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*Reprinted*

*3/15/95 Do Pass*

ECONOMIC DEVELOPMENT

HOUSE FILE 230

BY HEATON and BRUNKHORST

Passed House, <sup>(p.1050)</sup> Date 3-29-95 Passed Senate, Date 4/11/96 (p.1325)  
 Vote: Ayes 95 Nays 1 Vote: Ayes 49 Nays 1  
 Approved 4/23/96

A BILL FOR

1 An Act relating to procedural requirements for the enforcement of  
 2 certain copyrights, and providing for penalties.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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*HF 230*

1 Section 1. NEW SECTION. 549.1 FINDINGS.

2 The general assembly finds and declares all of the  
3 following:

4 1. Under the copyright laws of the United States, a  
5 copyright owner may enforce the rights of the copyright  
6 against the proprietor of an establishment where members of  
7 the public assemble for the public performance of music and  
8 other similar copyrighted works, regardless of whether the  
9 work is performed by an artist located at the establishment,  
10 or received by broadcast transmission and rebroadcast at the  
11 establishment.

12 2. The proprietors of public establishments are frequently  
13 subject to arbitrary and capricious enforcement and collection  
14 practices by copyright owners or performing rights societies,  
15 who do the following: enter the premises of the establishment  
16 without identification and question employees; collect fees on  
17 an irregular basis; arbitrarily increase and charge fees in  
18 excess of fees provided in contracts executed between  
19 proprietors and the owners of a copyrighted work or their  
20 agents; or charge the proprietors of similar establishments  
21 widely differing fees for essentially the same use of a  
22 copyrighted work.

23 3. The proprietors of these establishments, who often  
24 operate small businesses and professional offices which  
25 contribute to the economy of the state, are entitled to  
26 safeguards which ensure that they are not subject to  
27 arbitrary, capricious, or unfair trade practices, and which  
28 permit them to negotiate fairly with copyright owners and  
29 societies for purposes of arriving at appropriate terms and  
30 conditions for the use of copyrighted works in their  
31 establishments, and which provide the proprietors of these  
32 establishments with some reasonable degree of certainty in  
33 ascertaining their legal obligations and rights regarding the  
34 future use of copyrighted works.

35 4. Although rights and obligations regarding copyrighted

1 works are founded in Article I, section VIII of the  
2 Constitution of the United States, and exclusively governed by  
3 Title 17 of the United States Code, it remains a legitimate  
4 interest of this state to protect the proprietors of  
5 establishments from unfair practices of persons enforcing  
6 rights under federal law in an arbitrary, capricious, or  
7 unfair manner.

8 5. The general assembly declares that the purpose of this  
9 chapter is to safeguard the public against fraud, deceit,  
10 imposition, and financial hardship, and to foster and  
11 encourage fair dealing, by prohibiting or restricting unfair  
12 practices, onerous and arbitrary or capricious contract terms,  
13 or other unfair, dishonest, deceptive, destructive,  
14 unscrupulous, fraudulent, or discriminatory practices which  
15 threaten the public welfare. This chapter is intended to  
16 protect the legitimate interests of the state by reasonably  
17 regulating the manner in which persons may negotiate for the  
18 use of copyrighted works.

19 Sec. 2. NEW SECTION. 549.2 DEFINITIONS.

20 As used in this chapter, unless the context otherwise  
21 requires:

22 1. "Area" means a circular geographical region having a  
23 twenty-five-mile radius surrounding each establishment owned  
24 by the proprietor.

25 2. "Commissioner" means the commissioner of insurance  
26 appointed pursuant to section 505.2.

27 3. "Contract" means a promise or set of promises between  
28 the proprietor and a copyright owner or performing rights  
29 society which involves the payment of a compensation,  
30 including a royalty in exchange for the use of a copyrighted  
31 work, and includes promissory obligations based on instruments  
32 and similar documents.

33 4. "Copyright owner" means the owner of a copyright, or an  
34 agent of the owner, if the copyright is in a nondramatic  
35 musical or similar work recognized and enforceable under the

1 copyright laws of the United States pursuant to 17 U.S.C. §  
2 101 et seq.

3 5. "Establishment" means a location owned as a business  
4 for purposes of providing products or services to the general  
5 public on a retail basis, including a commercial establishment  
6 holding a liquor control license, subject to chapter 123; a  
7 food service establishment subject to chapter 137B; or a hotel  
8 subject to chapter 137C. However, an establishment does not  
9 include either of the following:

10 a. A broadcasting facility licensed by the federal  
11 communications commission, unless the copyright owner or  
12 performing rights society is also licensed by the federal  
13 communications commission.

14 b. A facility used for the primary purpose of holding a  
15 sporting event or concert regardless of whether food or  
16 alcohol is prepared or served at the facility.

17 6. "Performance" means a presentation located within the  
18 sensual range of an audience or transmitted to the sensual  
19 range of the audience by a medium including but not limited to  
20 television, motion picture, or radio.

21 7. "Performing rights society" means an organization,  
22 including an association or corporation, that licenses the  
23 public performance of nondramatic musical works on behalf of  
24 copyright owners, including but not limited to the American  
25 society of composers, authors, and publishers (ASCAP);  
26 broadcast music inc.; or SESAC, inc.

27 8. "Proprietor" means the owner of an establishment where  
28 the public is invited to assemble for purposes of witnessing  
29 the performance of nondramatic musical works or similar  
30 copyrighted works.

31 9. "Royalty" means a fee or fees payable to a copyright  
32 owner or performing rights society relating to the performance  
33 of a nondramatic musical or other similar work.

34 Sec. 3. NEW SECTION. 549.3 INITIAL DISCLOSURE -- NOTICE  
35 OF RATES, TERMS, AND CONDITIONS.

1 A copyright owner or performing rights society shall not  
2 execute, or offer to execute, a contract with a proprietor,  
3 unless the copyright owner or performing rights society  
4 provides an initial disclosure regarding the contract, not  
5 earlier than seventy-two hours prior to the execution of the  
6 contract. The initial disclosure shall include all of the  
7 following:

8 1. A schedule of the rates, terms, and conditions of  
9 royalties.

10 2. A schedule of the rates, terms, and conditions of  
11 royalties provided under contracts executed by the copyright  
12 owner or performing rights society and proprietors of  
13 comparable establishments in the area.

14 3. If a party to the contract is a performing rights  
15 society, the names of copyright owners represented by that  
16 performing rights society and copyrighted works, which are  
17 subject to the contract.

18 4. A written notice, which shall be in the following form  
19 in at least ten point type:

20 NOTICE

21 The following disclosure is required by section 549.3 of  
22 the Code of Iowa:

23 The person you are dealing with is a copyright owner, an  
24 agent of the copyright owner, or a performing rights society,  
25 exercising rights under the federal copyright law (17 U.S.C. §  
26 101 et seq.). Chapter 549 of the Code of Iowa regulates the  
27 conduct of the parties of a contract, including the manner in  
28 which the parties execute the contract. This disclosure  
29 statement must include all of the following: (1) a schedule  
30 of the rates, terms, and conditions of royalties; (2) a  
31 schedule of the rates, terms, and conditions of royalties  
32 provided under contracts executed by the copyright owner or  
33 performing rights society and proprietors of comparable  
34 establishments in the area; and (3) if a party to the contract  
35 is a performing rights society, the names of copyright owners

1 represented by that performing rights society and copyrighted  
2 works, which are subject to the contract.

3 The copyright owner or performing rights society must  
4 provide you with seventy-two hours in order to consider the  
5 rates, terms, and conditions of a proposed contract. You may  
6 consult an attorney and are advised to read chapter 549 prior  
7 to executing a contract. A disclosure statement or contract  
8 which does not contain information described in this notice  
9 may render the contract unenforceable.

10 Sec. 4. NEW SECTION. 549.4 CONTRACT REQUIREMENTS.

11 All of the following shall apply to a contract:

12 1. All provisions must be in writing.

13 2. The contract shall be signed by the parties, or  
14 authorized representatives of the parties.

15 3. The rates, terms, and conditions of the contract shall  
16 be effective for no longer than one year from the date that  
17 the contract is executed.

18 4. The contract shall contain all of the following:

19 a. The name of the proprietor.

20 b. The name and address of each establishment subject to  
21 the contract.

22 c. The name and address of the copyright owner.

23 d. The name and address of any performing rights society  
24 acting as a party to the contract or representing the  
25 copyright owner.

26 e. The name of the copyrighted works licensed to be  
27 performed under the contract.

28 f. The date that the contract expires.

29 g. The schedule of rates, terms, and conditions, of the  
30 royalties payable under the contract, including any sliding  
31 scale or schedule for an increase or decrease of rates for the  
32 duration of the contract.

33 Sec. 5. NEW SECTION. 549.5 PROHIBITIONS.

34 A copyright owner or performing rights society shall not do  
35 any of the following:

1 1. Enter on the premises of a proprietor's establishment  
2 for the purposes of investigating the use of copyrighted works  
3 by the proprietor, unless the copyright owner or performing  
4 rights society first informs the proprietor that the copyright  
5 owner or performing rights society is on the premises to  
6 conduct an investigation, and the purpose of the  
7 investigation.

8 2. Fail to make an initial disclosure or fail to provide a  
9 notice to a proprietor as required in section 549.3.

10 3. Execute a contract in violation of this chapter.

11 4. Collect or attempt to collect a royalty or other fee  
12 except as provided in a contract executed pursuant to this  
13 chapter.

14 5. Use or attempt to use any unfair practice in  
15 negotiating with a proprietor, or in retaliation for a  
16 proprietor's failure or refusal to negotiate the rates, terms,  
17 and conditions of a contract, including but not limited to all  
18 of the following:

19 a. Threatening to commence legal proceedings for an  
20 alleged copyright violation with the intent of coercing the  
21 proprietor to negotiate or execute a contract.

22 b. Charging or collecting a royalty which is unreasonable  
23 in comparison to royalties paid under similar contracts  
24 executed by the copyright owner or performing rights society  
25 with proprietors in the same area.

26 c. Using any deceptive or misleading practice with an  
27 intent to cause reliance, regardless of whether the proprietor  
28 was actually misled, deceived, or damaged.

29 Sec. 6. NEW SECTION. 549.6 COMPLIANCE WITH OTHER LAWS,  
30 VIOLATIONS, AND PENALTIES.

31 1. The provisions of this chapter are not exclusive and do  
32 not relieve persons or a contract from compliance with other  
33 applicable law.

34 2. An action by a copyright owner or performing rights  
35 society which violates this chapter renders a contract

1 executed between the proprietor and the copyright owner or  
2 performing rights society voidable by the proprietor.

3 3. A provision of a contract which waives a provision of  
4 this chapter is contrary to public policy and is void and  
5 unenforceable.

6 4. A proprietor may bring a civil action against a  
7 copyright owner or performing rights society that violates  
8 this chapter in executing a contract. The proprietor may be  
9 awarded damages together with costs and disbursements,  
10 including reasonable attorney fees. The court in its  
11 discretion may increase the award of damages to an amount not  
12 to exceed three times the damages or two thousand five hundred  
13 dollars, whichever is greater.

14 5. A violation of this chapter or a rule adopted by the  
15 commissioner pursuant to this chapter is a violation of  
16 section 714.16. The remedies and penalties provided by  
17 section 714.16, including but not limited to provisions  
18 relating to injunctive relief and penalties, apply to  
19 violations of this chapter. However, a copyright owner or  
20 performing rights society who violates a provision of this  
21 chapter shall be subject to a civil penalty of not more than  
22 seven thousand five hundred dollars for the first offense and  
23 not more than fifteen thousand dollars for a second or  
24 subsequent offense.

25 Sec. 7. NEW SECTION. 549.7 POWERS AND DUTIES OF THE  
26 COMMISSIONER.

27 The commissioner shall administer and enforce the  
28 provisions of this chapter and may do all of the following:

29 1. Adopt rules necessary to administer this chapter in  
30 accordance with chapter 17A.

31 2. Investigate the business and business records of  
32 copyright owners and performing rights societies and conduct  
33 necessary investigative procedures.

34 3. Administer oaths and affirmations, subpoena witnesses,  
35 receive evidence, and require the production of business



1 records relating to an investigation or proceedings.

2 4. Apply to the district court for issuance of an order  
3 requiring a person's appearance before the commissioner, if  
4 the person has refused to obey a subpoena issued by the  
5 commissioner. The person may also be required to produce  
6 documentary evidence germane to the subject of the  
7 investigation. Failure to obey a court order under this  
8 subsection constitutes contempt of court.

9 5. Issue an order directed at a copyright owner or  
10 performing rights society to cease and desist from engaging in  
11 an act which is in violation of this chapter or a rule adopted  
12 by the commissioner. The order shall be based on an  
13 investigation which provides reasonable evidence of a  
14 violation.

15 6. Cooperate with the attorney general in the prosecution  
16 of a case arising out of a violation of this chapter.

17 EXPLANATION

18 This bill creates a new chapter which provides procedures  
19 required before a copyright owner or a performing rights  
20 society may enforce a protection of copyrighted work granted  
21 under federal law against the owner of an establishment where  
22 a performance is taking place. The primary means of enforcing  
23 such a protection is to require that a royalty fee be paid to  
24 the owner of the copyright or a performing rights society.  
25 The following is a description of each section in the bill:

26 Section 549.1 provides findings and declarations by the  
27 general assembly. The section provides that the purpose of  
28 the chapter is to safeguard the public against fraud, deceit,  
29 imposition, and financial hardship, and to foster and  
30 encourage fair dealing, by prohibiting or restricting unfair  
31 practices, onerous and arbitrary or capricious contract terms,  
32 other unfair, dishonest, deceptive, destructive, unscrupulous,  
33 fraudulent, or discriminatory practices which threaten the  
34 public welfare.

35 Section 549.2 provides a number of definitions. The bill

1 applies to copyright owners and performing rights societies  
2 who seek to enforce a copyright against the proprietor of an  
3 establishment where a nondramatic musical or similar works  
4 recognized and enforceable under the copyright laws of the  
5 United States are performed. A performing rights society is  
6 defined to mean an organization that licenses the public  
7 performance of nondramatic musical works on behalf of  
8 copyright owners. A proprietor is the owner of an  
9 establishment in which the public is invited to assemble for  
10 purposes of witnessing the performance of nondramatic musical  
11 works or similar copyrighted works. An establishment is  
12 defined to mean a location owned as a business for purposes of  
13 providing products or services to the general public on a  
14 retail basis. However, an establishment does not include a  
15 broadcasting facility licensed by the federal communications  
16 commission, unless the copyright owner or performing rights  
17 society is also licensed by the federal communications  
18 commission, or a facility used for the primary purpose of  
19 holding a sporting event or concert.

20 Section 549.3 requires a copyright owner or performing  
21 rights society to disclose certain information to the  
22 proprietor prior to executing a contract. The proprietor is  
23 provided with 72 hours to consider the information prior to  
24 the contract's execution. The disclosure must include a  
25 schedule of the rates, terms, and conditions of royalties; a  
26 schedule of the rates, terms, and conditions of royalties  
27 provided under contracts executed by the copyright owner or  
28 performing rights society and proprietors of comparable  
29 establishments within a 25-mile radius of the establishment;  
30 and if a party to the contract is a performing rights society,  
31 the names of copyright owners represented by that society and  
32 copyrighted works, which are subject to the contract. The  
33 section also requires that the disclosure contain a notice to  
34 the proprietor describing the proprietor's rights under the  
35 chapter.

1 Section 549.4 provides contract requirements. The bill  
2 provides that a contract must be in writing; be signed by the  
3 parties; and include the rates, terms, and conditions of the  
4 contract. The contract must contain information relating to  
5 the proprietor, establishments, copyright owner, and any  
6 performing rights society who is a party to the contract. The  
7 section provides that the contract must also contain the date  
8 that the contract expires. The bill provides that a contract  
9 expires one year from the date of its execution.

10 Section 549.5 regulates the types of conduct by the  
11 parties. A copyright owner or performing rights society is  
12 restricted from entering on the premises of a proprietor's  
13 establishment unannounced for the purposes of investigating  
14 the use of copyrighted works by the proprietor. The owner or  
15 society must make an initial disclosure and provide a notice  
16 to a proprietor as required in the bill. The owner or society  
17 must execute a contract in compliance with the chapter. The  
18 owner or society must charge or collect fees only as provided  
19 in the contract. The bill prohibits copyright owners and  
20 performing rights societies from using unfair practices in  
21 negotiating with a proprietor, or in retaliation for a  
22 proprietor's failure or refusal to negotiate. Owners and  
23 societies are prohibited from using any deceptive or  
24 misleading practice with an intent to cause reliance.

25 Section 549.6 provides that the provisions of the chapter  
26 are not exclusive and do not relieve persons or a contract  
27 from compliance with other applicable law. It provides that  
28 an action by an owner or society which violates the chapter  
29 shall render a contract executed between the proprietor and  
30 the copyright owner or society voidable by the proprietor.  
31 The bill provides that a provision of a contract which waives  
32 a provision of this chapter is void and unenforceable. The  
33 section provides that a proprietor may bring a civil action  
34 against a copyright owner or performing rights society that  
35 violates this chapter in executing a contract. The proprietor

1 may be awarded triple damages or \$2,500, whichever is greater.  
2 The section provides that a violation of this chapter or a  
3 rule adopted by the commissioner pursuant to the chapter is a  
4 violation of section 714.16 (relating to consumer fraud).  
5 However, a copyright owner or performing rights society who  
6 violates a provision of the chapter is subject to a civil  
7 penalty of not more than \$7,500 for the first offense and not  
8 more than \$15,000 for a second or subsequent offense.

9 Section 549.7 provides that the commissioner of insurance  
10 shall administer and enforce the provisions of the chapter,  
11 and may adopt rules necessary to administer the chapter;  
12 investigate the business and business records of owners and  
13 societies and conduct necessary investigative procedures, or  
14 issue an order directed at an owner or society to cease and  
15 desist from engaging in an act which is in violation of the  
16 chapter or a rule adopted by the commissioner; and cooperate  
17 with the attorney general in the prosecution of a case arising  
18 out of a violation of the chapter.

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HOUSE FILE 230

H-3307

- 1 Amend House File 230 as follows:
- 2 1. Page 3, line 26, by striking the words
- 3 "broadcast music inc." and inserting the following:
- 4 "BMI".
- 5 2. Page 4, line 5, by striking the words
- 6 "seventy-two hours" and inserting the following:
- 7 "seven days".
- 8 3. Page 4, by striking line 6 and inserting the
- 9 following: "contract. The initial disclosure must be
- 10 presented to the proprietor or the proprietor's
- 11 representative in person by the copyright owner or the
- 12 owner's representative or the performing rights
- 13 society representative. The initial disclosure shall
- 14 include all of the".
- 15 4. Page 5, line 4, by striking the words
- 16 "seventy-two hours" and inserting the following:
- 17 "seven days".
- 18 5. Page 6, lines 26 and 27, by striking the words
- 19 "with an intent to cause reliance" and inserting the
- 20 following: "in retaliation".

By COMMITTEE ON ECONOMIC DEVELOPMENT  
LARSON of Linn, Chairperson

H-3307 FILED MARCH 15, 1995

*Adopted 3-29-95 (P. 1050)*

HOUSE FILE 230

H-3414

- 1 Amend the amendment, H-3307, to House File 230, as
- 2 follows:
- 3 1. Page 1, line 2, by striking the words
- 4 "striking the words" and inserting the following:
- 5 "inserting after the word "inc." the following:
- 6 "(BMI)"."
- 7 2. Page 1, by striking lines 3 and 4.

By BRUNKHORST of Bremer  
HEATON of Henry

H-3414 FILED MARCH 22, 1995

*Adopted 3-29-95*

*(P. 1051)*

HOUSE FILE 230

BY HEATON and BRUNKHORST

(As Amended and Passed by the House March 29, 1995)

Re - Passed House, Date 4/17/96 (p. 1701) Passed Senate, Date 4/11/96 (p. 1325)  
Vote: Ayes 94 Nays 0 Vote: Ayes 49 Nays 1

Approved 4/23/96

*Motion to Recon. (p. 134)  
4/11/96 Dvorsky*

**A BILL FOR**

1 An Act relating to procedural requirements for the enforcement of  
2 certain copyrights, and providing for penalties.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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House Amendments \_\_\_\_\_

1 Section 1. NEW SECTION. 549.1 FINDINGS.

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27 arbitrary, capricious, or unfair trade practices, and which  
28 permit them to negotiate fairly with copyright owners and  
29 societies for purposes of arriving at appropriate terms and  
30 conditions for the use of copyrighted works in their  
31 establishments, and which provide the proprietors of these  
32 establishments with some reasonable degree of certainty in  
33 ascertaining their legal obligations and rights regarding the  
34 future use of copyrighted works.

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1 works are founded in Article I, section VIII of the  
2 Constitution of the United States, and exclusively governed by  
3 Title 17 of the United States Code, it remains a legitimate  
4 interest of this state to protect the proprietors of  
5 establishments from unfair practices of persons enforcing  
6 rights under federal law in an arbitrary, capricious, or  
7 unfair manner.

8 5. The general assembly declares that the purpose of this  
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10 imposition, and financial hardship, and to foster and  
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20 As used in this chapter, unless the context otherwise  
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23 twenty-five-mile radius surrounding each establishment owned  
24 by the proprietor.

25 2. "Commissioner" means the commissioner of insurance  
26 appointed pursuant to section 505.2.

27 3. "Contract" means a promise or set of promises between  
28 the proprietor and a copyright owner or performing rights  
29 society which involves the payment of a compensation,  
30 including a royalty in exchange for the use of a copyrighted  
31 work, and includes promissory obligations based on instruments  
32 and similar documents.

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34 agent of the owner, if the copyright is in a nondramatic  
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1 copyright laws of the United States pursuant to 17 U.S.C. §  
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15 sporting event or concert regardless of whether food or  
16 alcohol is prepared or served at the facility.

17 6. "Performance" means a presentation located within the  
18 sensual range of an audience or transmitted to the sensual  
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22 including an association or corporation, that licenses the  
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24 copyright owners, including but not limited to the American  
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26 broadcast music inc. "BMI"; or SESAC, inc.

27 8. "Proprietor" means the owner of an establishment where  
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34 Sec. 3. NEW SECTION. 549.3 INITIAL DISCLOSURE -- NOTICE  
35 OF RATES, TERMS, AND CONDITIONS.

1 A copyright owner or performing rights society shall not  
2 execute, or offer to execute, a contract with a proprietor,  
3 unless the copyright owner or performing rights society  
4 provides an initial disclosure regarding the contract, not  
5 earlier than seven days prior to the execution of the  
6 contract. The initial disclosure must be presented to the  
7 proprietor or the proprietor's representative in person by the  
8 copyright owner or the owner's representative or the  
9 performing rights society representative. The initial  
10 disclosure shall include all of the following:

11 1. A schedule of the rates, terms, and conditions of  
12 royalties.

13 2. A schedule of the rates, terms, and conditions of  
14 royalties provided under contracts executed by the copyright  
15 owner or performing rights society and proprietors of  
16 comparable establishments in the area.

17 3. If a party to the contract is a performing rights  
18 society, the names of copyright owners represented by that  
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21 4. A written notice, which shall be in the following form  
22 in at least ten point type:

23 NOTICE

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26 The person you are dealing with is a copyright owner, an  
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29 101 et seq.). Chapter 549 of the Code of Iowa regulates the  
30 conduct of the parties of a contract, including the manner in  
31 which the parties execute the contract. This disclosure  
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34 schedule of the rates, terms, and conditions of royalties  
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1 performing rights society and proprietors of comparable  
2 establishments in the area; and (3) if a party to the contract  
3 is a performing rights society, the names of copyright owners  
4 represented by that performing rights society and copyrighted  
5 works, which are subject to the contract.

6 The copyright owner or performing rights society must  
7 provide you with seven days in order to consider the rates,  
8 terms, and conditions of a proposed contract. You may consult  
9 an attorney and are advised to read chapter 549 prior to  
10 executing a contract. A disclosure statement or contract  
11 which does not contain information described in this notice  
12 may render the contract unenforceable.

13 Sec. 4. NEW SECTION. 549.4 CONTRACT REQUIREMENTS.

14 All of the following shall apply to a contract:

- 15 1. All provisions must be in writing.
- 16 2. The contract shall be signed by the parties, or  
17 authorized representatives of the parties.
- 18 3. The rates, terms, and conditions of the contract shall  
19 be effective for no longer than one year from the date that  
20 the contract is executed.
- 21 4. The contract shall contain all of the following:
  - 22 a. The name of the proprietor.
  - 23 b. The name and address of each establishment subject to  
24 the contract.
  - 25 c. The name and address of the copyright owner.
  - 26 d. The name and address of any performing rights society  
27 acting as a party to the contract or representing the  
28 copyright owner.
  - 29 e. The name of the copyrighted works licensed to be  
30 performed under the contract.
  - 31 f. The date that the contract expires.
  - 32 g. The schedule of rates, terms, and conditions, of the  
33 royalties payable under the contract, including any sliding  
34 scale or schedule for an increase or decrease of rates for the  
35 duration of the contract.

1 Sec. 5. NEW SECTION. 549.5 PROHIBITIONS.

2 A copyright owner or performing rights society shall not do  
3 any of the following:

4 1. Enter on the premises of a proprietor's establishment  
5 for the purposes of investigating the use of copyrighted works  
6 by the proprietor, unless the copyright owner or performing  
7 rights society first informs the proprietor that the copyright  
8 owner or performing rights society is on the premises to  
9 conduct an investigation, and the purpose of the  
10 investigation.

11 2. Fail to make an initial disclosure or fail to provide a  
12 notice to a proprietor as required in section 549.3.

13 3. Execute a contract in violation of this chapter.

14 4. Collect or attempt to collect a royalty or other fee  
15 except as provided in a contract executed pursuant to this  
16 chapter.

17 5. Use or attempt to use any unfair practice in  
18 negotiating with a proprietor, or in retaliation for a  
19 proprietor's failure or refusal to negotiate the rates, terms,  
20 and conditions of a contract, including but not limited to all  
21 of the following:

22 a. Threatening to commence legal proceedings for an  
23 alleged copyright violation with the intent of coercing the  
24 proprietor to negotiate or execute a contract.

25 b. Charging or collecting a royalty which is unreasonable  
26 in comparison to royalties paid under similar contracts  
27 executed by the copyright owner or performing rights society  
28 with proprietors in the same area.

29 c. Using any deceptive or misleading practice in  
30 retaliation, regardless of whether the proprietor was actually  
31 misled, deceived, or damaged.

32 Sec. 6. NEW SECTION. 549.6 COMPLIANCE WITH OTHER LAWS,  
33 VIOLATIONS, AND PENALTIES.

34 1. The provisions of this chapter are not exclusive and do  
35 not relieve persons or a contract from compliance with other

1 applicable law.

2 2. An action by a copyright owner or performing rights  
3 society which violates this chapter renders a contract  
4 executed between the proprietor and the copyright owner or  
5 performing rights society voidable by the proprietor.

6 3. A provision of a contract which waives a provision of  
7 this chapter is contrary to public policy and is void and  
8 unenforceable.

9 4. A proprietor may bring a civil action against a  
10 copyright owner or performing rights society that violates  
11 this chapter in executing a contract. The proprietor may be  
12 awarded damages together with costs and disbursements,  
13 including reasonable attorney fees. The court in its  
14 discretion may increase the award of damages to an amount not  
15 to exceed three times the damages or two thousand five hundred  
16 dollars, whichever is greater.

17 5. A violation of this chapter or a rule adopted by the  
18 commissioner pursuant to this chapter is a violation of  
19 section 714.16. The remedies and penalties provided by  
20 section 714.16, including but not limited to provisions  
21 relating to injunctive relief and penalties, apply to  
22 violations of this chapter. However, a copyright owner or  
23 performing rights society who violates a provision of this  
24 chapter shall be subject to a civil penalty of not more than  
25 seven thousand five hundred dollars for the first offense and  
26 not more than fifteen thousand dollars for a second or  
27 subsequent offense.

28 Sec. 7. NEW SECTION. 549.7 POWERS AND DUTIES OF THE  
29 COMMISSIONER.

30 The commissioner shall administer and enforce the  
31 provisions of this chapter and may do all of the following:

32 1. Adopt rules necessary to administer this chapter in  
33 accordance with chapter 17A.

34 2. Investigate the business and business records of  
35 copyright owners and performing rights societies and conduct

1 necessary investigative procedures.

2 3. Administer oaths and affirmations, subpoena witnesses,  
3 receive evidence, and require the production of business  
4 records relating to an investigation or proceedings.

5 4. Apply to the district court for issuance of an order  
6 requiring a person's appearance before the commissioner, if  
7 the person has refused to obey a subpoena issued by the  
8 commissioner. The person may also be required to produce  
9 documentary evidence germane to the subject of the  
10 investigation. Failure to obey a court order under this  
11 subsection constitutes contempt of court.

12 5. Issue an order directed at a copyright owner or  
13 performing rights society to cease and desist from engaging in  
14 an act which is in violation of this chapter or a rule adopted  
15 by the commissioner. The order shall be based on an  
16 investigation which provides reasonable evidence of a  
17 violation.

18 6. Cooperate with the attorney general in the prosecution  
19 of a case arising out of a violation of this chapter.

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## HOUSE FILE 230

S-5670

1 Amend House File 230, as amended, passed, and  
2 reprinted by the House, as follows:

3 1. By striking everything after the enacting  
4 clause and inserting the following:

5 "Section 1. NEW SECTION. 549.1 SHORT TITLE.

6 This chapter may be cited as the "Music Licensing  
7 Fees Act".

8 Sec. 2. NEW SECTION. 549.2 DEFINITIONS.

9 As used in this chapter:

10 1. "Copyright owner" means the owner of a  
11 copyright of a nondramatic musical or similar work  
12 recognized and enforceable under the copyright laws of  
13 the United States under 17 U.S.C. § 101 et seq.

14 2. "Performing rights society" means an  
15 association or corporation, including an agent or  
16 employee of the association or corporation, that  
17 licenses the public performance of a nondramatic  
18 musical work on behalf of a copyright owner, including  
19 the American society of composers, authors and  
20 publishers (ASCAP), broadcast music, inc. (BMI), and  
21 the society of European stage authors and composers,  
22 inc. (SESAC).

23 3. "Proprietor" means the owner of a retail  
24 establishment, restaurant, inn, bar, tavern, or any  
25 other similar place of business located in this state  
26 in which the public may assemble and in which  
27 nondramatic musical works may be performed, broadcast,  
28 or otherwise transmitted.

29 4. "Royalty" or "royalties" means the license fee  
30 or fees payable by a proprietor to a performing rights  
31 society for the public performance of a nondramatic  
32 musical or similar work.

33 Sec. 3. NEW SECTION. 549.3 LICENSING  
34 NEGOTIATIONS.

35 1. A performing rights society shall not enter  
36 onto the business premises of a proprietor for the  
37 purpose of discussing a contract for the payment of  
38 royalties by the proprietor, unless the performing  
39 rights society identifies itself to the proprietor and  
40 describes to the proprietor the purpose for entering  
41 onto the proprietor's business premises.

42 2. A performing rights society shall not enter  
43 into, or offer to enter into, a contract for the  
44 payment of royalties by a proprietor unless at the  
45 time of the offer, or any later time, but not later  
46 than seventy-two hours prior to the execution of the  
47 contract, the performing rights society provides to  
48 the proprietor, in writing, all of the following:

49 a. A schedule of the rates and terms of royalties  
50 under the contract.

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1 b. Upon the request of the proprietor, the  
2 opportunity to review the most current available list  
3 of the members or affiliates represented by the  
4 performing rights society.

5 c. Notice that the performing rights society will  
6 make available, upon the written request of a  
7 proprietor, at the sole expense of the proprietor, the  
8 most current available listing of the copyrighted  
9 nondramatic musical or similar works in the performing  
10 rights society's repertory, provided that the notice  
11 shall specify the means by which the listing can be  
12 secured.

13 d. Notice that the performing rights society  
14 complies with federal law and orders of courts having  
15 appropriate jurisdiction regarding the rates and terms  
16 of royalties and the circumstances under which  
17 licenses for rights of public performance are offered  
18 to any proprietor.

19 Sec. 4. NEW SECTION. 549.4 ROYALTY CONTRACT

20 REQUIREMENTS.

21 A contract for the payment of royalties between a  
22 performing rights society and a proprietor executed in  
23 this state shall meet all of the following  
24 requirements:

- 25 1. Be in writing.
- 26 2. Be signed by the parties.
- 27 3. Include, at a minimum, the following  
28 information:

29 a. The proprietor's name and business address and  
30 the name and location of each place of business to  
31 which the contract applies.

32 b. The name of the performing rights society.

33 c. The duration of the contract.

34 d. The schedule of rates and terms of the  
35 royalties to be collected under the contract,  
36 including any sliding scale or schedule for any  
37 increase or decrease of rates for the duration of the  
38 contract.

39 Sec. 5. NEW SECTION. 549.5 IMPROPER LICENSING

40 PRACTICES.

41 A performing rights society shall not collect, or  
42 attempt to collect, from a proprietor licensed by that  
43 performing rights society, a royalty payment except as  
44 provided in a contract executed pursuant to the  
45 provisions of this chapter.

46 Sec. 6. NEW SECTION. 549.6 INVESTIGATIONS.

47 This chapter shall not be construed to prohibit a  
48 performing rights society from conducting  
49 investigations to determine the existence of music use  
50 by a proprietor or informing a proprietor of the

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1 proprietor's obligations under the federal copyright  
2 law, 17 U.S.C. § 101 et seq.

3 Sec. 7. NEW SECTION. 549.7 REMEDIES --  
4 INJUNCTION.

5 A person who suffers a violation of this chapter  
6 may bring an action to recover actual damages and  
7 reasonable attorney's fees and to seek an injunction  
8 or any other available remedy.

9 Sec. 8. NEW SECTION. 549.8 REMEDIES CUMULATIVE.

10 The rights, remedies, and prohibitions contained in  
11 this chapter shall be in addition to and cumulative of  
12 any other right, remedy, or prohibition accorded by  
13 common law or state or federal law. This chapter  
14 shall not be construed to deny, abrogate, or impair  
15 any such common law or statutory right, remedy, or  
16 prohibition.

17 Sec. 9. NEW SECTION. 549.9 EXCEPTIONS.

18 This chapter shall not apply to a contract between  
19 a performing rights society or a copyright owner and a  
20 broadcaster licensed by the federal communications  
21 commission, or to a contract with a cable operator,  
22 programmer, or other transmission service. This  
23 chapter shall not apply to a nondramatic musical or  
24 similar work performed in synchronization with an  
25 audio or visual film or tape."

26 2. Title page, by striking line 2 and inserting  
27 the following: "certain copyrights".

By MICHAEL E. GRONSTAL

S-5670 FILED APRIL 3, 1996

*Adopted as amended 4/11/96 (p. 1325)*

HOUSE FILE 230

S-5392

1 Amend House File 230, as amended, passed, and  
2 reprinted by the House, as follows:  
3 1. Page 3, by striking lines 25 and 26 and  
4 inserting the following: "society of composers,  
5 authors, and publishers; broadcast music, inc.; the  
6 society of composers; and the society of European  
7 stage authors and composers."  
8 2. Page 4, by striking lines 4 through 6 and  
9 inserting the following: "provides an initial  
10 disclosure regarding the contract. The initial  
11 disclosure must be presented to the proprietor not  
12 more than seven and not less than three days prior to  
13 the execution of the contract. The initial disclosure  
14 must be presented to the".

By MERLIN E. BARTZ

S-5392 FILED MARCH 19, 1996

*out/ order 4/11/96 (p. 1325)*

HOUSE FILE 230

S-5686

1 Amend the amendment, S-5670, to House File 230, as  
2 amended, passed, and reprinted by the House, as  
3 follows:  
4 1. Page 1, line 11, by striking the words "or  
5 similar".  
6 2. Page 1, line 32, by striking the words "or  
7 similar".  
8 3. Page 3, line 25, by inserting after the word  
9 "tape." the following: "This chapter shall also not  
10 apply to the gathering of information to determine  
11 compliance with or activities related to the  
12 enforcement of section 714.15."

By MICHAEL E. GRONSTAL

S-5686 FILED APRIL 8, 1996

*Adopted 4/11/96 (p. 1325)*

SENATE AMENDMENT TO HOUSE FILE 230

H-5981

1 Amend House File 230, as amended, passed, and  
2 reprinted by the House, as follows:

3 1. By striking everything after the enacting  
4 clause and inserting the following:

5 "Section 1. NEW SECTION. 549.1 SHORT TITLE.

6 This chapter may be cited as the "Music Licensing  
7 Fees Act".

8 Sec. 2. NEW SECTION. 549.2 DEFINITIONS.

9 As used in this chapter:

10 1. "Copyright owner" means the owner of a  
11 copyright of a nondramatic musical work recognized and  
12 enforceable under the copyright laws of the United  
13 States under 17 U.S.C. § 101 et seq.

14 2. "Performing rights society" means an  
15 association or corporation, including an agent or  
16 employee of the association or corporation, that  
17 licenses the public performance of a nondramatic  
18 musical work on behalf of a copyright owner, including  
19 the American society of composers, authors and  
20 publishers (ASCAP), broadcast music, inc. (BMI), and  
21 the society of European stage authors and composers,  
22 inc. (SESAC).

23 3. "Proprietor" means the owner of a retail  
24 establishment, restaurant, inn, bar, tavern, or any  
25 other similar place of business located in this state  
26 in which the public may assemble and in which  
27 nondramatic musical works may be performed, broadcast,  
28 or otherwise transmitted.

29 4. "Royalty" or "royalties" means the license fee  
30 or fees payable by a proprietor to a performing rights  
31 society for the public performance of a nondramatic  
32 musical work.

33 Sec. 3. NEW SECTION. 549.3 LICENSING  
34 NEGOTIATIONS.

35 1. A performing rights society shall not enter  
36 onto the business premises of a proprietor for the  
37 purpose of discussing a contract for the payment of  
38 royalties by the proprietor, unless the performing  
39 rights society identifies itself to the proprietor and  
40 describes to the proprietor the purpose for entering  
41 onto the proprietor's business premises.

42 2. A performing rights society shall not enter  
43 into, or offer to enter into, a contract for the  
44 payment of royalties by a proprietor unless at the  
45 time of the offer, or any later time, but not later  
46 than seventy-two hours prior to the execution of the  
47 contract, the performing rights society provides to  
48 the proprietor, in writing, all of the following:

49 a. A schedule of the rates and terms of royalties  
50 under the contract.

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1 b. Upon the request of the proprietor, the  
2 opportunity to review the most current available list  
3 of the members or affiliates represented by the  
4 performing rights society.

5 c. Notice that the performing rights society will  
6 make available, upon the written request of a  
7 proprietor, at the sole expense of the proprietor, the  
8 most current available listing of the copyrighted  
9 nondramatic musical or similar works in the performing  
10 rights society's repertory, provided that the notice  
11 shall specify the means by which the listing can be  
12 secured.

13 d. Notice that the performing rights society  
14 complies with federal law and orders of courts having  
15 appropriate jurisdiction regarding the rates and terms  
16 of royalties and the circumstances under which  
17 licenses for rights of public performance are offered  
18 to any proprietor.

19 Sec. 4. NEW SECTION. 549.4 ROYALTY CONTRACT  
20 REQUIREMENTS.

21 A contract for the payment of royalties between a  
22 performing rights society and a proprietor executed in  
23 this state shall meet all of the following  
24 requirements:

- 25 1. Be in writing.
- 26 2. Be signed by the parties.
- 27 3. Include, at a minimum, the following  
28 information:

29 a. The proprietor's name and business address and  
30 the name and location of each place of business to  
31 which the contract applies.

32 b. The name of the performing rights society.

33 c. The duration of the contract.

34 d. The schedule of rates and terms of the  
35 royalties to be collected under the contract,  
36 including any sliding scale or schedule for any  
37 increase or decrease of rates for the duration of the  
38 contract.

39 Sec. 5. NEW SECTION. 549.5 IMPROPER LICENSING  
40 PRACTICES.

41 A performing rights society shall not collect, or  
42 attempt to collect, from a proprietor licensed by that  
43 performing rights society, a royalty payment except as  
44 provided in a contract executed pursuant to the  
45 provisions of this chapter.

46 Sec. 6. NEW SECTION. 549.6 INVESTIGATIONS.

47 This chapter shall not be construed to prohibit a  
48 performing rights society from conducting  
49 investigations to determine the existence of music use  
50 by a proprietor or informing a proprietor of the

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1 proprietor's obligations under the federal copyright  
2 law, 17 U.S.C. § 101 et seq.

3 Sec. 7. NEW SECTION. 549.7 REMEDIES --  
4 INJUNCTION.

5 A person who suffers a violation of this chapter  
6 may bring an action to recover actual damages and  
7 reasonable attorney's fees and to seek an injunction  
8 or any other available remedy.

9 Sec. 8. NEW SECTION. 549.8 REMEDIES CUMULATIVE.

10 The rights, remedies, and prohibitions contained in  
11 this chapter shall be in addition to and cumulative of  
12 any other right, remedy, or prohibition accorded by  
13 common law or state or federal law. This chapter  
14 shall not be construed to deny, abrogate, or impair  
15 any such common law or statutory right, remedy, or  
16 prohibition.

17 Sec. 9. NEW SECTION. 549.9 EXCEPTIONS.

18 This chapter shall not apply to a contract between  
19 a performing rights society or a copyright owner and a  
20 broadcaster licensed by the federal communications  
21 commission, or to a contract with a cable operator,  
22 programmer, or other transmission service. This  
23 chapter shall not apply to a nondramatic musical or  
24 similar work performed in synchronization with an  
25 audio or visual film or tape. This chapter shall also  
26 not apply to the gathering of information to determine  
27 compliance with or activities related to the  
28 enforcement of section 714.15."

29 2. Title page, by striking line 2 and inserting  
30 the following: "certain copyrights."

RECEIVED FROM THE SENATE

H-5981 FILED APRIL 17, 1996

*House concurred (p.1701)*

HOUSE FILE 230

AN ACT  
RELATING TO PROCEDURAL REQUIREMENTS FOR THE ENFORCEMENT OF  
CERTAIN COPYRIGHTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. 549.1 SHORT TITLE.

This chapter may be cited as the "Music Licensing Fees Act".

Sec. 2. NEW SECTION. 549.2 DEFINITIONS.

As used in this chapter:

1. "Copyright owner" means the owner of a copyright of a nondramatic musical work recognized and enforceable under the copyright laws of the United States under 17 U.S.C. § 101 et seq.

2. "Performing rights society" means an association or corporation, including an agent or employee of the association or corporation, that licenses the public performance of a nondramatic musical work on behalf of a copyright owner, including the American society of composers, authors and publishers (ASCAP), broadcast music, inc. (BMI), and the society of European stage authors and composers, inc. (SESAC).

3. "Proprietor" means the owner of a retail establishment, restaurant, inn, bar, tavern, or any other similar place of business located in this state in which the public may assemble and in which nondramatic musical works may be performed, broadcast, or otherwise transmitted.

4. "Royalty" or "royalties" means the license fee or fees payable by a proprietor to a performing rights society for the public performance of a nondramatic musical work.

Sec. 3. NEW SECTION. 549.3 LICENSING NEGOTIATIONS.

1. A performing rights society shall not enter onto the business premises of a proprietor for the purpose of

discussing a contract for the payment of royalties by the proprietor, unless the performing rights society identifies itself to the proprietor and describes to the proprietor the purpose for entering onto the proprietor's business premises.

2. A performing rights society shall not enter into, or offer to enter into, a contract for the payment of royalties by a proprietor unless at the time of the offer, or any later time, but not later than seventy-two hours prior to the execution of the contract, the performing rights society provides to the proprietor, in writing, all of the following:

a. A schedule of the rates and terms of royalties under the contract.

b. Upon the request of the proprietor, the opportunity to review the most current available list of the members or affiliates represented by the performing rights society.

c. Notice that the performing rights society will make available, upon the written request of a proprietor, at the sole expense of the proprietor, the most current available listing of the copyrighted nondramatic musical or similar works in the performing rights society's repertory, provided that the notice shall specify the means by which the listing can be secured.

d. Notice that the performing rights society complies with federal law and orders of courts having appropriate jurisdiction regarding the rates and terms of royalties and the circumstances under which licenses for rights of public performance are offered to any proprietor.

Sec. 4. NEW SECTION. 549.4 ROYALTY CONTRACT REQUIREMENTS.

A contract for the payment of royalties between a performing rights society and a proprietor executed in this state shall meet all of the following requirements:

1. Be in writing.
2. Be signed by the parties.
3. Include, at a minimum, the following information:

a. The proprietor's name and business address and the name and location of each place of business to which the contract applies.

b. The name of the performing rights society.

c. The duration of the contract.

d. The schedule of rates and terms of the royalties to be collected under the contract, including any sliding scale or schedule for any increase or decrease of rates for the duration of the contract.

Sec. 5. NEW SECTION. 549.5 IMPROPER LICENSING PRACTICES.

A performing rights society shall not collect, or attempt to collect, from a proprietor licensed by that performing rights society, a royalty payment except as provided in a contract executed pursuant to the provisions of this chapter.

Sec. 6. NEW SECTION. 549.6 INVESTIGATIONS.

This chapter shall not be construed to prohibit a performing rights society from conducting investigations to determine the existence of music use by a proprietor or informing a proprietor of the proprietor's obligations under the federal copyright law, 17 U.S.C. § 101 et seq.

Sec. 7. NEW SECTION. 549.7 REMEDIES -- INJUNCTION.

A person who suffers a violation of this chapter may bring an action to recover actual damages and reasonable attorney's fees and to seek an injunction or any other available remedy.

Sec. 8. NEW SECTION. 549.8 REMEDIES CUMULATIVE.

The rights, remedies, and prohibitions contained in this chapter shall be in addition to and cumulative of any other right, remedy, or prohibition accorded by common law or state or federal law. This chapter shall not be construed to deny, abrogate, or impair any such common law or statutory right, remedy, or prohibition.

Sec. 9. NEW SECTION. 549.9 EXCEPTIONS.

This chapter shall not apply to a contract between a performing rights society or a copyright owner and a broadcaster licensed by the federal communications commission,

or to a contract with a cable operator, programmer, or other transmission service. This chapter shall not apply to a nondramatic musical or similar work performed in synchronization with an audio or visual film or tape. This chapter shall also not apply to the gathering of information to determine compliance with or activities related to the enforcement of section 714.15.

---

RON J. CORBETT  
Speaker of the House

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LEONARD L. BOSWELL  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 230, Seventy-sixth General Assembly.

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ELIZABETH ISAACSON  
Chief Clerk of the House

Approved 4/23, 1996

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TERRY E. BRANSTAD  
Governor