

CHAPTER 242

CONSUMER AND COMMERCIAL TRANSACTIONS

HOUSE BILL 95-1242

BY REPRESENTATIVES Tool, Acquafresca, Agler, Anderson, Berry, Entz, Foster, Friednash, Grampsas, Hagedorn, June, Kaufman, McElhany, Moellenberg, Owen, Prinster, Reeser, Reeves, Schauer, Clarke, Chlouber, and Taylor;
also SENATORS Wattenberg, Ament, Bishop, Feeley, Johnson, Lacy, R. Powers, Rizzuto, Schroeder, Weissmann, Martinez, Perlmutter, and Tanner.

AN ACT

CONCERNING CONTRACTS THAT REQUIRE THE PAYMENT OF ROYALTIES WHEN CERTAIN MUSICAL WORKS ARE PERFORMED IN PUBLIC.

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

SECTION 1. Title 6, Colorado Revised Statutes, 1992 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ENFORCEMENT OF NONDRAMATIC MUSIC COPYRIGHTS

ARTICLE 13
Enforcement of Music Copyrights

6-13-101. Definitions. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "COPYRIGHT OWNER" MEANS THE OWNER OF A COPYRIGHT OF A NONDRAMATIC MUSICAL OR SIMILAR WORK RECOGNIZED AND ENFORCEABLE UNDER THE COPYRIGHT LAWS OF THE UNITED STATES (17 U.S.C. SEC. 101 ET SEQ.). "COPYRIGHT OWNER" AND "SIMILAR WORK" SHALL NOT INCLUDE THE OWNER OF A COPYRIGHT IN A MOTION PICTURE OR AUDIOVISUAL WORK, OR IN PART OF A MOTION PICTURE OR AUDIOVISUAL WORK.

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

(2) "NONDRAMATIC" MEANS THE PUBLIC PERFORMANCE OF A RECORDED, BROADCAST, OR LIVE MUSICAL WORK; EXCEPT THAT "NONDRAMATIC" SHALL NOT MEAN THE PERFORMANCE OF A DRAMATIC WORK INCLUDING A PLAY.

(3) "PERFORMING RIGHTS SOCIETY" MEANS AN ASSOCIATION OR CORPORATION THAT LICENSES THE PUBLIC PERFORMANCE OF NONDRAMATIC MUSICAL WORKS ON BEHALF OF COPYRIGHT OWNERS SUCH AS THE AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS (ASCAP), BROADCAST MUSIC, INC. (BMI), AND SESAC, INC.

(4) "PROPRIETOR" MEANS THE OWNER OF A RETAIL ESTABLISHMENT, INCLUDING, BUT NOT LIMITED TO, A RESTAURANT, BAR, SPORTS FACILITY, OR OTHER PLACE OF BUSINESS WHERE NONDRAMATIC MUSICAL OR SIMILAR COPYRIGHTED WORKS MAY BE PERFORMED, BROADCAST, OR OTHERWISE TRANSMITTED FOR THE ENJOYMENT OF MEMBERS OF THE GENERAL PUBLIC.

(5) "ROYALTY" OR "ROYALTIES" MEANS THE FEES PAYABLE TO A COPYRIGHT OWNER OR PERFORMING RIGHTS SOCIETY FOR THE PUBLIC PERFORMANCE OF NONDRAMATIC MUSICAL OR OTHER SIMILAR WORK.

6-13-102. Scope of article. (1) THIS ARTICLE SHALL APPLY TO A CONTRACT ENTERED INTO BETWEEN A PERFORMING RIGHTS SOCIETY AND A PROPRIETOR EVEN IF SUCH SOCIETY IS LICENSED BY THE FEDERAL COMMUNICATIONS COMMISSION, AND THE RIGHTS, REMEDIES, AND PROHIBITIONS ACCORDED BY THIS ARTICLE SHALL BE IN ADDITION TO ANY OTHER RIGHT, REMEDY, OR PROHIBITION ACCORDED BY COMMON LAW, FEDERAL LAW, OR THE LAWS OF THIS STATE, AND SHALL NOT BE CONSTRUED TO DENY, ABROGATE, OR IMPAIR ANY SUCH COMMON LAW OR STATUTORY RIGHT, REMEDY, OR PROHIBITION.

(2) THIS ARTICLE SHALL NOT APPLY TO:

(a) A CONTRACT ENTERED INTO BETWEEN A PERFORMING RIGHTS SOCIETY AND A BROADCASTER LICENSED BY THE FEDERAL COMMUNICATIONS COMMISSION;

(b) CONDUCT DESCRIBED IN SECTIONS 18-4-602, 18-4-603, AND 18-4-604, C.R.S.

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 IF, AT LEAST SEVENTY-TWO HOURS BEFORE THE EXECUTION OF SUCH CONTRACT, THE FOLLOWING INFORMATION IS PROVIDED TO THE PROPRIETOR, IN WRITING:

(a) A DESCRIPTION OF THE RULES AND TERMS OF ROYALTIES REQUIRED TO BE PAID UNDER THE CONTRACT;

(b) A SCHEDULE OF THE RATES AND A DESCRIPTION OF THE TERMS OF ROYALTIES REQUIRED TO BE PAID UNDER AGREEMENTS EXECUTED BY THE COPYRIGHT OWNER OR PERFORMING RIGHTS SOCIETY;

(c) IN THE CASE OF A PERFORMING RIGHTS SOCIETY, INFORMATION CONCERNING HOW TO OBTAIN A CURRENT LIST OF THE COPYRIGHT OWNERS REPRESENTED BY THAT

SOCIETY AND THE WORKS LICENSED UNDER THE CONTRACT. SUCH LIST SHALL BE MADE AVAILABLE WITHIN FOURTEEN DAYS BY ELECTRONIC MEANS. A PROPRIETOR SHALL NOT BE CHARGED AN AMOUNT IN EXCESS OF THE ACTUAL COST INCURRED BY THE PERFORMING RIGHTS SOCIETY FOR PROVIDING SUCH LIST.

(d) NOTICE, IN A FORM PRESCRIBED BY THE ATTORNEY GENERAL, THAT THE PROPRIETOR IS ENTITLED TO THE INFORMATION CONTAINED IN PARAGRAPHS (a), (b), AND (c), OF THIS SUBSECTION (1), AND THAT THE FAILURE TO PROVIDE SUCH INFORMATION SHALL MAKE THE PERFORMING RIGHTS SOCIETY SUBJECT TO THE PENALTY PROVISIONS IN SECTION 6-13-104.

(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 REVIEW PERIOD.

(3) A PROPRIETOR SHALL HAVE THE RIGHT TO RESCIND A CONTRACT FOR THE PAYMENT OF ROYALTIES FOR A PERIOD OF SEVENTY-TWO HOURS AFTER EXECUTION OF SUCH CONTRACT.

(4) A CONTRACT FOR THE PAYMENT OF THE ROYALTIES BY A PROPRIETOR TO A COPYRIGHT OWNER OR SOCIETY SHALL:

(a) BE IN WRITING;

(b) BE SIGNED BY THE PARTIES;

(c) INCLUDE AT LEAST THE FOLLOWING INFORMATION:

(I) THE PROPRIETOR'S NAME AND BUSINESS ADDRESS AND THE NAME AND LOCATION OF EACH PLACE OF BUSINESS TO WHICH THE CONTRACT APPLIES;

(II) THE NAME AND ADDRESS OF THE PERFORMING RIGHTS SOCIETY AUTHORIZED TO ACT ON BEHALF OF A COPYRIGHT OWNER;

(III) THE DURATION OF THE CONTRACT, WHICH SHALL NOT EXCEED ONE YEAR, BUT WHICH MAY BE AUTOMATICALLY EXTENDED FOR ADDITIONAL TERMS WHICH DO NOT EXCEED ONE YEAR, UNLESS OTHERWISE MUTUALLY AGREED UPON;

(IV) THE SCHEDULE OF RATES AND TERMS OF ROYALTIES TO BE COLLECTED UNDER THE CONTRACT, INCLUDING ANY SLIDING SCALE OR SCHEDULE FOR ANY INCREASE OR DECREASE OF SUCH RATES FOR THE DURATION OF THE CONTRACT;

(V) NOTICE OF THE SEVENTY-TWO-HOUR RESCISSION PERIOD DESCRIBED IN SUBSECTION (3) OF THIS SECTION.

(5) A COPYRIGHT OWNER, PERFORMING RIGHTS SOCIETY, OR AN AGENT OR EMPLOYEE OF A COPYRIGHT OWNER OR PERFORMING RIGHTS SOCIETY SHALL NOT:

(a) ENTER ONTO THE PREMISES OF A PROPRIETOR'S BUSINESS FOR THE PURPOSE OF DISCUSSING WITH THE PROPRIETOR OR THE EMPLOYEES OF THE PROPRIETOR A

CONTRACT FOR THE PAYMENT OF ROYALTIES OR THE USE OF COPYRIGHTED WORKS WITHOUT FIRST IDENTIFYING HIMSELF OR HERSELF TO THE PROPRIETOR OR THE EMPLOYEES OF THE PROPRIETOR AND MAKING KNOWN THE PURPOSE OF THE VISIT;

(b) COLLECT OR ATTEMPT TO COLLECT A ROYALTY PAYMENT OR OTHER FEE PURSUANT TO A CONTRACT THAT DOES NOT MEET THE REQUIREMENTS OF THIS SECTION;

(c) ENGAGE IN ANY COERCIVE CONDUCT OR UNFAIR OR DECEPTIVE ACT OR PRACTICE THAT IS SUBSTANTIALLY DISRUPTIVE OF A PROPRIETOR'S BUSINESS;

(d) USE OR ATTEMPT TO USE ANY UNFAIR OR DECEPTIVE ACT OR PRACTICE IN NEGOTIATING WITH A PROPRIETOR.

(6) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO PROHIBIT A PERFORMING RIGHTS SOCIETY FROM CONDUCTING INVESTIGATIONS TO DETERMINE THE EXISTENCE OF MUSIC USE BY A PROPRIETOR OR INFORMING A PROPRIETOR OF THE PROPRIETOR'S OBLIGATIONS UNDER THE COPYRIGHT LAWS OF THE UNITED STATES (17 U.S.C. SEC. 101 ET SEQ.).

6-13-104. Violations - penalties. (1) A PROPRIETOR MAY BRING AN ACTION IN A COURT OF COMPETENT JURISDICTION OR ASSERT A COUNTERCLAIM AGAINST A COPYRIGHT OWNER OR PERFORMING RIGHTS SOCIETY TO ENJOIN A VIOLATION OF THIS ARTICLE AND RECOVER ANY DAMAGES SUSTAINED AS A RESULT OF SUCH VIOLATION.

(2) THE PREVAILING PARTY IN ANY ACTION BROUGHT UNDER THIS ARTICLE SHALL BE AWARDED REASONABLE ATTORNEY'S FEES. IF THE PREVAILING PARTY IS A PROPRIETOR, SUCH PROPRIETOR MAY ALSO RECOVER THE REASONABLE COSTS OF SUCH ACTION AND TREBLE DAMAGES, BUT IN NO EVENT SHALL SUCH PROPRIETOR BE AWARDED LESS THAN ONE THOUSAND DOLLARS.

(3) A PROPRIETOR SHALL NOT BRING A COUNTERCLAIM AGAINST ANY PARTY EXCEPT THE ORIGINAL COMPLAINANT, AND IF SUCH COMPLAINANT IS A PERFORMING RIGHTS SOCIETY, A COUNTERCLAIM SHALL NOT BE BROUGHT AGAINST ANY COPYRIGHT OWNER IN HIS OR HER INDIVIDUAL CAPACITY.

SECTION 2. Effective date - applicability. This act shall take effect July 1, 1995, and applies to contracts for the payment of royalties entered into on or after said date.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 3, 1995