

House Bill 2857

Sponsored by COMMITTEE ON BUSINESS AND LABOR

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

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 provisions; and
3 amending ORS 646.607, 647.700, 647.705, 647.710, 647.715, 647.720 and 647.725.

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

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

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

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

12 646.607. A person engages in an unlawful trade practice if in the course of the person's business,
13 vocation or occupation the person:

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

16 (2) Fails to deliver all or any portion of real estate, goods or services as promised, and at a
17 customer's request, fails to refund money that the customer gave to the person to purchase the
18 undelivered real estate, goods or services and that the person does not retain pursuant to any right,
19 claim or defense the person may assert in good faith. This subsection does not create a warranty
20 obligation and does not apply to a dispute over the quality of real estate, goods or services delivered
21 to a customer;

22 (3) Violates ORS 401.965 (2);

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

24 (5) Violates ORS 646A.530;

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

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

27 (8) Violates ORS 646A.093;

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

29 (10) Violates ORS 646A.808 (2); *[or]*

30 (11) Violates ORS 336.184[.]; **or**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

(12) Violates ORS 647.715 (1).

SECTION 4. ORS 647.700 is amended to read:

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

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

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

(2) "**Perform**" means to disseminate a musical work by playing a recording of the musical work in public or by broadcasting the musical work by means of radio, the Internet or other means or to perform a musical work live in public.

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

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

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

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

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

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

SECTION 5. ORS 647.705 is amended to read:

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

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

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

[(2)] (b) [*The*] **Written permission, and an** opportunity, to review the most current available list of the performing rights society's members or affiliates; [*and*]

[(3)] (c) [*The*] **A** schedule of rates and terms of the royalties [*to be collected*] **the performing rights society will collect** under the contract, including any sliding scale or schedule for any increase or decrease of the rates for the duration of the contract[.]; **and**

(d) **Information as to whether the proposed contract waives any claims for infringement based on any of the proprietor's previous unlicensed uses of copyrighted musical works that are within the performing rights society's repertoire of copyrighted musical works; and**

(2) **Provides, free of charge, electronic access to and the means by which to search by artist or song a complete and accurate listing of the performing rights society's entire rep-**

1 **erty of copyrighted musical works.**

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

3 647.710. *[Every contract for the payment of royalties between a proprietor and a performing rights*
 4 *society executed, issued or renewed in this state shall be:]* **A contract that a performing rights**
 5 **society executes or renews in this state under which a proprietor pays royalties must be:**

6 (1) In writing;

7 (2) Signed by the parties; and

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

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

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

12 (c) The duration of the contract; and

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

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

17 647.715. (1) A performing rights society or any agent or employee *[thereof shall]* **of a performing**
 18 **rights society may not:**

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

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

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

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

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

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

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

33 **(d) Communicate with a proprietor or the proprietor's employees after receiving notice**
 34 **from the proprietor's attorney that the performing rights society or an employee or agent**
 35 **of the performing rights society must address communications to the proprietor's attorney;**

36 *[(b)]* **(e) Engage in any coercive conduct, act or practice that is substantially disruptive to a**
 37 **proprietor's business;**

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

40 *[(d)]* **(g) Fail to comply with or fulfill the obligations imposed by ORS 647.705 and 647.710.**

41 **(2) A violation of subsection (1) of this section is an unlawful trade practice under ORS**
 42 **646.607 that is subject to enforcement under ORS 646.632.**

43 *[(2)]* **(3) [Nothing in] ORS 647.700 to 647.730 [shall be construed to] do not** prohibit a performing
 44 rights society from conducting investigations to determine *[the existence of music use by]* **whether**
 45 **a proprietor is performing copyrighted musical works** or informing a proprietor of the

1 proprietor's obligation under the [*copyright laws of the United States pursuant to title 17 of the United*
2 *States Code*] **Copyright Act of 1976** (P.L. 94-553, 17 U.S.C. 101 et seq.), **and other copyright laws**
3 **or regulations of the United States.**

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

5 647.720. [*In the event of a violation of ORS 647.705, 647.710 or 647.715,*] Any person may bring
6 an action to recover actual damages and reasonable attorney fees or seek an injunction or any other
7 remedy available at law or in equity **for a violation of ORS 647.705, 647.710 or 647.715.**

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

9 647.725. The rights, remedies and prohibitions [*contained*] in ORS 647.700 to 647.730 [*shall be*]
10 **are** in addition to and cumulative to any other right, remedy or prohibition accorded by common
11 law, federal law or the statutes of this state[,]. [*and nothing contained in*] ORS 647.700 to 647.730
12 [*shall be construed to*] **do not** deny, abrogate or impair any common law or statutory right, remedy
13 or prohibition.

14 **SECTION 10.** **Section 2 of this 2017 Act and the amendments to ORS 646.607, 647.700,**
15 **647.705, 647.710, 647.715, 647.720 and 647.725 by sections 3 to 9 of this 2017 Act apply to con-**
16 **tracts into which a performing rights society enters on or after the effective date of this 2017**
17 **Act.**

18