

MAINE STATE LEGISLATURE

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N I N E T Y - S I X T H L E G I S L A T U R E

Legislative Document

No. 1335

S. P. 479

In Senate, March 11, 1953.

Referred to Committee on Legal Affairs. Sent down for concurrence and ordered printed.

CHESTER T. WINSLOW, Secretary

Presented by Senator Weeks of Cumberland by request.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FIFTY-THREE

**AN ACT Relating to Combinations Restricting Use of Musical
Compositions.**

Be it enacted by the People of the State of Maine, as follows:

R. S., c. 124-A, additional. The revised statutes are hereby amended by adding thereto a new chapter to be numbered 124-A, to read as follows:

'CHAPTER 124-A.

**COMBINATIONS RESTRICTING USE OF MUSICAL
COMPOSITIONS**

Sec. 1. Monopolies and restraint of trade as to use of copyrighted musical compositions; combinations to fix prices, etc., unlawful. It is unlawful for authors, composers, publishers, owners, or their heirs, successors or assigns, of copyrighted vocal or instrumental musical compositions to form any society, association, partnership, corporation or other group or entity, called herein a combination, when the members therein constitute a substantial number of the persons within the United States who own or control copyrighted vocal or instrumental and musical compositions, and when one of the objects of such combination is the determination and fixation of license fees or other exactions required by such combination for

itself or its members or other interested parties for any use or rendition of copyrighted vocal or instrumental musical compositions for private or public performance for profit.

The collection or attempted collection of such license fee or other exaction so fixed and determined by any member, agent or representative of such combination from any person within this state, including theatres, radio receiving, radio broadcasting and radio rebroadcasting stations, moving picture houses, hotels, restaurants, clubs, dance halls, recreation rooms, pavilions, colleges, universities, churches or any one who uses music in the conduct of his business, or the officers, directors, proprietors, managers, owners or representatives thereof, who render or cause to be rendered or permit to be rendered such copyrighted vocal or instrumental musical compositions privately or publicly for profit through personal performance, or through radio or any instrumentality of sound producing apparatus is unlawful and illegal.

The license fees or other exactions by such combination or its agents, members or interested parties shall not be collected in any court within the boundaries of this state; and the collection or attempted collection of such license fee or other exaction by such combination or its agents, members or interested parties, shall be a separate offense hereunder; and any such combination of authors, composers or publishers, or their heirs, successors or assigns, is declared to be an unlawful monopoly in this state; and the fixing of prices or exactions for use or rendition of copyrighted musical compositions and the collecting or attempting to collect such license fees or other exactions by it or for its members or other interested parties, is declared illegal and in restraint of trade; and such collection or attempted collection is declared to be an intrastate transaction within this state, and shall be subject to the terms and penalties of this chapter.

Sec. 2. Common law rights abolished. When any phonograph record or electrical transcription, upon which musical performances are embodied, is sold in commerce for use within this state, all asserted common law rights to further restrict or to collect royalties on the commercial use made of any such recorded performances by any person are hereby abrogated and expressly repealed. When such article or chattel has been sold in commerce, any asserted intangible rights shall be deemed to have passed to the purchaser upon the purchase of the chattel itself, and the right to further restrict the use made of phonograph records or electrical transcriptions, whose sole value is in their use, is hereby forbidden and abrogated.

Sec. 3. Rights under copyright laws unaffected. Nothing in section

2 or this section shall be deemed to deny the rights granted any person by the United States copyright laws. The sole intentment of this enactment is to abolish any common law rights attaching to phonograph records and electrical transcriptions, whose sole value is in their use, and to forbid further restrictions or the collection of subsequent fees and royalties on phonograph records and electrical transcriptions by performers who were paid for the initial performance at the recording thereof.

Sec. 4. Construction of law as to resale, fixing price, etc. Nothing in sections 4 to 18, inclusive, shall be construed to give to any purchaser of copyrighted musical compositions, as herein provided, the right to resell, copy, print, publish or vend the same; nor to prevent authors and composers from determining and fixing the price to be charged for the use or rendition of their copyrighted musical compositions, provided such authors and composers act independently of any such combination as is in section 1 declared unlawful.

Sec. 5. Existing contracts made with unlawful combinations declared void. All contracts, agreements or licenses now existing within this state, made by any person with any combination declared unlawful under section 1, are void and nonenforceable in any court within this state, and are declared to have been entered into as intrastate transactions with such unlawful combinations and in restraint of trade. All such contracts, agreements, licenses and the attempted enforcement thereof may be enjoined by any person sought to be bound thereby; and any agent, member or representative of such unlawful combination enforcing or attempting to enforce the terms of such existing contract, agreement or license, shall be guilty of a violation of the terms of this chapter; and for any collection or attempted collection of moneys set out in the illegal contract, agreement or license, shall be subject to the penalties of section 18.

Sec. 6. Broadcasts by radio stations within state. Any person who owns, leases, operates or manages a radio broadcasting, radio receiving or radio rebroadcasting station within this state, may receive, broadcast and rebroadcast copyrighted vocal or instrumental musical compositions, the copyrights of which are owned or controlled by any combination declared unlawful by section 1, without the payment, to such combination or to its agents, representatives or assigns, of any license fee or other exaction declared illegal and non-collectible by the terms hereof.

Sec. 7. Radio stations within state affiliated with stations outside of state using compositions. When a radio receiving, radio broadcasting or radio rebroadcasting station is affiliated with any person owning, leasing

or operating a radio broadcasting station outside this state from whence copyrighted vocal or instrumental musical compositions originate or emanate, and which are received, used, broadcast or rebroadcast within this state, in accordance with terms of any affiliation, agreement or other contract, then such person owning, leasing, operating or managing a radio broadcasting station outside this state, is prohibited from in any manner charging or attempting to charge, or collecting or attempting to collect, from any person who owns, leases, operates or manages a radio broadcasting, radio receiving or radio rebroadcasting station within this state, any herein declared noncollectible license fee or other exaction, for the purpose of paying or repaying the same outside this state to any combination, or its members, stockholders or other interested parties, declared unlawful by section 1.

Any person collecting or attempting to collect such license fee or other exaction against such persons within this state for the purpose of paying or reimbursing itself for having paid any such license fee or other exaction herein declared unlawful and noncollectible, shall be deemed guilty of a violation of the provisions of this chapter; and the person from without this state is declared to be an agent and representative of such combination as declared illegal and unlawful by section 1 and shall be subject to all the penalties hereof.

Sec. 8. Use of compositions by theater, etc., where same unlawfully restricted. Any person who owns, operates or manages any theater, moving picture houses, or a similar place for amusement and public performance within this state may receive, use and render, or cause to be received, used and rendered, by the personal performance of artists, singers, musicians, orchestras, bands or actors, or by loud speakers, radio, sound production or reproduction apparatus or instrumentalities, or electrical transcriptions, or by any other means of rendition whatsoever, copyrighted vocal or instrumental musical compositions, the copyrights of which are owned or controlled by any combination declared unlawful by section 1 without the payment, to such combination, or to its agents, representatives or assigns, of any license fee or other exaction declared illegal and noncollectible by the terms of this chapter.

Sec. 9. Theaters, etc., using compositions of concerns outside of state. When such theater, moving picture house, or other place for amusement or performance is affiliated or under contract in any manner whatsoever with any person furnishing in any form or manner copyrighted musical compositions from outside this state, or supplying such persons in this state with

radio broadcasts or electrical transcriptions, sound production instrumentalities or apparatus, or artists, performers, musicians, signers, players, orchestras, bands or other artists or talent, wherein or whereby copyrighted vocal or instrumental musical compositions are privately or publicly rendered for profit, then such person outside this state is prohibited from in any manner charging or attempting to charge, or collecting or attempting to collect, from any person who owns, leases, operates or manages such theater, moving picture house, or other place for amusement or public performance within this state, any license fee or other exaction for the purpose of paying or repaying the same to any combination declared unlawful by section 1 for the use, rendition or performance of such copyrighted musical compositions.

Any person collecting, or attempting to collect, such license fee or other exaction from outside this state against such persons within this state for the purpose of paying or reimbursing itself for having paid any such license fee or other exaction herein declared unlawful and noncollectible, shall be deemed guilty of a violation of the provisions of this chapter; and such person from without this state is declared to be an agent and representative of such combination declared illegal and unlawful by section 1 and shall be subject to all the penalties hereof.

Sec. 10. Contract with the owners or agents of theaters. Combinations of owners of copyrighted music as defined and prohibited in this chapter shall have the right to contract with theater owners in the state for the sale of the public performance rights of the music owned or controlled by said combination, despite the provisions of this chapter, provided, however, this section shall not relieve any such combination from any taxes or fees levied by this chapter, nor any provisions relating to filing contracts and other information thereunder.

Sec. 11. Representatives of unlawful combinations; service of process. Any person within this state who shall act as the representative of any combination declared unlawful in section 1, shall, for the purpose of this chapter, be deemed an official representative and agent of such unlawful combination and shall be construed to be doing business within this state, and service of any process against such combination may be had upon such representative or the agent of such representative. When so served, such process shall have the same legal effect as if served upon a duly elected officer or managing agent or other official representative upon whom service might otherwise be made upon such combination within this state.

Sec. 12. Collectors of license fees considered part of unlawful combina-

tions. Any person who negotiates for, or collects, or attempts to collect license fees or other exactions, or who acts as the representative or agent for any combination declared unlawful in section 1, shall, for the purpose of this chapter, be considered as a part of said unlawful combinations; and such person shall be subject to all the penalties in this chapter provided for violations thereof.

Sec. 13. Injunctions to restrain violations. The superior court shall have jurisdiction to prevent and restrain violations of sections 1 to 18, inclusive, and, on the complaint of any party aggrieved because of the violation of any of the terms of sections 1 to 18, inclusive, anywhere within this state, the county attorneys in their respective counties, under the direction of the attorney general, shall institute proceedings, civil or criminal or both, under the terms hereof against any combination as defined in section 1, against any of its members, agents or representatives, to enforce any of the rights herein conferred, and to impose any of the penalties herein provided, or to dissolve any such combination. In civil actions such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of having been duly notified of such petition, the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order as shall be deemed equitable.

Sec. 14. Persons aggrieved authorized to sue. Any person in this state aggrieved by reason of anything forbidden in sections 1 to 18, inclusive, may sue therefor in the superior court in the county in which the violation or a part thereof took place, to recover any damages assessed as a result of the violation of the terms of sections 1 to 18, inclusive, and shall be entitled to recover his costs, including reasonable attorney's fees to be fixed by the court in such action.

Sec. 15. Civil suits by parties aggrieved. In the event of the failure of the county attorney and attorney general to act promptly, when requested so to do by any aggrieved party, then such party may institute a civil proceeding in his own behalf, or upon behalf of plaintiff and others similarly situated, as the county attorney and the attorney general could have instituted under the terms of this chapter.

Sec. 16. Petition requiring defendant to produce records, etc. In any proceeding brought under the terms of sections 1 to 18, inclusive, any attorney of record for the plaintiff may file with the clerk of the court in which such action is pending, a petition praying that the defendant be re-

quired to file with the clerk of said court exact copies of all documentary evidence, records or data in the possession or under the control of said defendant pertaining to the issues as alleged by the plaintiff in the cause; and the superior court, upon the presentation to it of such petition, shall determine what part, or all, or any of such evidence shall be produced, and enter an order to that effect. A copy of such order shall be mailed to each defendant at his last known address, which shall be deemed sufficient notice and service upon such defendant; or, the same may be served by mail in the same manner upon the attorney of record for the defendant, and this shall be deemed sufficient notice and service upon said defendant.

Sec. 17. Failure of defendant to file records, etc.; penalty. If said defendant shall fail to file with the clerk of the court in which such action is pending said copy of documentary evidence, records or data, and within the time provided in said order, the court shall adjudge such defendant guilty of contempt and shall assess a fine of \$100 against the defendant for each day that such defendant fails to comply with said order, and judgment shall be entered accordingly. The plaintiff may collect the same against the defendant with interest thereon and costs, including a reasonable attorney's fee. The court shall determine when the judgment is rendered what disposition shall be made of the proceeds collected after the payment of costs and attorney's fees.

Sec. 18. Penalty for violations of sections 1 to 17, inclusive. Any combination as in section 1 declared to be unlawful, and any other person acting or attempting to act within this state in violation of the terms of sections 1 to 17, inclusive, or any representative or agent of any person who aids or attempts to aid any unlawful combinations as defined in section 1, in the violation of any of the terms of sections 1 to 17, inclusive, in any manner whatsoever, shall be punished by a fine of not less than \$50 nor more than \$5,000, or by imprisonment for not less than 1 nor more than 10 years.

Sec. 19. Public performance rights in copyrighted musical compositions, etc.; definitions. As used in sections 19 to 35, inclusive, "person" means any individual, resident or non-resident, of this state, and every domestic or foreign or alien partnership, society, association or corporation; the words "performing rights" refer to "public performance for profit"; the word "user" means any person who directly or indirectly performs or causes to be performed musical compositions for profit; the term "blanket license" includes any device whereby public performance for profit is authorized of the combined copyrights of 2 or more owners; the term "blanket royalty or fee" includes any device whereby prices for performing rights are not based on the separate performance of individual copyrights.

Sec. 20. Conditions under which sale of performing rights may be made. It is unlawful for any person to sell, license the use of, or in any manner whatsoever dispose of, in this state, the performing rights in or to any musical composition or dramatico-musical composition which has been copyrighted, and is the subject of a valid existing copyright, under the laws of the United States, or to collect any compensation on account of any such sale, license or other disposition, unless such person:

I. Shall first have filed with the secretary of state on forms prescribed by the secretary of state a list describing each musical composition and dramatico-musical composition, the performing rights in which said person intends to sell, license or otherwise dispose of in this state, which description shall include the following: The name and title of the copyrighted composition, the date of the copyright, the number or other identifying symbol given thereto in the United States copyright office, the name of the author, the name of the publisher, the name of the present owner of the copyright to said composition, and the name of the present owner of the performing rights thereto. Additional lists of such copyrighted compositions may be filed by any such person from time to time, and shall be subject to all the provisions of this chapter. A filing fee of 2c a composition shall be required by the secretary of state for filing any list under this chapter.

II. Shall simultaneously file an affidavit which shall describe the performing rights to be sold, licensed or otherwise disposed of and shall state that the compositions so listed are copyrighted under the laws of the United States, that the facts contained in the list to which said affidavit relates are true, that affiant has full authority to sell, license or otherwise dispose of the performing rights in such composition. The affidavit shall set forth the name, age, occupation and residence of the affiant; and if an agent, the name, occupation and residence of his principal.

Sec. 21. List of copyrighted compositions. The list provided for in section 20 shall be made available by the secretary of state to all persons for examination, and taking of copies, in order that any user of such compositions in this state may be fully advised concerning the performing rights therein, and avoid being overreached by false claims of ownership of said performing rights, and also avoid committing innocent infringements of said works. The secretary of state may, in order to prevent such overreaching and to protect the citizens of this state from committing innocent violations of the copyright laws of the United States, cause a list of all such

copyrighted material filed with him to be published once a year or oftener in a form and medium which he shall deem suitable for said purposes. A duplicate of any list so filed by any such person shall at his request be certified by the secretary of state and shall by the secretary of state be given or delivered to such person, who shall exhibit the same on demand of anyone to whom such person seeks to sell, license or otherwise dispose of said performing rights.

Sec. 22. Unlawful combinations. It is unlawful for 2 or more owners of the copyrights of musical compositions or dramatico-musical compositions to associate or combine together in any manner, directly or indirectly, for the purpose of issuing blanket licenses for the public performance for profit of their combinations upon a blanket royalty or fee covering more than one, or all, of such compositions owned or controlled by the members of such association unless each individual copyright owner included in such association, or such association in behalf of each individual copyright owner, also shall make available to each user of such composition within the state, at the option of the user, the right to perform publicly for profit each such copyrighted musical composition owned by him at a price established for each separate performance of each such composition.

To this end, there shall be filed with the secretary of state, either as a part of the list required by section 20 or as a separate document by such copyright owner, or by such association in behalf of such owner, a schedule of prices for the performing rights to each separate performance for profit of each composition contained in such list, together with an affidavit of the copyright owner of such compositions that the price so stated has been determined by such copyright owner acting for himself and not either directly or indirectly in concert or by agreement with the owner of any other copyrights. Such schedule of prices may contain reasonable classifications determined by use and function, or either, of the users of said compositions, with separate price for each classification; provided, that there is equal treatment of all persons within each classification and that there is no unreasonable discrimination between classifications.

Any copyright owner may at his election fix one price which shall be applicable to each rendition of each of such compositions owned by him except to the extent that he elects to name specific compositions and to fix other prices for each rendition thereof; and said prices shall remain in force and effect until a new schedule of prices with respect to the performing rights to such compositions has been similarly filed in the office of the secretary of state, at any time, at the election of such owner, changes in prices to become effective 7 days from the date of filing thereof. The schedule of

prices provided for herein shall be made available by the secretary of state to all persons for examination and the taking of copies, and may be published by him in the same manner as provided in section 21.

Sec. 23. Blanket license. Any person issuing a blanket license for performance rights shall file with the secretary of state within 30 days from the date such blanket license is issued, a true and complete copy of each such license issued or sold with respect to performance within this state, together with the affidavit of such person that such copy is a true and complete copy of the original and that it sets forth each and every agreement between the parties thereto with respect to such performing rights. The secretary of state shall charge for filing such contracts the same fee allowed clerks of court for similar services.

Sec. 24. Charge for performance rights based on program not containing copyrighted compositions. It is unlawful for any person selling, licensing the use of or in any manner whatsoever disposing of or contracting to dispose of, in this state, the performing rights in or to any musical composition of dramatico-musical composition, to make any charge or to contract for or collect any compensation as a condition of using said performing rights based in whole or in part on any program not containing any such composition, and any such charge or contract for compensation shall be valid and enforceable only to the extent that it is based and computed upon a program in which such composition is rendered.

Sec. 25. Charge for performance rights on unlisted compositions. It is unlawful for any person selling, licensing the use of or in any manner whatsoever disposing of or contracting to dispose of in this state public performing rights in or to any musical composition or dramatico-musical composition to make any charge or to contract for or collect any compensation for the use or performance of any such compensation that has not been listed with the secretary of state as provided in section 20.

Sec. 26. Secretary of state to accept service of process on owner. At the time of filing the information required in sections 20 and 21, the owner of said performing rights shall execute and deliver to the secretary of state on a form to be furnished by the secretary of state, an authorization empowering the secretary of state to accept service of process on such person in any action or proceeding, whether cognizable at law or in equity, arising under this chapter, and designating the address of such person until the same shall be changed by a new form similarly filed. Service of process may thereafter be effected in this state on such person in any action or proceeding by serving the secretary of state with duplicate copies of such

process; and immediately upon receipt thereof the secretary of state shall mail one of the duplicate copies by registered mail to the address of such person as stated on authorization last filed by him. A filing fee of \$5 shall accompany this notice and shall be credited to the general fund.

Sec. 27. Actions with respect to performing rights; prerequisites. No person may commence or maintain any action or proceeding in any court with respect to such performing rights, or collect any compensation on account of any sale, license or other disposition of such performing rights, in this state, except upon pleading and proving compliance with the provisions of sections 19 to 35, inclusive.

Copies, certified by the secretary of state as such, of the lists, license agreements, affidavits and other documents filed with the secretary of state pursuant to the requirements of sections 19 to 35, inclusive, shall be furnished by the secretary of state to any person upon request at the prices regularly charged by a clerk of the superior court for such work. Such certified copies shall be admitted in evidence in any action or proceeding in any court to the same extent as the original thereof.

Sec. 28. Gross receipts tax; authority of state tax assessor. There is levied, and there shall be collected, a tax, for the act or privilege of selling, licensing or otherwise disposing of performing rights in compositions in this state, in an amount equal to 3% of the gross receipts of all such sales, licenses or other dispositions of performing rights in this state, payable annually to the state tax assessor on or before the 15th day of March of each year, with respect to the gross receipts of the preceding calendar year. A return on a form prescribed by the state tax assessor shall be made by all persons subject to this tax on or before the 15th day of March of every year which shall accompany a remittance of the tax due.

The state tax assessor through his authorized agents may examine and audit the books and records of any person he may deem subject to the tax or fees under this chapter and may require such persons to appear before him at his office in Augusta, with such records and papers as may be necessary, after giving 30 days' notice to such person through said person's authorized agent, the secretary of state.

The state tax assessor through his authorized agents may examine and audit the books, records and accounts of any licensee or user making payments for use of public performing rights in the state to any person in order that the state tax assessor may determine or check on gross receipts of those selling or licensing public performing rights in the state. Any per-

son refusing the state tax assessor or his duly authorized agents access to such books, records and accounts shall be subject to penalties prescribed in section 35 and may be required to appear in person with all books, papers and accounts required by the state tax assessor at the state tax assessor's office in Augusta, within 10 days after receipt of notice which the state tax assessor shall send by "registered mail, return receipt requested."

Should the state tax assessor determine that any person liable for any tax or fees under this chapter has made an incorrect return or has made no return at all, or has failed to pay any tax or fees due, the state tax assessor shall after determining the amount of such tax or fees due the state, from the best information at his command, certify such claim for delinquent taxes and shall apply to a justice of the superior court in Kennebec county for the appointment of a receiver to take over and administer all assets of said delinquent taxpayer in the state.

The superior court justice, upon the state tax assessor's application properly authenticated, shall appoint some agent of the state tax assessor as receiver, to serve without further compensation, but who shall be allowed all actual expenses. After posting such bond as the justice may determine proper, the receiver shall take over and administer the affairs of said delinquent taxpayer within the state, collect amounts and do all things necessary to protect the interests of both the state and the said delinquent taxpayer and from such collections as he may make, he shall first pay the expenses of the receivership and any litigation incident thereto and the tax plus interest at the rate of 2% per month or fraction thereof from the last day of the year for which the tax was due.

After having satisfied the claims of the state and paid all costs of the receivership, the receiver shall make a return to the court which shall order all assets returned to the taxpayer.

Sec. 29. Unlawful to publicly perform compositions without owner's consent. It is unlawful for any person, without the consent of the owner thereof, if said owner shall have complied with the provisions of this chapter, publicly to perform for profit, in this state, any such composition, or for any person knowingly to participate in the public performance for profit of such composition, or any part thereof.

Sec. 30. Illegal collection of license fees, etc. Any person who negotiates, collects or attempts to collect license fees or other exactions or acts in any capacity whatsoever as a representative or agent for any person owning public performing rights of any copyrighted composition shall be subject to all the penalties in this chapter provided for violations thereof.

Sec. 31. Suit by party aggrieved for violations. Any person in this state aggrieved by reason of any violation of this chapter may sue in the superior court of the county in which he resides or of the county in which the violation took place to recover any damages as the result of the violation of the terms of sections 19 to 34, inclusive, or to require specific performance under the provisions of sections 19 to 34, inclusive, and shall be entitled to recover his costs, including reasonable attorney's fees to be fixed by the court.

Sec. 32. Injunction to restrain violations. The several superior courts shall have jurisdiction to prevent and restrain violations of sections 19 to 34, inclusive, and, on the complaint of any party aggrieved because of the violation of any of the terms of said sections anywhere within this state, the county attorneys in their respective counties, under the direction of the attorney general shall institute proceedings, civil or criminal or both under the terms hereof, to enforce any of the rights herein conferred, and to impose any of the penalties herein provided. In civil actions such proceeding may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of have been duly notified of such petition, the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order as shall be deemed equitable.

Sec. 33. Suit by aggrieved party in own behalf. In the event of the failure of the county attorney and attorney general to act promptly, as herein provided, when requested to do so by any aggrieved party, then such party may institute a civil proceeding in his own behalf, or upon behalf of plaintiff and others similarly situated, as the county attorney and the attorney general could have instituted under the terms of this chapter.

Sec. 34. Costs and expenses; appropriations. Sufficient moneys shall be appropriated for payment of the costs and expenses of enforcing this chapter, and all taxes and fees levied and collected shall be paid into the general fund.

Sec. 35. Penalty for violations of sections 19 to 34. Any violation of sections 19 to 34, inclusive, shall constitute a misdemeanor, to be punished as provided elsewhere in the laws of this state.'