

# Enrolled House Bill 4088

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Business and Labor for Oregon Winegrowers Association, Oregon Restaurant and Lodging Association)

CHAPTER .....

AN ACT

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

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

**SECTION 1. Sections 2 and 3 of this 2018 Act are added to and made a part of ORS 647.700 to 647.730.**

**SECTION 2. ORS 647.700 to 647.730 do not prohibit a performing rights society from conducting investigations to determine whether a proprietor is performing copyrighted musical works or informing a proprietor of the proprietor's obligations under the Copyright Act of 1976 (P.L. 94-553, 17 U.S.C. 101 et seq.) and other copyright laws or regulations of the United States.**

**SECTION 3. A performing rights society may not collect royalties, fees, penalties or other amounts for performing copyrighted musical works or enter into a contract to collect royalties for performing a copyrighted musical work unless the performing rights society is authorized to do business in this state. This section does not apply to a performing rights society that by law is exempt from a requirement to have an authorization to do business in this state.**

**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 copyright of a nondramatic musical or similar work recognized and enforceable under the copyright laws of the United States pursuant to title 17 of the United States Code (P.L. 94-553, 17 U.S.C. 101 et seq.).]*

*[(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.]*

*[(3) "Performing rights society" means an association or corporation that licenses the public performances of nondramatic musical works on behalf of copyright owners, including but not limited to:]*

*[(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 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*

*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 to a copyright owner or performing rights society for the public performance of nondramatic musical works or other similar works.]*

**As used in ORS 647.700 to 647.730:**

**(1) "Copyright owner" means a person that owns a copyright that is recognized and enforceable under the Copyright Act of 1976 (P.L. 94-553, 17 U.S.C. 101 et seq.).**

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

**(3) "Performing rights society" means an association or corporation that grants a license on behalf of a copyright 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) SESAC.**

**(4) "Proprietor" means 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 copyrighted musical works may be performed.**

**(5) "Royalty" means a fee provided to a copyright owner or performing rights society for a license to perform a musical work.**

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

*647.705. [A performing rights society shall not enter into, or offer to enter into, a contract for the payment of royalties by a proprietor unless the performing rights society agrees to provide to the proprietor upon request at the proprietor's place of business, by electronic means or otherwise:]*

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

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

*[(3) The schedule of rates and terms of the royalties to be collected under the contract, including any sliding scale or schedule for any increase or decrease of the rates for the duration of the contract.]*

**(1) A performing rights society may not enter into, or offer to enter into, a contract under the terms of which a proprietor must pay royalties unless the performing rights society, at least 72 hours before entering into the contract, provides to the proprietor or an employee of the proprietor:**

**(a) Information, at the proprietor's request, as to whether specific copyrighted musical works are in the repertoire of the performing rights society;**

**(b) An opportunity to review, electronically and free of charge, the most current available list of the performing rights society's members or affiliates, and the most current available list of the musical works that the performing rights society licenses, in a format that the proprietor can search by title, publisher and performing artist; and**

**(c) A schedule of rates and terms under which the performing rights society will collect royalties under the contract, including the terms of any sliding scale or schedule for any increase or decrease of the rates for the duration of the contract.**

**(2) A performing rights society may not license or attempt to license a proprietor to perform a musical work in this state unless the performing rights society each year submits to the Secretary of State for filing an electronic template copy of each performing rights form contract that a performing rights society offers to a proprietor in this state under which the proprietor would pay royalties.**

**(3) The Secretary of State's duty to file documents under this section is ministerial. The Secretary of State need not review or verify the contents of performing rights contracts for compliance with this section.**

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

647.710. *[Every contract for the payment of royalties between a proprietor and a performing rights society executed, issued or renewed in this state shall be:]*

*[(1) In writing;]*

*[(2) Signed by the parties; and]*

*[(3) Written to include, at a minimum, the following information:]*

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

*[(b) The name of the performing rights society;]*

*[(c) The duration of the contract; and]*

*[(d) The schedule of rates and terms of the royalties to be collected under the contract, including any sliding scale or schedule for any increase or decrease of the rates for the duration of the contract.]*

**A contract that a performing rights society executes or renews in this state under which a proprietor pays royalties must be:**

**(1) In writing;**

**(2) Signed by the parties; and**

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

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

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

**(c) The duration of the contract; and**

**(d) The schedule of rates and terms of the royalties the performing rights society will collect under the contract, including the terms of any sliding scale or schedule for any increase or decrease of the rates for the duration of the contract.**

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

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

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

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

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

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

*[(2) Nothing in ORS 647.700 to 647.730 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 obligation under the copyright laws of the United States pursuant to title 17 of the United States Code (P.L. 94-553, 17 U.S.C. 101 et seq.).]*

**A performing rights society or any agent or employee of a performing rights society may not:**

**(1) Enter onto the premises of a proprietor's business to discuss or inquire about a contract under which the proprietor will pay royalties without first:**

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

**(b) Specifying the purpose of the entry;**

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

(3) Communicate with a proprietor or the proprietor's employees in person or by telephone in locations or at times other than in the proprietor's place of business during regular business hours unless the proprietor's place of business is not open to the public and the proprietor or an employee, agent or representative of the proprietor agrees to communicate in a different location or at a different time;

(4) Communicate with a proprietor or the proprietor's employees after receiving notice from the proprietor's attorney that the performing rights society or an agent or employee of the performing rights society must address communications to the proprietor's attorney, except that a performing rights society or an agent or employee of the performing rights society may communicate directly with the proprietor or the proprietor's employees if the attorney fails to respond to communications for a period of 60 days or more;

(5) Engage in any coercive conduct, act or practice that is substantially disruptive to a proprietor's business;

(6) Use or attempt to use any unfair or deceptive act or practice in negotiating with a proprietor; or

(7) Fail to comply with or fulfill the obligations imposed by ORS 647.705 and 647.710.

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

647.720. (1) *[In the event of a violation of ORS 647.705, 647.710 or 647.715,]* Any person may bring an action to recover actual damages and reasonable attorney fees or seek an injunction or any other remedy available at law or in equity **for a violation of ORS 647.705, 647.710 or 647.715 or section 3 of this 2018 Act.**

(2) **In addition to and not in lieu of any damages a person may recover under subsection (1) of this section, a court may impose a fine of not more than \$1,000 for each willful violation of ORS 647.705, 647.710 or 647.715 or section 3 of this 2018 Act.**

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

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

**SECTION 10.** Section 3 of this 2018 Act and the amendments to ORS 647.705, 647.710 and 647.715 by sections 5 to 7 of this 2018 Act apply to contracts into which a performing rights society enters on or after the effective date of this 2018 Act.

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**Passed by House February 8, 2018**

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

**Passed by Senate February 22, 2018**

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Peter Courtney, President of Senate

**Received by Governor:**

.....M,....., 2018

**Approved:**

.....M,....., 2018

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Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M,....., 2018

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Dennis Richardson, Secretary of State