirmative relief, shall thereafter be subject to the general orders and jurisdiction of the court for all purposes, and if any of said defendants or persons appear in any court proceeding instituted to effectuate this act solely for the purpose of challenging the validity of service of process upon them they shall be deemed to have surrendered themselves and as having submitted to the general jurisdiction of the court: *Provided, however,* This section shall not be construed as denying, and no attempt shall be made at any time in any proceeding in connection with the enforcement of this act, to restrain or deny any of said defendants, resident or nonresident, copyright holders or owners, or any person, or members of any defendant combination, entity, pool, or monopoly of their rights or property without full and complete due process of law.

SEC. 11. Every person, in addition to the other Penalty. penalties provided in this act, who violates or who procures, or aids or abets in the violating of any provision of this act, or who conspires to render ineffectual any valid order or decision of any court in the enforcement of this act, or who procures, conspires with, or aids or abets any person or persons in his or their failure to obey the provisions of this act, or to render ineffectual any valid order of any court in connection with the enforcement of this act shall be deemed guilty of a gross misdemeanor, and upon conviction, shall be punished by a fine not exceeding five hundred dollars (\$500), or imprisonment in the county jail for not more than six month[s], or both such fine and imprisonment.

Partial
invalidity.

SEC. 12. In case any part or portion of this act shall be held unconstitutional, such holding shall not affect the validity of this act as a whole or any other part or portion of this act, and if any clause, sentence, paragraph, subdivision, section or part of this act shall for any reason be adjudged invalid, such judgment shall not affect, impair, or invalidate the remainder of the act, but shall be strictly confined in its operation and holding to the specific clause, sentence, paragraph, subdivision, section, or part thereof, directly involved in the controversy in which such judgment shall have been rendered; and all other acts and laws in conflict herewith are hereby repealed.

Consolida-
tion of
actions.

SEC. 13. In the event more than one injunction suit provided for in this act is instituted in this state, in different counties by different prosecuting attorneys, but against the same defendants, the respective superior judges hearing the causes may issue orders against said defendants in any county, but in the event any of the various county proceedings enter into the state of receivership, as herein provided, then the judges hearing the respective causes shall order those causes where the defendants are the same, to be consolidated in one action in one particular county, and in such county as the judges may decide, to the end that only one receiver may be appointed for the entire state for the property of the same defendant or defendants.

Vetoed.

SEC. 14. That all persons, firms, corporations or associations, or the agents or representatives of any persons, firms, corporations or associations, who shall collect or attempt to collect or receive money or other valuable consideration for rights, royalties, rents, or fees on copyrighted music books, recorded music for mechanical reproduction, or radio programs, from any person, firm, corporation or association using such copyrighted music books, recorded

music for mechanical reproduction, or radio programs, within this state, shall pay a license fee for each and every county of this state wherein such royalties, rents or fees are collected, or attempted to be collected, in the sum of three thousand dollars (\$3,000.00): *Provided*, That the provisions of this act shall not apply to any patented equipment used in producing moving or talking pictures, or any patented equipment used in connection with the reproduction of sound or music or speech in connection with moving or talking pictures.

SEC. 15. Applications for licenses shall be made in duplicate and shall be accompanied by such fees as herein provided, payable to the state treasurer, which shall be filed in the office of the department of licenses. The director of licenses shall, upon receipt of same, issue to the licensee a license for the purposes herein described, which shall be valid for one (1) year, commencing on the first day of January and ending on the thirty-first day of December of each year.

Vetoed.

SEC. 16. Every person, firm or corporation or agent thereof who shall make any collection or attempt to collect such money as provided in section 14 without first paying a license fee, shall be guilty of a gross misdemeanor.

SEC. 17. No person, firm or corporation or agent thereof shall be permitted to bring a suit in any of the courts of this state for the recovery of any money judgment unless such person, firm or corporation or agent thereof shall first have paid the license fee as herein provided.

Passed the House March 8, 1937.

Passed the Senate March 8, 1937.

Approved by the Governor March 19, 1937, with the exception of sections 14, 15, 16 and 17, which are vetoed.