

CERTIFICATION OF ENROLLMENT
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1763

64th Legislature
2016 Regular Session

Passed by the House March 8, 2016
Yeas 93 Nays 3

Speaker of the House of Representatives

Passed by the Senate March 3, 2016
Yeas 48 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1763** as passed by House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1763

AS AMENDED BY THE SENATE

Passed Legislature - 2016 Regular Session

State of Washington

64th Legislature

2015 Regular Session

By House General Government & Information Technology (originally sponsored by Representatives Van De Wege, Lytton, Riccelli, and Tharinger)

1 AN ACT Relating to regulating music licensing agencies; adding a
2 new chapter to Title 19 RCW; prescribing penalties; and providing an
3 effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The definitions in this section apply
6 throughout this chapter unless the context clearly requires
7 otherwise.

8 (1) "Copyright owner" means the owner of a copyright of a
9 nondramatic musical work recognized and enforceable under the
10 copyright laws of the United States pursuant to Title 17 of the
11 United States Code (17 U.S.C. Sec. 101 et seq.). "Copyright owner"
12 does not include the owner of a copyright in a motion picture or
13 audiovisual work, or in part of a motion picture or audiovisual work.

14 (2) "Music licensing agency" means a performing rights society.

15 (3) "Performing rights society" means an association or
16 corporation that licenses the public performance of non-dramatic
17 musical works on behalf of copyright owners, such as the American
18 Society of Composers, Authors and Publishers (ASCAP), Broadcast
19 Music, Inc. (BMI), and SESAC, Inc.

20 (4) "Proprietor" means the owner of a retail establishment,
21 restaurant, inn, bar, tavern, sports or entertainment facility, or

1 any other similar place of business or professional office located in
2 this state in which the public may assemble and in which nondramatic
3 musical works or similar copyrighted works may be performed,
4 broadcast, or otherwise transmitted for the enjoyment of members of
5 the public there assembled.

6 (5) "Royalty" or "royalties" means the fees payable to a
7 copyright owner or performing rights society for the public
8 performance of nondramatic musical works or other similar works.

9 NEW SECTION. **Sec. 2.** A performing rights society that licenses
10 the performing rights to music may not license or attempt to license
11 the use of or collect or attempt to collect any compensation on
12 account of any sale, license, or other disposition regarding the
13 performance rights of music unless the performing rights society:

14 (1) Registers and files annually with the department of licensing
15 an electronic copy of each performing rights form agreement providing
16 for the payment of royalties made available from the performing
17 rights society to any proprietor within the state; and

18 (2) Has a valid Washington unified business identifier number.

19 NEW SECTION. **Sec. 3.** A performing rights society must make
20 available electronically to business proprietors the most current
21 available list of members and affiliates represented by the
22 performing rights society and the most current available list of the
23 performed works that the performing rights society licenses.

24 NEW SECTION. **Sec. 4.** A person who willfully violates any of the
25 provisions of this chapter may be liable for a civil penalty of not
26 more than one thousand dollars per violation. Multiple violations on
27 a single day may be considered separate violations. The attorney
28 general, acting in the name of the state, may seek recovery of all
29 such penalties in a civil action. The attorney general may issue
30 civil investigative demands for the inspection of documents,
31 interrogatory responses, and oral testimony in the enforcement of
32 this section.

33 NEW SECTION. **Sec. 5.** (1) Before seeking payment or a contract
34 for payment of royalties for the use of copyrighted works by that
35 proprietor, a representative or agent for a performing rights society
36 must:

1 Identify himself or herself to the proprietor or the proprietor's
2 employees, disclose that he or she is acting on behalf of a
3 performing rights society, and disclose the purpose for being on the
4 premises.

5 (2) A representative or agent of a performing rights society must
6 not:

7 (a) Use obscene, abusive, or profane language when communicating
8 with the proprietor or his or her employees;

9 (b) Communicate by telephone or in-person with a proprietor other
10 than at the proprietor's place of business during the hours when the
11 proprietor's business is open to the public. However, such
12 communications may occur at a location other than the proprietor's
13 place of business or during hours when the proprietor's business is
14 not open to the public if the proprietor or the proprietor's agents,
15 employees, or representatives so authorizes;

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

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

20 (e) Communicate with an unlicensed proprietor about licensing
21 performances of musical works at the proprietor's establishment after
22 receiving notification in writing from an attorney representing the
23 proprietor that all further communications related to the licensing
24 of the proprietor's establishment by the performing rights society
25 should be addressed to the attorney. However, the performing rights
26 society may resume communicating directly with the proprietor if the
27 attorney fails to respond to communications from the performing
28 rights society within sixty days, or the attorney becomes
29 nonresponsive for a period of sixty days or more.

30 NEW SECTION. **Sec. 6.** (1) The department of revenue shall inform
31 proprietors of their rights and responsibilities regarding the public
32 performance of copyrighted music as part of the business licensing
33 service.

34 (2) Performing rights societies are encouraged to conduct
35 outreach campaigns to educate existing proprietors on their rights
36 and responsibilities regarding the public performance of copyrighted
37 music.

1 NEW SECTION. **Sec. 7.** (1) No performing rights society may enter
2 into, or offer to enter into, a contract for the payment of royalties
3 by a proprietor unless at least seventy-two hours prior to the
4 execution of that contract it provides to the proprietor or the
5 proprietor's employees, in writing, the following:

6 (a) A schedule of the rates and terms of royalties under the
7 contract; and

8 (b) Notice that the proprietor is entitled to the information
9 contained in section 3 of this act.

10 (2) A contract for the payment of royalties executed in this
11 state must:

12 (a) Be in writing;

13 (b) Be signed by the parties; and

14 (c) Include, at least, the following information:

15 (i) The proprietor's name and business address;

16 (ii) The name and location of each place of business to which the
17 contract applies;

18 (iii) The duration of the contract; and

19 (iv) The schedule of rates and terms of the royalties to be
20 collected under the contract, including any sliding scale or schedule
21 for any increase or decrease of those rates for the duration of that
22 contract.

23 NEW SECTION. **Sec. 8.** Nothing in this act may be construed to
24 prohibit a performing rights society from conducting investigations
25 to determine the existence of music use by a proprietor's business or
26 informing a proprietor of the proprietor's obligations under the
27 copyright laws of the United States pursuant to Title 17 of the
28 United States Code (17 U.S.C. Sec. 101 et seq.).

29 NEW SECTION. **Sec. 9.** Sections 1 through 8 of this act
30 constitute a new chapter in Title 19 RCW.

31 NEW SECTION. **Sec. 10.** This act takes effect January 1, 2017.

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