

First Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 17-0005.02 Jery Payne x2157

HOUSE BILL 17-1092

HOUSE SPONSORSHIP

Lebsock,

SENATE SPONSORSHIP

(None),

House Committees
Business Affairs and Labor

Senate Committees

A BILL FOR AN ACT

101 CONCERNING CONTRACTS INVOLVING LICENSE ROYALTIES WITH
102 PROPRIETORS OF RETAIL ESTABLISHMENTS THAT PUBLICLY
103 PERFORM MUSIC.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Section 1 of the bill expands the law covering contracts between performing rights societies and proprietors of retail establishments to cover investigations and negotiations between the two.

Current law gives a retail establishment 72 hours to consider and to rescind a contract with a performing rights society. **Section 2** changes

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

this standard to 3 business days. Section 2 also clarifies that the law governing these negotiations and contracts applies to representatives of these societies.

Section 3 forbids such a contract from requiring the proprietor to pay for times when another person is already paying licensing fees to publicly perform the music.

Section 4:

- ! Requires a performing rights society to publish a schedule of fees it charges a proprietor to license music for public performance.
- ! Requires a performing rights society to publish a catalog of musical works the society licenses. A link to the schedule must be filed with the secretary of state, who publishes the link.
- ! Prohibits contracts made in violation of these provisions and declares such contracts void.

Section 5 authorizes the secretary of state to collect filing fees for the filings required by the bill.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 6-13-102, **amend** (1)
3 as follows:

4 **6-13-102. Scope of article.** (1) (a) This article ~~shall apply~~ 13
5 APPLIES ONLY to THE FOLLOWING, REGARDLESS OF WHETHER A
6 PERFORMING RIGHTS SOCIETY IS LICENSED BY THE FEDERAL
7 COMMUNICATIONS COMMISSION:

8 (I) A contract entered into between a performing rights society
9 and a proprietor; ~~even if such society is licensed by the federal~~
10 ~~communications commission~~; and

11 (II) INVESTIGATIONS AND NEGOTIATIONS RELATED TO A CONTRACT
12 OR PROSPECTIVE CONTRACT BETWEEN A PERFORMING RIGHTS SOCIETY
13 AND A PROPRIETOR.

14 (b) The rights, remedies, and prohibitions accorded by this ~~article~~
15 ~~shall be~~ ARTICLE 13 ARE in addition to any other right, remedy, or

1 prohibition accorded by common law, federal law, or the laws of this state
2 and ~~shall DO not be construed to deny~~, abrogate, or impair any such
3 common-law or statutory right, remedy, or prohibition.

4 **SECTION 2.** In Colorado Revised Statutes, 6-13-103, **amend** (1)
5 introductory portion, (2), (3), (4) introductory portion, (4)(c)(V), and (5)
6 introductory portion as follows:

7 **6-13-103. Payment of royalties - contract requirements.** (1) A
8 copyright owner or performing rights society may enter into a contract
9 requiring the payment of royalties by a proprietor ONLY if, at least
10 ~~seventy-two hours~~ THREE BUSINESS DAYS before the execution of ~~such~~
11 THE contract, the following information is provided to the proprietor, in
12 writing:

13 (2) Notwithstanding subsection (1) of this section, a proprietor
14 may, in its sole discretion and without coercion or undue influence,
15 execute a contract for the payment of royalties before the expiration of the
16 ~~seventy-two hour~~ THREE-BUSINESS-DAY review period.

17 (3) A proprietor ~~shall have~~ HAS the right to rescind a contract for
18 the payment of royalties for ~~a period of seventy-two hours~~ THREE
19 BUSINESS DAYS after execution of ~~such~~ THE contract.

20 (4) TO BE ENFORCEABLE, a contract for the payment of ~~the~~
21 royalties by a proprietor to a copyright owner or society ~~shall~~ MUST:

22 (c) Include at least the following information:

23 (V) Notice of the ~~seventy-two-hour~~ THREE-BUSINESS-DAY
24 rescission period described in subsection (3) of this section.

25 (5) A copyright owner, A performing rights society, or an agent,
26 REPRESENTATIVE, or employee of a copyright owner or performing rights
27 society shall not:

1 **SECTION 3.** In Colorado Revised Statutes, **add** 6-13-105 as
2 follows:

3 **6-13-105. Double charging prohibited - legislative declaration.**

4 (1) (a) THE GENERAL ASSEMBLY FINDS THAT RETAIL BUSINESS
5 ESTABLISHMENTS ENTER INTO CONTRACTS WITH PERFORMING RIGHTS
6 SOCIETIES BASED ON, AMONG OTHER FACTORS, THE NUMBER OF DAYS THE
7 ESTABLISHMENT PUBLICLY PERFORMS MUSICAL WORKS. THE MORE DAYS
8 THE ESTABLISHMENT PERFORMS MUSICAL WORKS, THE MORE THE
9 ESTABLISHMENT IS CHARGED. YET, ESTABLISHMENTS FREQUENTLY USE
10 SERVICES OR EMPLOY PEOPLE, SUCH AS DISC JOCKEYS OR MUSICIANS, WHO
11 HAVE ALREADY PURCHASED A LICENSE TO PUBLICLY PERFORM THE WORK.
12 IN THESE INSTANCES, THE PERFORMING RIGHTS SOCIETY IS BEING PAID
13 TWICE TO LICENSE A SINGLE PERFORMANCE.

14 (b) THE GENERAL ASSEMBLY ALSO FINDS THAT PROPRIETORS ARE
15 FREQUENTLY PRESENTED WITH ADHESION CONTRACTS BY PERFORMING
16 RIGHTS SOCIETIES THAT REQUIRE THE PROPRIETOR TO PAY FOR THE
17 PERFORMANCE OF MUSICAL WORKS THAT HAVE ALREADY BEEN LICENSED.

18 (2) THE GENERAL ASSEMBLY DECLARES THAT THE INEQUALITY OF
19 BARGAINING POSITION BETWEEN THE AVERAGE PROPRIETOR AND A
20 PERFORMING RIGHTS SOCIETY MAKES DOUBLE CHARGING A PROPRIETOR
21 AN UNCONSCIONABLE BUSINESS PRACTICE.

22 (3) (a) A PERFORMING RIGHTS SOCIETY SHALL NOT ENTER INTO A
23 CONTRACT THAT REQUIRES A PROPRIETOR TO PAY LICENSING FEES THAT
24 ARE CALCULATED TO INCLUDE ANY TIME WHEN A MUSICAL WORK IS
25 PUBLICLY PERFORMED AND WHEN THE MUSIC IS BEING PERFORMED BY A
26 PERSON WHO ALREADY HOLDS A LICENSE TO PERFORM THE WORK.

27 (b) FOR THE PURPOSES OF THIS SUBSECTION (3), "PERSON" MEANS

1 ANY PERSON, GROUP OF PEOPLE, OR SERVICE THAT ENABLES THE PUBLIC
2 PERFORMANCE OF A NONDRAMATIC MUSICAL WORK. "PERSON" INCLUDES:

- 3 (I) BANDS;
- 4 (II) DISC JOCKEYS;
- 5 (III) COMPANIES THAT PROVIDE MUSICAL SERVICES OVER THE
6 INTERNET; AND
- 7 (IV) ANY COMMERCIALY LICENSED SOURCE OF NONDRAMATIC
8 MUSICAL WORKS.

9 (4) A VIOLATION OF THIS SECTION SUBJECTS THE VIOLATOR TO
10 CIVIL PENALTIES AUTHORIZED BY SECTION 6-13-204.

11 **SECTION 4.** In Colorado Revised Statutes, **add** part 2 to article
12 13 of title 6 as follows:

13 PART 2

14 REQUIRED DISCLOSURES

15 **6-13-201. Schedule of royalties - publishing online.** (1) (a) A
16 PERFORMING RIGHTS SOCIETY SHALL ANNUALLY PUBLISH ONLINE A
17 SCHEDULE SUMMARIZING ALL ROYALTIES COLLECTED DURING THE
18 IMMEDIATELY PRECEDING YEAR FROM PROPRIETORS WITHIN COLORADO.

19 (b) TO COMPLY WITH THIS SECTION, THE SCHEDULE OF ROYALTIES
20 SHALL BE MADE AVAILABLE, WITHOUT CHARGE, TO ANY PROPRIETOR
21 WITHIN COLORADO AND TO THE SECRETARY OF STATE ON A WEBSITE OR
22 USING A SUBSTANTIALLY SIMILAR OR SUPERIOR TECHNOLOGY FOR
23 COMMUNICATING THE INFORMATION, AT NO CHARGE, TO THE PUBLIC AND
24 MUST:

- 25 (I) INCLUDE THE PHYSICAL SIZE OR RANGE OF SIZES, EXPRESSED IN
26 TERMS OF GROSS SQUARE FOOTAGE, OF THE ENTIRE PREMISES USED FOR
27 RETAIL ESTABLISHMENTS THAT PAY A CERTAIN ROYALTY;

1 (II) INCLUDE THE NUMBER OF SEATS FOR PATRONS OR THE RANGE
2 OF THE NUMBER OF SEATS FOR PATRONS OF RETAIL ESTABLISHMENTS THAT
3 PAY A CERTAIN ROYALTY; AND

4 (III) BE ARRANGED IN TWO TABLES DELINEATING THE
5 INFORMATION REQUIRED BY THIS SUBSECTION (1)(b).

6 (2) A PERFORMING RIGHTS SOCIETY LICENSING MUSICAL WORKS IN
7 COLORADO SHALL FILE THE ADDRESS OF THE WEBSITE OR SUBSTANTIALLY
8 SIMILAR OR SUPERIOR TECHNOLOGY WITH THE SECRETARY OF STATE, WHO
9 SHALL PUBLISH THE LINKS ON THE SECRETARY OF STATE'S WEBSITE OR
10 USING A SUBSTANTIALLY SIMILAR OR SUPERIOR TECHNOLOGY FOR
11 COMMUNICATING THE INFORMATION, AT NO CHARGE, TO THE PUBLIC.

12 **6-13-202. Catalog of musical works - publication by**
13 **performing rights society.** (1) (a) A PERFORMING RIGHTS SOCIETY SHALL
14 PUBLISH A LIST ONLINE OF ALL NONDRAMATIC MUSICAL WORKS THE
15 PERFORMING RIGHTS SOCIETY LICENSES FOR PERFORMANCE IN A RETAIL
16 ESTABLISHMENT.

17 (b) TO COMPLY WITH THIS SECTION, THE LIST OF NONDRAMATIC
18 MUSICAL WORKS MUST BE:

19 (I) UPDATED WITHIN THIRTY BUSINESS DAYS AFTER ADDING OR
20 SUBTRACTING A NONDRAMATIC MUSICAL WORK; AND

21 (II) MADE AVAILABLE, WITHOUT CHARGE, TO ANY PROPRIETOR
22 WITHIN COLORADO AND TO THE SECRETARY OF STATE ON A WEBSITE OR
23 USING A SUBSTANTIALLY SIMILAR OR SUPERIOR TECHNOLOGY FOR
24 COMMUNICATING THE INFORMATION, AT NO CHARGE, TO THE PUBLIC.

25 (2) A PERFORMING RIGHTS SOCIETY LICENSING MUSICAL WORKS IN
26 COLORADO SHALL FILE THE ADDRESS OF THE WEBSITE OR SUBSTANTIALLY
27 SIMILAR OR SUPERIOR TECHNOLOGY WITH THE SECRETARY OF STATE, WHO

1 SHALL PUBLISH THE LINKS ON THE SECRETARY OF STATE'S WEBSITE OR
2 USING A SUBSTANTIALLY SIMILAR OR SUPERIOR TECHNOLOGY FOR
3 COMMUNICATING THE INFORMATION, AT NO CHARGE, TO THE PUBLIC.

4 **6-13-203. Violations.** (1) A PERFORMING RIGHTS SOCIETY SHALL
5 NOT ENTER INTO A CONTRACT THAT IS SUBJECT TO THIS ARTICLE 13:

6 (a) WITHOUT PUBLISHING THE DISCLOSURES REQUIRED BY THIS
7 PART 2;

8 (b) WITHOUT MAKING THE FILINGS REQUIRED BY THIS PART 2; OR

9 (c) THAT VIOLATES SECTION 6-13-105.

10 (2) IF A PERFORMING RIGHTS SOCIETY DOES NOT COMPLY WITH
11 THIS PART 2 OR SECTION 6-13-105 WHEN A CONTRACT IS EXECUTED, THE
12 CONTRACT IS VOID.

13 **6-13-204. Penalties.** A PERSON WHO ENGAGES IN ANY VIOLATION
14 OF THIS PART 2 IS LIABLE IN A PRIVATE CIVIL ACTION TO THE PROPRIETOR
15 OF A BUSINESS WHO PERFORMS MUSICAL WORKS FOR COURT COSTS,
16 ATTORNEY FEES, AND A PENALTY IN THE AMOUNT OF AT LEAST TWO
17 THOUSAND DOLLARS FOR A FIRST OFFENSE AND EACH SUBSEQUENT
18 OFFENSE.

19 **6-13-205. Royalties and catalog of musical works - material**
20 **information.** THE SCHEDULE OF ROYALTIES SUBMITTED TO THE
21 SECRETARY OF STATE IN ACCORDANCE WITH SECTION 6-13-201 AND THE
22 LIST OF ALL NONDRAMATIC MUSICAL WORKS PUBLISHED ONLINE IN
23 ACCORDANCE WITH SECTION 6-13-202 CONSTITUTE MATERIAL
24 INFORMATION PURSUANT TO SECTION 6-1-105 (1)(u).

25 **SECTION 5.** In Colorado Revised Statutes, 24-21-104, **amend**
26 (1)(a) as follows:

27 **24-21-104. Fees of secretary of state.** (1) (a) (I) ~~It is the duty of~~

1 The secretary of state ~~to~~ SHALL charge fees, which shall be determined
2 and collected pursuant to subsection (3) of this section, for:

- 3 (A) Filing each body corporate and politic document; ~~for~~
- 4 (B) Filing each facsimile signature; ~~for~~
- 5 (C) Each notary public's commission; ~~for~~
- 6 (D) Each foreign commission; ~~for~~
- 7 (E) Each official certificate; ~~for~~
- 8 (F) Administering each oath; ~~for all~~
- 9 (G) EACH FILING MADE IN ACCORDANCE WITH SECTIONS 6-13-201
10 AND 6-13-202;

11 (H) ANY transcripts or copies of papers and records, computer
12 tapes, microfilm, or microfiche; and ~~for~~

13 (I) ANY other papers officially executed and other official work
14 that ~~may be~~ IS done in the secretary of state's office.

15 (II) The secretary of state shall not deliver any ~~such~~ commission,
16 file for record any certificate, or do any ~~such~~ OTHER official work until
17 the APPLICABLE fee ~~or sum so fixed to be collected therefor~~ FOR THE
18 WORK has first been paid.

19 (III) At the time of service of any subpoena upon the secretary of
20 state or any of his or her deputies or employees, a fee of fifty dollars and
21 a fee of ten dollars for meals and mileage at the rate prescribed for state
22 officers and employees in section 24-9-104 for each mile actually and
23 necessarily traveled in going to and returning from the place named in the
24 subpoena shall be paid to the department of state cash fund. If the person
25 named in the subpoena is required to attend the place named in the
26 subpoena for more than one day, ~~there~~ THE SUM OF FORTY-FOUR DOLLARS
27 FOR EACH DAY OF ATTENDANCE shall be paid, in advance, to the

1 department of state cash fund ~~the sum of forty-four dollars~~ for each day
2 of attendance to cover the expenses of the person named in the subpoena.

3 **SECTION 6. Act subject to petition - effective date.** This act
4 takes effect at 12:01 a.m. on the day following the expiration of the
5 ninety-day period after final adjournment of the general assembly (August
6 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a
7 referendum petition is filed pursuant to section 1 (3) of article V of the
8 state constitution against this act or an item, section, or part of this act
9 within such period, then the act, item, section, or part will not take effect
10 unless approved by the people at the general election to be held in
11 November 2018 and, in such case, will take effect on the date of the
12 official declaration of the vote thereon by the governor.