



**Colorado
Legislative
Council
Staff**

HB17-1092

**REVISED
FISCAL NOTE**

(replaces fiscal note dated February 16, 2017)

FISCAL IMPACT: State Local Statutory Public Entity Conditional No Fiscal Impact

Drafting Number: LLS 17-0005
Prime Sponsor(s): Rep. Lebsack
Sen. Tate

Date: February 17, 2017
Bill Status: Senate Business
Fiscal Analyst: Anna Gerstle (303-866-4375)

BILL TOPIC: RETAIL ESTABLISHMENT & PERFORMING RIGHTS

Fiscal Impact Summary	FY 2017-2018	FY 2018-2019
State Revenue	up to \$5,000	up to \$5,000
General Fund	up to 5,000	up to 5,000
Cash Funds	Minimal increase.	Minimal increase.
State Expenditures	Workload increase.	
TABOR Impact	Minimal increase.	
Appropriation Required: None.		
Future Year Impacts: Ongoing revenue and workload increase.		

Summary of Legislation

The bill changes state laws governing contracts between performing rights societies and proprietors of retail venues that perform or broadcast music for public enjoyment (proprietors). The bill requires a performing rights society to annually file with the Secretary of State's Office (SOS), and make freely available on the society's website:

- an electronic copy of each form contract licensing the public performance of musical works to proprietors;
- a schedule of royalties collected from proprietors in Colorado; and
- the website address for a list of all musical works for which the performing rights society holds a license, which must be updated within 30 business days of any change to the list.

Upon request of the SOS, performing rights societies must provide information on a proprietor's rights and responsibilities related to public performance of nondramatic musical works, for posting on the SOS website. The SOS must publish the links on its website and charge a fee for each filing. Not completing the required filings and disclosures is a deceptive trade practice under the bill.

Under current law, a proprietor has 72 hours to consider and rescind a contract with a performing rights society; the bill changes that period to three business days. The bill also:

- requires that contracts between a performing rights society and a proprietor do not charge the proprietor royalties for public performances of musical works for which another entity already holds a license to perform the work;
- expands the scope of existing laws governing these contracts to cover contract investigations and negotiations; and
- clarifies that certain provisions apply to representatives of performing rights societies.

Under current law, if the proprietor prevails in a civil action, the proprietor can be awarded reasonable costs of at least \$1,000. The bill raises the minimal civil award to a proprietor to \$2,000.

Background

A performing rights society is an association or corporation that licenses the public performance of nondramatic musical works on behalf of copyright owners. There are three main performing rights organizations in the United States: the American Society of Composers, Authors, and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and SESAC, Inc.

State Revenue

The bill increases cash fund revenue to the SOS by a minimal amount and fine revenue to the General Fund by less than \$5,000 beginning in FY 2017-18, as detailed below.

Fee impact on performing rights societies. Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. The fee for each required filing by a performing rights society will be set administratively by the SOS based on cash fund balance, estimated program costs, and the estimated number of filings subject to the fee. However, fees are expected to be minimal, as it is assumed that there are three performing rights societies that will make two filings per year, and that the workload for SOS can be accomplished within current appropriations. Fee revenue will be deposited into the Secretary of State Cash Fund.

Deceptive trade practice. To the extent that the Attorney General or district attorneys pursue actions related to the deceptive trade practice, fine revenue to the General Fund may increase beginning in FY 2017-18. Fines for violations range from \$500 to \$5,000. Additional fines may be levied for violations of a court order or injunction related to the deceptive trade practice. The fiscal note generally assumes a high level of compliance and any fine revenue is assumed to be less than \$5,000 per year.

TABOR Impact

This bill increases state cash fund revenue from fees, which will increase the amount of money required to be refunded under TABOR for FY 2017-18 and FY 2018-19. Civil fine revenue is not subject to TABOR. TABOR refunds are paid out of the General Fund. Since the bill

increases the TABOR refund obligation without a corresponding change in General Fund revenue, the amount of money available in the General Fund for the budget will decrease by an identical amount.

State Expenditures

The bill increases the workload in the SOS, Department of Law, and Judicial Department beginning in FY 2017-18, as detailed below.

Secretary of State's Office. The bill increases the workload in the SOS to establish a process for performing rights societies to file website addresses with the office, post the addresses online, and update them annually (schedule of royalties), or as needed (catalog of musical works). Assuming three performing rights societies make the required filings, the workload increase is expected to be accomplished within existing appropriations. Should additional resources be required, the SOS will request them through the annual budget process.

Department of Law. To the extent that deceptive trade practice complaints are filed under the bill, workload in the Department of Law will increase by a minimal amount. The office will review complaints under the bill within the annual body of deceptive trade practice complaints and assess which complaints to investigate. Any increase is expected to be accomplished through existing appropriations.

Judicial Department. The bill will increase the workload in the Judicial Department to handle any additional civil cases related to violations of the bill. The increase is expected to be minimal and accomplished through existing appropriations.

Local Government Impact

To the extent that district attorneys pursue actions related to the deceptive trade practice, the bill will increase the workload for district attorneys. Any increase is expected to be minimal.

Effective Date

The bill takes effect August 9, 2017, if the General Assembly adjourns on May 10, 2017, as scheduled, and no referendum petition is filed.

State and Local Government Contacts

Information Technology Judicial Law Secretary of State