

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 17-0005.02 Jery Payne x2157

HOUSE BILL 17-1092

HOUSE SPONSORSHIP

Lebsock,

SENATE SPONSORSHIP

Tate,

House Committees
Business Affairs and Labor

Senate Committees
Business, Labor, & Technology

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.

SENATE
Amended 2nd Reading
March 3, 2017

HOUSE
3rd Reading Unamended
February 13, 2017

HOUSE
Amended 2nd Reading
February 10, 2017

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:**

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

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

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

1 common-law or statutory right, remedy, or prohibition.

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

5 **6-13-103. Payment of royalties - contract requirements.** (1) A
6 copyright owner or performing rights society may enter into a contract
7 requiring the payment of royalties by a proprietor **ONLY** if, at least
8 ~~seventy-two hours~~ **THREE BUSINESS DAYS** before the execution of ~~such~~
9 **THE** contract, the following information is provided to the proprietor, in
10 writing:

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

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

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

21 (c) Include at least the following information:

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

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

1 THE PROPRIETOR.

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

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

7 6-13-104. Violations - penalties. (2) The prevailing party in any
8 action brought under this ~~article~~ ARTICLE 13 shall be awarded reasonable
9 attorney fees. If the prevailing party is a proprietor, ~~such~~ THE proprietor
10 may also recover the reasonable costs of ~~such~~ THE action and treble
11 damages, but in no event shall ~~such~~ THE proprietor be awarded less than
12 ~~one~~ TWO thousand dollars.

13 SECTION 4. In Colorado Revised Statutes, add part 2 to article
14 13 of title 6 as follows:

15 PART 2

16 REQUIRED DISCLOSURES

17 6-13-201. Filing and online publication of contracts and
18 royalty schedules. (1) A PERFORMING RIGHTS SOCIETY SHALL ANNUALLY
19 FILE WITH THE SECRETARY OF STATE AN ELECTRONIC COPY OF EACH FORM
20 CONTRACT LICENSING THE PUBLIC PERFORMANCE OF THE NONDRAMATIC
21 MUSICAL WORKS IN THE PERFORMING RIGHTS SOCIETY'S REPERTORY TO
22 PROPRIETORS IN THE STATE OF COLORADO, TOGETHER WITH THE
23 APPLICABLE SCHEDULE OF ROYALTY RATES PAYABLE UNDER EACH FORM
24 CONTRACT. THE SECRETARY OF STATE SHALL POST THE INFORMATION
25 FILED IN ACCORDANCE WITH THIS SUBSECTION (1) ON THE SECRETARY OF
26 STATE'S WEBSITE. THE SECRETARY OF STATE HAS NO DUTY TO DETERMINE
27 WHETHER THE DOCUMENTS FILED COMPLY WITH THE REQUIREMENTS OF

1 THIS ARTICLE 13, OR TO DETERMINE THE PERFORMING RIGHTS SOCIETY'S
2 COMPLIANCE WITH THIS ARTICLE 13.

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

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

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

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

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

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

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

8 **6-13-203. Violations.** (1) A PERFORMING RIGHTS SOCIETY SHALL
9 NOT ENTER INTO A CONTRACT THAT IS SUBJECT TO THIS ARTICLE 13
10 WITHOUT EITHER:

- 11 (a) PUBLISHING THE DISCLOSURES REQUIRED BY THIS PART 2; OR
- 12 (b) MAKING THE FILINGS REQUIRED BY THIS PART 2.

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

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

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

- 24 (A) Filing each body corporate and politic document; ~~for~~
- 25 (B) Filing each facsimile signature; ~~for~~
- 26 (C) Each notary public's commission; ~~for~~
- 27 (D) Each foreign commission; ~~for~~

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

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

3 (G) EACH FILING MADE IN ACCORDANCE WITH SECTIONS 6-13-201

4 AND 6-13-202;

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

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

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

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

24 **SECTION 6. Act subject to petition - effective date.** This act
25 takes effect at 12:01 a.m. on the day following the expiration of the
26 ninety-day period after final adjournment of the general assembly (August
27 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a

1 referendum petition is filed pursuant to section 1 (3) of article V of the
2 state constitution against this act or an item, section, or part of this act
3 within such period, then the act, item, section, or part will not take effect
4 unless approved by the people at the general election to be held in
5 November 2018 and, in such case, will take effect on the date of the
6 official declaration of the vote thereon by the governor.