

AMENDMENTS TO LB1120

Introduced by General Affairs.

1 1. Strike the original sections and insert the following new
2 sections:

3 Section 1. Section 59-1401, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 59-1401 Sections 59-1401 to 59-1406 and sections 2 and 4 to 8 of
6 this act shall be known and may be cited as the Music Licensing Agency
7 Act. As used in sections 59-1401 to 59-1406, person means any individual,
8 resident or nonresident of this state, and every domestic, foreign, or
9 alien partnership, limited liability company, society, association, or
10 corporation and the words performing rights refer to public performance
11 for profit.

12 Sec. 2. For purposes of the Music Licensing Agency Act:

13 (1) Copyright owner means the owner of a copyright of a nondramatic
14 musical work recognized and enforceable under the copyright laws of the
15 United States pursuant to 17 U.S.C. 101 et seq., as such sections existed
16 on January 1, 2018, and does not include the owner of a copyright in a
17 motion picture or audiovisual work or in part of a motion picture or
18 audiovisual work;

19 (2) Music licensing agency means an association or corporation that
20 licenses the public performance of nondramatic musical works on behalf of
21 copyright owners;

22 (3) Performing right means the right to perform a copyrighted
23 nondramatic musical work publicly for profit;

24 (4) Person means any individual, resident or nonresident of this
25 state, and every domestic, foreign, or alien partnership, limited
26 liability company, society, association, corporation, or music licensing
27 agency;

1 (5) Proprietor means the owner of a retail establishment,
2 restaurant, inn, bar, tavern, sports or entertainment facility, or other
3 similar place of business or professional office located in this state in
4 which the public may assemble and in which nondramatic musical works or
5 similar copyrighted works may be performed, broadcast, or otherwise
6 transmitted for the enjoyment of members of the public there assembled;
7 and

8 (6) Royalty means the fees payable to a copyright owner for a
9 performing right.

10 Sec. 3. Section 59-1403, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 59-1403 ~~There From and after August 10, 1945, there is hereby~~
13 ~~levied and there shall be collected a tax for the act or privilege of~~
14 ~~selling, licensing, or otherwise disposing in this state of performing~~
15 ~~rights in any musical composition, which has been copyrighted under the~~
16 ~~laws of the United States, in an amount equal to three percent of the~~
17 ~~gross receipts of all such sales, licenses, or other dispositions of~~
18 ~~performing rights in this state payable to the Department of Revenue~~
19 ~~Secretary of State on or before March 15, 1946, with respect to all such~~
20 ~~gross receipts for the portion of the calendar year 1945 from August 10,~~
21 ~~1945, and annually thereafter, on or before March 15 of each succeeding~~
22 ~~year with respect to the gross receipts of the preceding calendar year.~~
23 ~~At the time of paying the said tax the Secretary of State shall issue a~~
24 ~~receipt therefor in duplicate, one of which shall be given to the~~
25 ~~taxpayer and one filed with the State Treasurer at the time the tax~~
26 ~~collected is paid by the Secretary of State to the state treasury. The~~
27 ~~department Secretary of State shall adopt and promulgate ~~publish~~ rules~~
28 ~~and regulations not in conflict with this section herewith, as well as a~~
29 ~~form of return and any other forms necessary to carry out the provisions~~
30 ~~of this section.~~

31 Sec. 4. (1) Beginning January 1, 2019, a music licensing agency

1 shall not license or attempt to license the use of or collect or attempt
2 to collect any compensation with regard to any sale, license, or other
3 disposition of a performing right unless the music licensing agency
4 registers and files annually, on or before February 15, with the
5 Department of Revenue an electronic copy of each variation of the
6 performing-rights agreement providing for the payment of royalties made
7 available from the music licensing agency to any proprietor within this
8 state. The registration shall be valid for the calendar year. The
9 department shall impose a fine for failure to renew or register in the
10 amount of ten thousand dollars for each forty-five-day period which has
11 passed since February 15 of the registration year if a music licensing
12 agency fails to renew a registration or engages in business without
13 registration.

14 (2) Each registered music licensing agency shall make available
15 electronically to proprietors the most current available list of members
16 and affiliates represented by the music licensing agency and the most
17 current available list of the performed works that the music licensing
18 agency licenses.

19 Sec. 5. (1) Beginning January 1, 2019, no music licensing agency
20 may enter into, or offer to enter into, a contract for the payment of
21 royalties by a proprietor unless at least seventy-two hours prior to the
22 execution of that contract it provides to the proprietor or the
23 proprietor's employees, in writing, the following:

24 (a) A schedule of the rates and terms of royalties under the
25 contract; and

26 (b) Notice that the proprietor is entitled to the information filed
27 with the Department of Revenue pursuant to section 4 of this act.

28 (2) Beginning January 1, 2019, a contract for the payment of
29 royalties executed in this state shall:

30 (a) Be in writing;

31 (b) Be signed by the parties; and

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

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

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

5 (iii) The duration of the contract; and

6 (iv) The schedule of rates and terms of the royalties to be
7 collected under the contract, including any sliding scale or schedule for
8 any increase or decrease of those rates for the duration of the contract.

9 Sec. 6. (1) Beginning January 1, 2019, before seeking payment or a
10 contract for payment of royalties for the use of copyrighted works by
11 that proprietor, a representative or agent for a music licensing agency
12 shall identify himself or herself to the proprietor or the proprietor's
13 employees, disclose that he or she is acting on behalf of a music
14 licensing agency, and disclose the purpose for being on the premises.

15 (2) A representative or agent of a music licensing agency shall not:

16 (a) Use obscene, abusive, or profane language when communicating
17 with a proprietor or his or her employees;

18 (b) Communicate by telephone or inperson with a proprietor other
19 than at the proprietor's place of business during the hours when the
20 proprietor's business is open to the public unless otherwise authorized
21 by the proprietor or the proprietor's agents, employees, or
22 representatives;

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

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

27 (e) Communicate with an unlicensed proprietor about licensing
28 performances of musical works at the proprietor's establishment after
29 receiving notification in writing from an attorney representing the
30 proprietor that all further communications related to the licensing of
31 the proprietor's establishment by the music licensing agency should be

1 addressed to the attorney. However, the music licensing agency may resume
2 communicating directly with the proprietor if the attorney fails to
3 respond to communications from the music licensing agency within sixty
4 days or the attorney becomes nonresponsive for a period of sixty days or
5 more.

6 Sec. 7. The Department of Revenue shall inform proprietors of their
7 rights and responsibilities regarding the public performance of
8 copyrighted music as part of the business licensing service.

9 Sec. 8. Nothing in the Music Licensing Agency Act may be construed
10 to prohibit a music licensing agency from conducting an investigation to
11 determine the existence of music use by a proprietor's business or
12 informing a proprietor of the proprietor's obligations under the
13 copyright laws of the United States pursuant to 17 U.S.C. 101 et seq., as
14 such sections existed on January 1, 2018.

15 Sec. 9. Section 59-1404, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 59-1404 Upon compliance with the Music Licensing Agency Act,
18 ~~provisions of sections 59-1401 to 59-1406~~ the copyright owner, and his or
19 her proprietors, their assigns and licensees, of a nondramatic musical
20 work compositions copyrighted under the laws of the United States shall
21 be entitled to all the benefits thereof.

22 Sec. 10. Section 59-1405, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 59-1405 All music licensing agencies ~~persons~~ who sell, license the
25 use of, or in any manner whatsoever dispose of, in this state, the
26 performing rights in or to any copyrighted musical composition shall
27 refrain from discriminating in price or terms between licensees similarly
28 situated, except ; ~~Provided, however,~~ that differentials based upon
29 applicable business factors which justify different prices or terms shall
30 not be considered discriminations within the meaning of this section.
31 ~~Nothing ; and provided further, that nothing contained in this section~~

1 shall prevent price changes from time to time by reason of changing
2 conditions affecting the market for or marketability of performing
3 rights.

4 Sec. 11. Section 59-1406, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 59-1406 Any person violating the Music Licensing Agency Act ~~sections~~
7 ~~59-1401 to 59-1406~~ shall be fined an amount not less than five ~~one~~
8 hundred dollars and not more than two ~~one~~ thousand dollars. Multiple
9 violations on a single day may be considered separate violations.

10 Sec. 12. Original sections 59-1401, 59-1403, 59-1404, 59-1405, and
11 59-1406, Reissue Revised Statutes of Nebraska, are repealed.