

# D R A F T

## SUMMARY

Prohibits certain activities by, and specifies additional duties for, performing rights society in notifying business proprietors concerning proprietors' duties with respect to performing copyrighted musical works and in negotiating contracts for paying royalties for performing copyrighted musical works.

### A BILL FOR AN ACT

1  
2 Relating to regulating operations of performing rights societies; creating new  
3 provisions; and amending ORS 646.607, 647.700, 647.705, 647.710, 647.715,  
4 647.720 and 647.725.

5 **Be It Enacted by the People of the State of Oregon:**

6 **SECTION 1. Section 2 of this 2017 Act is added to and made a part**  
7 **of ORS 647.700 to 647.730.**

8 **SECTION 2. A performing rights society may not collect royalties,**  
9 **fees, penalties or other amounts for performing copyrighted musical**  
10 **works or enter into a contract to collect royalties for performing a**  
11 **copyrighted musical work unless the performing rights society is au-**  
12 **thorized to do business in this state.**

13 **SECTION 3. ORS 646.607 is amended to read:**

14 646.607. A person engages in an unlawful trade practice if in the course  
15 of the person's business, vocation or occupation the person:

16 (1) Employs any unconscionable tactic in connection with selling, renting  
17 or disposing of real estate, goods or services, or collecting or enforcing an  
18 obligation;

19 (2) Fails to deliver all or any portion of real estate, goods or services as

1 promised, and at a customer's request, fails to refund money that the cus-  
2 tomer gave to the person to purchase the undelivered real estate, goods or  
3 services and that the person does not retain pursuant to any right, claim or  
4 defense the person may assert in good faith. This subsection does not create  
5 a warranty obligation and does not apply to a dispute over the quality of real  
6 estate, goods or services delivered to a customer;

7 (3) Violates ORS 401.965 (2);

8 (4) Violates a provision of ORS 646A.725 to 646A.750;

9 (5) Violates ORS 646A.530;

10 (6) Employs a collection practice that is unlawful under ORS 646.639;

11 (7) Is a beneficiary that violates ORS 86.726 (1)(a) or (2), 86.729 (4) or  
12 86.732 (1) or (2);

13 (8) Violates ORS 646A.093;

14 (9) Violates a provision of ORS 646A.600 to 646A.628;

15 (10) Violates ORS 646A.808 (2); or

16 (11) Violates ORS 336.184.

17 **(12) Violates ORS 647.715 (1).**

18 **SECTION 4.** ORS 647.700 is amended to read:

19 647.700. As used in ORS 647.700 to 647.730[, *unless the context requires*  
20 *otherwise*]:

21 (1) "Copyright owner" means [*the owner of*] **a person that owns** a copy-  
22 right [*of a nondramatic musical or similar work*] **that is** recognized and en-  
23 forceable under the [*copyright laws of the United States pursuant to title 17*  
24 *of the United States Code*] **Copyright Act of 1976** (P.L. 94-553, 17 U.S.C. 101  
25 et seq.), **and other copyright laws and regulations of the United**  
26 **States.**

27 [(2) "*Nondramatic*" means the public performance of a recorded, broadcast  
28 or live musical work. "*Nondramatic*" does not include the performance of a  
29 dramatic work, including a play.]

30 (2) "**Perform**" means to disseminate a musical work by playing a  
31 **recording of the musical work in public or by broadcasting the musical**

1 **work by means of radio, the Internet or other means or to perform a**  
2 **musical work live in public.**

3 (3) "Performing rights society" means an association or corporation that  
4 [*licenses the public performances of nondramatic musical works on*] **grants a**  
5 **license on** behalf of a copyright [*owners*] **owner to perform a copyrighted**  
6 **musical work**, including but not limited to **the following societies and**  
7 **corporations:**

8 (a) The American Society of Composers, Authors and Publishers (ASCAP);

9 (b) Broadcast Music, Inc. (BMI); and

10 (c) The Society of European Stage Authors and Composers (SESAC).

11 (4) "Proprietor" means [*the*] **an** owner of a [*retail establishment, restau-*  
12 *rant, inn, bar, tavern, sports or entertainment facility or any other similar*]  
13 place of business or professional office located in this state in which the  
14 public may assemble and in which [*nondramatic musical works or similar*]  
15 copyrighted **musical** works may be performed[, *broadcast or otherwise trans-*  
16 *mitted for the enjoyment of members of the public there assembled*].

17 (5) "Royalty" [*or "royalties"*] means [*the fees payable*] **a payment or other**  
18 **consideration provided** to a copyright owner or performing rights society  
19 for [*the public performance of nondramatic musical works or other similar*  
20 *works*] **a license to perform a musical work.**

21 **SECTION 5.** ORS 647.705 is amended to read:

22 647.705. A performing rights society [*shall*] **may** not enter into, or offer  
23 to enter into, a contract [*for the payment of royalties by a*] **under the terms**  
24 **of which a proprietor must pay royalties** unless the performing rights so-  
25 ciety **first:**

26 (1) Agrees to provide to the proprietor [*upon request at the proprietor's*  
27 *place of business, by electronic means or otherwise*] **at least three business**  
28 **days before executing the contract:**

29 [(1)] (a) Information **in writing** as to whether specific copyrighted mu-  
30 sical works are in the repertoire of the performing rights society;

31 [(2)] (b) [*The*] **Written permission, and an** opportunity, to review the

1 most current available list of the performing rights society's members or af-  
2 filiates; [and]

3 [(3)] (c) [The] **A** schedule of rates and terms of the royalties [to be col-  
4 lected] **the performing rights society will collect** under the contract, in-  
5 cluding any sliding scale or schedule for any increase or decrease of the  
6 rates for the duration of the contract[.]; **and**

7 **(d) Information as to whether the proposed contract waives any**  
8 **claims for infringement based on any of the proprietor's previous un-**  
9 **licensed uses of copyrighted musical works that are within the per-**  
10 **forming rights society's repertory of copyrighted musical works; and**

11 **(2) Provides, free of charge, electronic access to and the means by**  
12 **which to search by artist or song a complete and accurate listing of**  
13 **the performing rights society's entire repertory of copyrighted musical**  
14 **works.**

15 **SECTION 6.** ORS 647.710 is amended to read:

16 647.710. [Every contract for the payment of royalties between a proprietor  
17 and a performing rights society executed, issued or renewed in this state shall  
18 be:] **A contract that a performing rights society executes or renews in**  
19 **this state under which a proprietor pays royalties must be:**

20 (1) In writing;

21 (2) Signed by the parties; and

22 (3) Written to include, at a minimum, the following information:

23 (a) The proprietor's name and business address and the name and location  
24 of each place of business to which the contract applies;

25 (b) The name of the performing rights society;

26 (c) The duration of the contract; and

27 (d) The schedule of rates and terms of the royalties [to be collected] **the**  
28 **performing rights society will collect** under the contract, including any  
29 sliding scale or schedule for any increase or decrease of the rates for the  
30 duration of the contract.

31 **SECTION 7.** ORS 647.715 is amended to read:

1 647.715. (1) A performing rights society or any agent or employee [*thereof*  
2 *shall*] **of a performing rights society may not:**

3 [(a) *Enter onto the premises of a proprietor's business for the purpose of*  
4 *discussing or inquiring about a contract for the payment of royalties with the*  
5 *proprietor or the proprietor's employees, without first providing identification*  
6 *to the proprietor or the proprietor's employees and making known to them the*  
7 *purpose of the discussion or inquiry;*]

8 **(a) Enter onto the premises of a proprietor's business without first:**

9 **(A) Providing written notice to the proprietor 72 hours before the**  
10 **time of entry;**

11 **(B) Providing identification to the proprietor or the proprietor's**  
12 **employees; and**

13 **(C) Specifying the purpose of the entry before communicating with**  
14 **the proprietor or the proprietor's employees about a contract to pay**  
15 **royalties;**

16 **(b) Use abusive, profane or obscene language when communicating**  
17 **with a proprietor or the proprietor's employees;**

18 **(c) Communicate with the proprietor or the proprietor's employees**  
19 **in locations or at times other than in the proprietor's place of business**  
20 **during regular business hours unless the proprietor agrees to the**  
21 **communication in a different location or at a different time;**

22 **(d) Communicate with a proprietor or the proprietor's employees**  
23 **after receiving notice from the proprietor's attorney that the per-**  
24 **forming rights society or an employee or agent of the performing**  
25 **rights society must address communications to the proprietor's attor-**  
26 **ney;**

27 [(b)] **(e) Engage in any coercive conduct, act or practice that is substan-**  
28 **tially disruptive to a proprietor's business;**

29 [(c)] **(f) Use or attempt to use any unfair or deceptive act or practice in**  
30 **negotiating with a proprietor; or**

31 [(d)] **(g) Fail to comply with or fulfill the obligations imposed by ORS**

1 647.705 and 647.710.

2 **(2) A violation of subsection (1) of this section is an unlawful trade**  
3 **practice under ORS 646.607 that is subject to enforcement under ORS**  
4 **646.632.**

5 [(2)] **(3)** [*Nothing in*] ORS 647.700 to 647.730 [*shall be construed to*] **do not**  
6 prohibit a performing rights society from conducting investigations to de-  
7 termine [*the existence of music use by*] **whether** a proprietor **is performing**  
8 **copyrighted musical works** or informing a proprietor of the proprietor's  
9 obligation under the [*copyright laws of the United States pursuant to title 17*  
10 *of the United States Code*] **Copyright Act of 1976** (P.L. 94-553, 17 U.S.C. 101  
11 et seq.), **and other copyright laws or regulations of the United States.**

12 **SECTION 8.** ORS 647.720 is amended to read:

13 647.720. [*In the event of a violation of ORS 647.705, 647.710 or 647.715,*] Any  
14 person may bring an action to recover actual damages and reasonable at-  
15 torney fees or seek an injunction or any other remedy available at law or  
16 in equity **for a violation of ORS 647.705, 647.710 or 647.715.**

17 **SECTION 9.** ORS 647.725 is amended to read:

18 647.725. The rights, remedies and prohibitions [*contained*] in ORS 647.700  
19 to 647.730 [*shall be*] **are** in addition to and cumulative to any other right,  
20 remedy or prohibition accorded by common law, federal law or the statutes  
21 of this state[.]. [*and nothing contained in*] ORS 647.700 to 647.730 [*shall be*  
22 *construed to*] **do not** deny, abrogate or impair any common law or statutory  
23 right, remedy or prohibition.

24 **SECTION 10.** **Section 2 of this 2017 Act and the amendments to ORS**  
25 **646.607, 647.700, 647.705, 647.710, 647.715, 647.720 and 647.725 by sections**  
26 **3 to 9 of this 2017 Act apply to contracts into which a performing**  
27 **rights society enters on or after the effective date of this 2017 Act.**

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