

HOUSE No. 1626

By Mr. Connors of Waltham, petition of Charles H. McGlue for legislation to establish an anti-monopoly board for regulating the use and abuse of the copyright law and to discourage price fixing and monopolistic practices. State Administration.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Forty-Nine.

AN ACT TO ESTABLISH AN ANTI-MONOPOLY BOARD SO AS TO FURTHER REGULATE THE USE AND ABUSE OF THE COPYRIGHT LAW, AND TO FURTHER DISCOURAGE PRICE FIXING AND MONOPOLISTIC PRACTICES WITHIN THE COMMONWEALTH.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. It shall be unlawful for any person
2 who, without the consent of the owner thereof,
3 shall cause to be publicly performed for profit any
4 dramatic composition, or dramatic musical com-
5 position commonly called an opera, or other copy-
6 righted works, or any substantial part thereof,
7 which has been copyrighted under the laws of the
8 United States, or for any person to knowingly
9 participate in the performance or representation
10 of any substantial part thereof, or by knowingly
11 selling a substantial copy or any substantial part
12 thereof.

1 SECTION 2. It shall be unlawful for two or more
2 persons holding or claiming separated copyrighted
3 works under the copyright laws of the United States,
4 either within or without the commonwealth, to
5 band together, or to pool their interests for the
6 purpose of fixing the prices on the use of said copy-
7 righted works, or to pool their separate interests
8 or to conspire, federate, or join together, for the
9 purpose of collecting fees in this state, or to issue
10 blanket licenses in this commonwealth, for the
11 right to commercially use or publicly perform their
12 separate copyrighted works; provided, however,
13 such persons may join together if they issue licenses
14 at rates based on a per piece system of usage; pro-
15 vided, further, that this act shall not apply to any
16 one individual author, composer, or copyright
17 holder or owner who may demand any price or fee
18 he or she may choose for the right to use or publicly
19 perform his or her individual copyrighted work
20 or works; and provided, further, such per piece
21 system of licensing must not be in excess of any
22 per piece system in operation in other states where
23 any group or persons affected by this act, does
24 business, and all groups and persons affected by
25 this act, are prohibited from discriminating against
26 the citizens of this commonwealth by charging
27 higher and more inequitable rates per piece for
28 music licenses in this commonwealth than in other
29 states; provided, further, where the owner, holder,
30 or person having control of any copyrighted work
31 has sold the right to the single use of such copy-
32 righted work, where its sole value is in its use for
33 public performance for profit, and has received

34 any consideration therefor, either within or without
35 the commonwealth, then said person or persons
36 shall be deemed to have sold and parted with the
37 right to further restrict the use of said copyrighted
38 work or works.

1 SECTION 3. In the event two or more persons
2 holding separate copyrighted musical works, or
3 any rights flowing therefrom, whether by assign-
4 ment, agency, or agreements, or by any form of
5 agreement, pool their interests or combine or con-
6 spire, federate or form together in any way, whether
7 for a lawful purpose or otherwise, a complete list
8 of their copyrighted works or compositions shall
9 be filed once each year in the office of the secretary
10 of state, together with a list of the prices charged
11 or demanded for their various copyrighted works;
12 no payment or filing fee shall be required by the
13 secretary of state, and said persons, corporation,
14 or association, foreign or domestic, shall state
15 therein, under oath, that said list is a complete
16 catalogue of the titles of their claimed composi-
17 tions, whether musical or dramatic or of any other
18 classification, and in addition to stating the name
19 and title of the copyrighted work, it shall state
20 therein the date each separate work was copy-
21 righted, and the name of the author, the date of
22 its assignment, if any, or the date of the assignment
23 of any interest therein, if any, and the name of
24 the publisher, the name of the present owner, to-
25 gether with the addresses and residences of all
26 parties who have at any time had any interest in
27 such copyrighted work. The secretary of state

28 shall require two copies of said list, one of which
29 he shall keep on file, the other shall be forwarded
30 to the office of the state treasurer at Boston.

1 SECTION 4. The foregoing list of names and
2 titles provided for in the preceding section, shall
3 be made available by the secretary of state to all
4 persons for examination, in order that any user of
5 the copyrighted works in this commonwealth may
6 know the rights and the titles to such copyrighted
7 works as may be claimed by any of said combi-
8 nations, pools, associations, or persons as afore-
9 said; said lists shall be prepared so that all persons
10 may avoid using said copyrighted compositions,
11 if they so desire, and may avoid conflict therewith,
12 and avoid committing innocent infringements of
13 said works; and in order to further effectuate the
14 copyrighted laws of the United States, the secretary
15 of state shall, if he deems it necessary to protect
16 the citizens of this commonwealth from committing
17 innocent violations of the copyright laws of the
18 United States, publish such list once each year
19 in a newspaper of general circulation, in order that
20 all citizens of the commonwealth may respect any
21 and all individual rights granted by the United
22 States copyright laws.

1 SECTION 5. No person, corporation, or associ-
2 ation, foreign or domestic, whether doing business
3 in this commonwealth as hereinafter defined or
4 not, shall be absolved from the foregoing duty of
5 filing said list of holdings as required in the pre-
6 ceding sections of this act, if their music or copy-
7 righted works are used commercially in this common-

8 wealth, or have been used herein, whether origi-
9 nating from a point within the commonwealth
10 or without, and as long as any rendition thereof
11 is received or heard within the commonwealth, or
12 is intended to be so received by the originator of
13 any musical program; provided, however, any
14 individual owner of a copyrighted work or works,
15 not a party to or not connected in any way with
16 any pool, conspiracy, combination, or group of
17 persons, as prohibited by this act, need not file
18 any such list.

1 SECTION 6. It is hereby declared that the produc-
2 tion and creation of music and the commercial
3 use of music and of copyrighted works within this
4 commonwealth, whether originating at a point
5 from within or without the commonwealth, as
6 long as the same shall be rendered and publicly
7 received within the confines of this commonwealth,
8 whether mechanically or by radio communication,
9 is a business clothed and affected with the public
10 interest, and the adult educational advantages
11 engendered by the public necessity, and necessary
12 for the education and training of the youth of this
13 commonwealth; that many abuses are practiced
14 under the false guise of federal protection which
15 only the commonwealth with its police power can
16 easily and lawfully restrain, and in order to prohibit,
17 discourage, and prevent monopolistic practices,
18 and to prevent extortion, to encourage free bargain-
19 ing between the citizens of this commonwealth
20 with each other and with those without the com-
21 monwealth, and in order to give greater effect to
22 the constitutional provisions relating to monopoly

23 and price fixing, and in the general interest of the
24 public, therefore, the general court in the interest
25 of the peace and dignity of the commonwealth,
26 in the interest of good morals and the general welfare
27 of the people of this commonwealth, and for greater
28 educational advantages to the public, declares
29 that said business shall be subject to the police
30 power and reasonable regulation of the state govern-
31 ment, and such police and regulating power shall
32 be administered by the courts and other officials
33 of this commonwealth in a manner consistent with,
34 in aid of, and never in conflict with, the copyright
35 laws of the United States. The provisions of this act,
36 and the administration thereof, shall at all times
37 effectuate the enforcement, the true intent, and
38 meaning of the United States copyright laws, in
39 order to prevent abuses from being practiced within
40 this commonwealth from points within or from
41 points without the commonwealth, by any individ-
42 ual, corporation, or organizations, who attempt
43 to use the Federal courts as innocent instrumentalities
44 in the furtherance of any systematic campaign
45 or scheme designed to illegally fix prices for the
46 commercial use of copyrighted works in this com-
47 monwealth through the use of extortionate means
48 and terrorizing practices based on threats of suits,
49 and an abuse of both state and federal process,
50 all of which are declared to be in violation of this
51 act and of the state constitution; it is further de-
52 clared that any person or persons, or combines, as
53 aforesaid, who shall violate this act shall be deemed
54 to have used their property within this common-
55 wealth in such a way that the same shall have
56 acquired a legal situs, analogous to the situs of

57 other personal tangible property within the com-
58 monwealth, even though separate from the domicile
59 and residence of the owner; provided, further, the
60 legal situs of any copyrighted work is coextensive
61 about the commonwealth, and a copyrighted work
62 used or sold for public use or performance for profit,
63 if intended to be heard from a point without the
64 commonwealth or from a point within the common-
65 wealth, is hereby declared to be a commercial com-
66 modity, and its legal situs is hereby declared to
67 be within the commonwealth of Massachusetts.

1 SECTION 7. All persons, groups, corporation,
2 association, foreign or domestic, violating this
3 chapter, shall be deemed to have been doing busi-
4 ness within this commonwealth and amenable to
5 the process of the state courts, when any such
6 persons, combinations, or groups shall have issued
7 licenses, either from within or from without the
8 commonwealth, for the privilege of using com-
9 mercially and publicly any copyrighted work or
10 works pooled in a common group or entity, or when
11 any of the functions of said entity, organization,
12 pool, or combine, is or has been performed in this
13 commonwealth; and the business of spying upon
14 and the warning of users of the copyrighted work
15 of such combinations, in addition to the presence
16 within the commonwealth of such persons, and
17 the activities of such persons or their agents at
18 any time or occasion for the detection of infringe-
19 ments within this state, shall be conclusive evidence
20 that such combinations and persons, even though
21 nonresidents, have accepted the privileges of doing
22 business within this state, and such persons, if

23 they abide by the provisions of this act, shall be
24 granted the privilege of conducting business within
25 this commonwealth in a legal manner, and may
26 invoke the benefits of the state government and its
27 political subdivisions in their behalf, and they may
28 use all of the privileges available to the citizens
29 of this commonwealth in general, and the use at
30 any time of any general privilege available to any
31 citizen of this commonwealth, by any of such agents,
32 their attorneys, or representative, or investigator,
33 or by any aider and abettor, or any nonresident
34 person, group, entity, or combination as aforesaid,
35 shall be deemed to be an acceptance of the provisions
36 of this act; and all licenses of any violator of this
37 act shall be deemed as aiders and abettors of said
38 persons and subject to the provisions of this act
39 unless they forthwith indicate their obedience here-
40 with; and the acceptance of the general privileges
41 of the commonwealth of Massachusetts by any
42 nonresident copyright holder or owner, or com-
43 bination, defendant, or person, or organization
44 of any kind, or entity, through any aider and abettor
45 as hereinafter defined, and the acceptance by such
46 persons of the rights, police protection, or of any
47 general privilege conferred by the law of this com-
48 monwealth to any of its citizens, including the
49 use of the roads and highways, or the privileges
50 of any of its political subdivisions, as evidenced
51 by their presence within the commonwealth at any
52 time, shall be deemed equivalent to and construed
53 to be an appointment by such nonresident or non-
54 residents, as the case may be, of the secretary of
55 state of the commonwealth of Massachusetts to
56 be his or their true and lawful attorney upon whom

57 may be served all summons and processes against
58 him or them and growing out of a violation of this
59 act, in which said nonresident may be involved,
60 and said acceptance of the privileges of this common-
61 wealth, as aforesaid, shall be a signification of his
62 or their agreement that any summons or process
63 against him or them which is so served shall be
64 of the same legal force and validity as if served
65 on him or them personally within the common-
66 wealth of Massachusetts. Service of such summons
67 or process shall be made by leaving a copy thereof
68 with a fee of two dollars with the secretary of the
69 commonwealth of Massachusetts, or in his office,
70 and such service shall be sufficient and valid personal
71 service upon any such nonresident defendant, copy-
72 right holder or owner, persons, or defendants, com-
73 bination, entity, or organization, as aforesaid;
74 provided, that notice of such service and a copy
75 of the summons of process shall be forthwith sent
76 by registered mail requiring personal delivery,
77 by the prosecutor bringing any action under this
78 act, to any defendant at his last known address,
79 and the defendant's return receipt and the prose-
80 cutor's affidavit of compliance herewith are ap-
81 pended to the process and entered as a part of the
82 return thereof; provided, further, the court in
83 which any action is brought may order such con-
84 tinuances as may be necessary to afford any non-
85 resident defendant or groups, or entity, a reasonable
86 opportunity to defend the action; provided, further,
87 the secretary of state shall keep a record of all
88 such summons and process which shall show the
89 day and time of service; and valid personal service
90 shall thus be had on nonresident persons or indi-

91 viduals, entities, firms, or corporations violating this
92 act.

1 SECTION 8. In the event any person, or groups
2 of persons, or any combination or pool aforesaid,
3 whether a nonresident corporation, person, or an
4 association, or domestic, refuse to abide by the
5 provisions hereof, or attempt to evade or render
6 ineffectual the true enforcement of any provision
7 of this act, then the prosecuting attorney of any
8 county where complaint is made of any violation,
9 shall institute injunction proceedings against said
10 persons in the superior court, and valid personal
11 service may be had upon any nonresident defendant
12 as set forth in the preceding section; and the court
13 shall enjoin all persons from violating the provi-
14 sions of this act and the constitutional provisions
15 prohibiting price fixing, monopolies, and combina-
16 tions, and all copyrighted works and the public per-
17 formance rights thereto when sold or used for profit
18 are hereby declared to be a commercial commodity,
19 and all persons, aiders, and abettors, and agents, shall
20 be enjoined by the court from aiding or furthering
21 in any way a continuation of defendants or in any
22 way; and if any defendant or defendants persist
23 in defying the judgment of the court, the court
24 shall, in order to effectuate its judgment and orders,
25 order three days' notice be given said defendant
26 or defendants, as the case may be, by having a
27 copy of such notice served on the secretary of state
28 as heretofore provided if defendants are without
29 the state, or served personally if within the state,
30 and have the same published in some daily paper
31 in the state of general circulation and at the end

32 of said period, if any defendant or defendants refuse
33 to obey the order of the court, then the court shall
34 appoint the county auditor as receiver for the copy-
35 righted works and property of defendants, tangible
36 or intangible, and of all other effects and moneys
37 derived therefrom, and the receiver shall take over
38 and preserve the commercial rights to all of said
39 copyrighted works, together with such other prop-
40 erty of any defendant, combination, pool, corpo-
41 ration, or entity through which they are acting,
42 that he can locate within the state, and the receiver
43 shall administer the same under the direction of
44 the court, and said receivership shall be considered
45 only as an incident to the main injunction suit
46 of the prosecutor, and for the purpose of enforcing
47 the court's orders; the said receiver shall seize the
48 copyrighted works of all of the copyright holders
49 and owners in said defendant combination, in-
50 cluding all of the rights to suits for infringement
51 and damages in both state and federal courts,
52 and all choses of action, and all sums due on con-
53 tracts and licenses, and hold the same subject to
54 the order of the court; and all persons holding
55 licenses or contracts with any defendant combination
56 or entity, shall pay the fees and sums due thereon
57 to the receiver for such time as the court may need
58 to effectuate the provisions of this act, and to compel
59 any defendant to abide herewith; provided, any
60 sums paid on licenses violating this act shall only
61 be continued in the court's discretion or until such
62 time as the court can award defendants complete
63 and full due process of law before entering a final
64 order thereon, or until such time as a legal and
65 equitable system of licensing can be determined

66 according to the subsequent provisions of this act;
67 provided, further, in the event any defendant or
68 defendants attempt to withdraw their said copy-
69 right works or property from the state in order to
70 violate and render this act or the court's orders
71 ineffectual, or to deprive the citizens of this state
72 of such commodity, or to hamper the enforcement
73 of any provision of this act, or to injure any citizen
74 or user of music in any way, then the court shall
75 immediately order the receiver to compile a complete
76 list of all of the copyrighted works of said defendants
77 which have been used in this state, and the court
78 shall then convene the state anti-monopoly board,
79 as herein now created, consisting of the state treas-
80 urer and the state auditor, and said board shall
81 meet in the county where the suit is filed, and the
82 superior judge hearing the cause shall be an advisory
83 member of said board; and said board, of which
84 the state treasurer shall be chairman, shall have
85 only one function, the discouragement of price
86 fixing and monopolies, and the court shall then
87 submit to said board the single question of the
88 establishment of license rates for the use of those
89 copyrighted works controlled by the defendants
90 so proceeded against; and for the purpose of aiding
91 in the abolition of monopolies and price fixing,
92 and preventing violations of this act, the board
93 shall determine a fair and just rate that the receiver
94 should charge for the single and separate public
95 performance for profit of each copyrighted work
96 or works of said defendants, on a per piece system
97 and basis of licensing, and the court shall not be
98 deemed thereby to have divested itself of any of
99 its jurisdiction by so doing; after determining

100 such rate, the said anti-monopoly board shall im-
101 mediately advise the receiver of its findings, and
102 of its fair rate, and the same shall be filed of record
103 in the cause, and the receiver may then, if said
104 finding is approved by the court, issue licenses for
105 the use of said music at such approved rate on a
106 basis of so much money per each time a piece of
107 music is played or used in a public performance
108 for profit; that said property shall be thus ad-
109 ministered by the receiver for a period of one year,
110 or until such time as the defendants, or the indi-
111 vidual copyright owners of any combination so pro-
112 ceeded against take oath that they will abide by
113 the rulings of the court and the provisions of this
114 act; and all fees and funds collected by the receiver
115 shall be turned over to the state treasurer, and
116 no receiver's fees or attorney's fees shall be allowed,
117 and the prosecuting attorney shall be the attorney
118 for the receiver, and the state treasurer shall keep
119 said money in a separate and special fund, subject
120 to the order of the court only for whatever portion
121 thereof that the court may order used to defray
122 the actual expenses of the board and the receiver-
123 ship; at the end of one year, if the defendants
124 and copyright owners or holders in any combination
125 thus proceeded against, continue to wilfully disobey
126 the court's orders, then the court shall issue an
127 order, which shall be published in three public
128 places, to the effect that unless the defendants
129 obey all of the orders of the court within ten days
130 from the date of said order, that the court will
131 proceed to permanently deprive said defendants
132 and each of them of their property; and the court
133 shall then order said defendants compelled to assign

134 all of their copyrighted works to the receiver forth-
135 with, and to show cause why, within ten days,
136 they should not be involuntarily compelled to assign
137 all of their copyrighted works to the receiver forth-
138 with, and to show cause why all of the funds as
139 collected in the manner aforesaid from licenses,
140 together with all of the copyrighted works including
141 the performing rights thereto of said defendants
142 and members of said combine, should not escheat
143 and be forfeited forever to the commonwealth of
144 Massachusetts, and be subject thereafter to ad-
145 ministration by the state in the same manner as
156 all other personal property belonging to the com-
147 monwealth of Massachusetts; if any of said defend-
148 ants and copyright holders, or owners, do appear
149 before the end of said ten day period, and take oath
150 that they will abide by the future of the court and the
151 provisions of this act, then the court shall release
152 their copyrighted works and order the state treasurer
153 to return any and all of their money which has
154 been received or seized; provided, however, the
155 court shall retain such jurisdiction over their persons
156 for such time as the court may deem necessary
157 to insure strict compliance with the terms of the
158 court's judgment and the provisions of this act,
159 if any of said defendants or copyright owners or
160 holders shall ignore or refuse to obey the show
161 cause order, as aforesaid, or fail to appear at the
162 end of ten days as ordered and abide by the court's
163 judgment then the court shall make an order and
164 enter judgment to the effect that all of the copy-
165 righted works, including the performing right thereto,
166 of said defendants and the members of any defendant,
167 combination, shall be construed as having been

168 escheated and forfeited to the commonwealth of
169 Massachusetts, and the court shall thereupon ap-
170 point some officer of the court to execute an in-
171 voluntary assignment of all the legal and equitable
172 titles to all of the copyrighted works of each of
173 said defendants and members of any defendant
174 combination to the receiver, in the event the de-
175 fendants or any of their members fail to execute
176 a voluntary assignment, and the receiver shall
177 immediately file said involuntary assignment at
178 the United States copyright office at Washing-
179 ton, D. C.; and the court shall then order the
180 receiver to close the estate, and turn the titles to
181 said copyrighted works over by proper assignment
182 from the receiver to the state treasurer of the
183 commonwealth of Massachusetts, who shall there-
184 after administer, issue licenses for the use of the
185 same in a manner consistent with this act, and
186 conserve the same as state personal property in
187 his possession, and according to law; and any
188 funds left in the state treasury from said receiver-
189 ship shall escheat and be forfeited to the state
190 and become part of the general fund; provided,
191 further, the state treasurer shall make a report
192 to the legislature on each biennium of the amount
193 of money received from such licensing and the
194 amount of property he has on hand through the
195 enforcement of this act.

1 SECTION 9. In the event any person, or any of the
2 defendants, or nonresidents, or nonresident copy-
3 right owners or holders, are proceeded against as
4 herein outlined, and are served with process according
5 to law, or any nonresident is served with process as

6 outlined in the preceding sections of this act, and
7 if any of said defendants, or persons, or aiders and
8 abettors named as defendants, appear in any such
9 proceeding by counsel or otherwise, or institute
10 any special proceeding attacking such proceeding,
11 or make any motion therein either special or general,
12 or if any of them appear to obtain the judgment
13 of the court solely upon the sufficiency of the service
14 of the process upon them, or upon any phase or
15 particularity of said injunction proceedings, such
16 special proceeding or appearance, or motion, or
17 appearance, as the case may be, shall nevertheless
18 be deemed as a general appearance even though
19 the process may have been insufficient, and said
20 parties and defendants as may thus appear in the
21 action, for any reason or cause, whether they seek
22 special or affirmative relief, shall thereafter be
23 subject to the general orders and jurisdiction of
24 the court for all purposes, and if any of said de-
25 fendants or persons appear in any court proceeding
26 instituted to effectuate this act solely for the purpose
27 of challenging the validity of service of process
28 upon them they shall be deemed to have surrendered
29 themselves, and as having submitted to the general
30 jurisdiction of the court; provided, however, this
31 section shall not be construed as denying, and no
32 attempt shall be made at any time in any proceeding
33 in connection with the enforcement of this act, to
34 restrain or deny any of said defendants, resident
35 or nonresident, copyright holders, or owners, or
36 any person, or members of any defendant, com-
37 bination, entity, pool, or monopoly of their rights
38 or property without full and complete due process
39 of law.

1 SECTION 10. Every person, in addition to the
2 other penalties provided in this act, who violates or
3 who procures, or aids or abets in the violating of
4 any provision of this act, or who conspires to render
5 ineffectual any valid order or decision of any court
6 in the enforcement of this act, or who procures,
7 conspires with, or aids or abets any person or persons
8 in his or their failure to obey the provisions of this
9 act, or to render ineffectual any valid order of any
10 court in connection with the enforcement of this
11 act shall be deemed guilty of a misdemeanor, and
12 upon conviction shall be punished by a fine not
13 exceeding five hundred dollars or imprisonment
14 in the county jail for not more than six months, or
15 both such fine and imprisonment.

1 SECTION 11. In case any part or portion of this
2 act shall be held unconstitutional, such holding
3 shall not affect the validity of this act as a whole
4 or any other part or portion of this act, and if any
5 clause, sentence, paragraph, subdivision, section or
6 part of this act shall for any reason be adjudged
7 invalid, such judgment shall not affect, impair, or
8 invalidate the remainder of the act, but shall be
9 strictly confined in its operation and holding to the
10 specific clause, sentence, paragraph, subdivision,
11 section, or part thereof, directly involved in the
12 controversy in which such judgment shall have
13 been rendered; and all other acts and laws in con-
14 flict herewith are hereby repealed.

1 SECTION 12. In the event more than one in-
2 junction suit provided for in this act is instituted
3 in this state, in different counties by different prose-

4 cutting attorneys, but against the same defendants,
5 the respective superior judges hearing the causes
6 may issue orders against said defendants in any
7 county, but in the event any of the various county
8 proceedings enter into the state of receivership,
9 as herein provided, then the judges hearing the
10 respective causes shall order those causes where
11 the defendants are the same, to be consolidated
12 in one action in one particular county, and in such
13 county as the judges may decide, to the end that
14 only one receiver may be appointed for the entire
15 state for the property of the same defendant or
16 defendants.



