

HOUSE COMMITTEE OF REFERENCE REPORT

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Chairman of Committee

February 7, 2017  
Date

Committee on Business Affairs and Labor.

After consideration on the merits, the Committee recommends the following:

HB17-1092 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

1 Amend printed bill, strike everything below the enacting clause and  
2 substitute:

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

5 **6-13-102. Scope of article.** (1) (a) This article ~~shall apply~~ 13  
6 APPLIES ONLY to THE FOLLOWING:

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

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

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

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

21 **6-13-103. Payment of royalties - contract requirements.** (1) A  
22 copyright owner or performing rights society may enter into a contract  
23 requiring the payment of royalties by a proprietor ONLY if, at least

1 ~~seventy-two hours~~ THREE BUSINESS DAYS before the execution of ~~such~~  
2 THE contract, the following information is provided to the proprietor, in  
3 writing:

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

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

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

14 (c) Include at least the following information:

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

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

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

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

27 **6-13-104. Violations - penalties.** (2) The prevailing party in any  
28 action brought under this ~~article~~ ARTICLE 13 shall be awarded reasonable  
29 attorney fees. If the prevailing party is a proprietor, ~~such~~ THE proprietor  
30 may also recover the reasonable costs of ~~such~~ THE action and treble  
31 damages, but in no event shall ~~such~~ THE proprietor be awarded less than  
32 ~~one~~ TWO thousand dollars.

33 **SECTION 4.** In Colorado Revised Statutes, **add** part 2 to article  
34 13 of title 6 as follows:

35 PART 2

36 REQUIRED DISCLOSURES

37 **6-13-201. Filing and online publication of contracts and**  
38 **royalty schedules.** (1) A PERFORMING RIGHTS SOCIETY SHALL ANNUALLY  
39 REGISTER AND FILE WITH THE SECRETARY OF STATE AN ELECTRONIC COPY  
40 OF EACH FORM CONTRACT LICENSING THE PUBLIC PERFORMANCE OF THE  
41 NONDRAMATIC MUSICAL WORKS TO PROPRIETORS IN THE STATE OF

1 COLORADO, TOGETHER WITH THE APPLICABLE SCHEDULE OF ROYALTY  
2 RATES PAYABLE UNDER EACH FORM CONTRACT.

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.

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

35 **6-13-203. Violations.** (1) A PERFORMING RIGHTS SOCIETY SHALL  
36 NOT ENTER INTO A CONTRACT THAT IS SUBJECT TO THIS ARTICLE 13  
37 WITHOUT EITHER:

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

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

40 **6-13-204. Royalties and catalog of musical works - material**  
41 **information.** THE CONTRACTS AND SCHEDULE OF ROYALTIES SUBMITTED

1 TO THE SECRETARY OF STATE IN ACCORDANCE WITH SECTION 6-13-201  
2 AND THE LIST OF ALL NONDRAMATIC MUSICAL WORKS PUBLISHED ONLINE  
3 IN ACCORDANCE WITH SECTION 6-13-202 CONSTITUTE MATERIAL  
4 INFORMATION FOR PURPOSES OF SECTION 6-1-105 (1)(u).

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

7 **24-21-104. Fees of secretary of state.** (1) (a) (I) ~~It is the duty of~~  
8 The secretary of state ~~to~~ SHALL charge fees, which shall be determined  
9 and collected pursuant to subsection (3) of this section, for:

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

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

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

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

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

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

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

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

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

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

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

37 **SECTION 6. Act subject to petition - effective date.** This act  
38 takes effect at 12:01 a.m. on the day following the expiration of the  
39 ninety-day period after final adjournment of the general assembly (August  
40 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a  
41 referendum petition is filed pursuant to section 1 (3) of article V of the

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

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