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HOUSE BILL 17-1092

BY REPRESENTATIVE(S) Lebsock, Melton, Duran;
also SENATOR(S) Tate, Crowder, Garcia, Hill, Holbert, Kagan, Kerr,
Martinez Humenik, Merrifield, Neville T., Priola, Scott.

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

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

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

6-13-102. Scope of article. (1) (a) This article ~~shall apply~~ 13
APPLIES ONLY to THE FOLLOWING:

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

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

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(b) The rights, remedies, and prohibitions accorded by this ~~article shall be~~ ARTICLE 13 ARE in addition to any other right, remedy, or prohibition accorded by common law, federal law, or the laws of this state and ~~shall DO not be construed to~~ deny, abrogate, or impair any such common-law or statutory right, remedy, or prohibition.

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

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

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

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

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

(c) Include at least the following information:

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

(d) NOT CHARGE A PROPRIETOR ROYALTIES FOR PUBLIC PERFORMANCES, AT THE ESTABLISHMENT, OF NONDRAMATIC MUSICAL WORKS FOR WHICH ANOTHER ENTITY HAS ENTERED INTO A LICENSE WITH THE PERFORMING RIGHTS SOCIETY THAT COVERS THE PERFORMANCES BY THE PROPRIETOR.

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

SECTION 3. In Colorado Revised Statutes, 6-13-104 **amend** (2) as follows:

6-13-104. Violations - penalties. (2) The prevailing party in any action brought under this ~~article~~ ARTICLE 13 shall be awarded reasonable attorney fees. If the prevailing party is a proprietor, ~~such~~ THE proprietor may also recover the reasonable costs of ~~such~~ THE action and treble damages, but in no event shall ~~such~~ THE proprietor be awarded less than ~~one~~ TWO thousand dollars.

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

PART 2 REQUIRED DISCLOSURES

6-13-201. Filing and online publication of contracts and royalty schedules. (1) A PERFORMING RIGHTS SOCIETY SHALL ANNUALLY FILE WITH THE SECRETARY OF STATE AN ELECTRONIC COPY OF EACH FORM CONTRACT LICENSING THE PUBLIC PERFORMANCE OF THE NONDRAMATIC MUSICAL WORKS IN THE PERFORMING RIGHTS SOCIETY'S REPERTORY TO PROPRIETORS IN THE STATE OF COLORADO, TOGETHER WITH THE APPLICABLE SCHEDULE OF ROYALTY RATES PAYABLE UNDER EACH FORM CONTRACT. THE SECRETARY OF STATE SHALL POST THE INFORMATION FILED IN ACCORDANCE WITH THIS SUBSECTION (1) ON THE SECRETARY OF STATE'S WEBSITE. THE SECRETARY OF STATE HAS NO DUTY TO DETERMINE WHETHER THE DOCUMENTS FILED COMPLY WITH THE REQUIREMENTS OF THIS ARTICLE 13 OR TO DETERMINE THE PERFORMING RIGHTS SOCIETY'S COMPLIANCE WITH THIS ARTICLE 13.

(2) A PERFORMING RIGHTS SOCIETY SHALL ALSO MAKE AVAILABLE, AT NO CHARGE, BOTH THE CONTRACTS AND SCHEDULES OF ROYALTY RATES THAT ARE REQUIRED TO BE FILED WITH THE SECRETARY OF STATE IN ACCORDANCE WITH SUBSECTION (1) OF THIS SECTION TO ANY PROPRIETOR WITHIN COLORADO VIA A LINK TO THE SOCIETY'S WEBSITE FROM THE SECRETARY OF STATE'S WEBSITE.

(3) UPON REQUEST OF THE SECRETARY OF STATE, EACH PERFORMING RIGHTS SOCIETY SHALL PROVIDE TO THE SECRETARY OF STATE INFORMATION ON A PROPRIETOR'S RIGHTS AND RESPONSIBILITIES REGARDING THE PUBLIC PERFORMANCE OF NONDRAMATIC MUSICAL WORKS, AND THE SECRETARY OF STATE SHALL POST THE INFORMATION ON THE SECRETARY OF STATE'S WEBSITE.

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

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

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

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

(2) A PERFORMING RIGHTS SOCIETY LICENSING MUSICAL WORKS IN COLORADO SHALL FILE THE ADDRESS OF THE WEBSITE OR SUBSTANTIALLY SIMILAR OR SUPERIOR TECHNOLOGY WITH THE SECRETARY OF STATE, WHO SHALL PUBLISH THE WEBSITE ADDRESS OF THE LIST PUBLISHED IN ACCORDANCE WITH SUBSECTION (1)(a) OF THIS SECTION ON THE SECRETARY OF STATE'S WEBSITE OR USING A SUBSTANTIALLY SIMILAR OR SUPERIOR TECHNOLOGY FOR COMMUNICATING THE INFORMATION, AT NO CHARGE, TO THE PUBLIC.

6-13-203. Violations. (1) A PERFORMING RIGHTS SOCIETY SHALL NOT ENTER INTO A CONTRACT THAT IS SUBJECT TO THIS ARTICLE 13 WITHOUT EITHER:

(a) PUBLISHING THE DISCLOSURES REQUIRED BY THIS PART 2; OR

(b) MAKING THE FILINGS REQUIRED BY THIS PART 2.

6-13-204. Royalties and catalog of musical works - material information. THE CONTRACTS AND SCHEDULE OF ROYALTIES SUBMITTED TO THE SECRETARY OF STATE IN ACCORDANCE WITH SECTION 6-13-201 AND THE LIST OF ALL NONDRAMATIC MUSICAL WORKS PUBLISHED ONLINE IN ACCORDANCE WITH SECTION 6-13-202 CONSTITUTE MATERIAL INFORMATION FOR PURPOSES OF SECTION 6-1-105 (1)(u).

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

24-21-104. Fees of secretary of state. (1) (a) (I) ~~It is the duty of~~ The secretary of state ~~to~~ SHALL charge fees, which shall be determined and collected pursuant to subsection (3) of this section, for:

(A) Filing each body corporate and politic document; ~~for~~

(B) Filing each facsimile signature; ~~for~~

(C) Each notary public's commission; ~~for~~

(D) Each foreign commission; ~~for~~

(E) Each official certificate; ~~for~~

(F) Administering each oath; ~~for all~~

(G) EACH FILING MADE IN ACCORDANCE WITH SECTIONS 6-13-201 AND 6-13-202;

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

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

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

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

SECTION 6. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless

approved by the people at the general election to be held in November 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Crisanta Duran
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Kevin J. Grantham
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Effie Ameen
SECRETARY OF
THE SENATE

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO