

continue in such office. If a majority shall vote "Yes" such incumbent shall thereupon be deemed removed from such office, upon the qualification of his successor. The canvassers shall canvass all votes for candidates for such office and declare the result in like manner as in a regular election. If the vote at any such recall election shall recall the officer, then the candidate who has received the highest number of votes for the office shall be declared elected for the remainder of the term. In case the person who received the highest number of votes shall fail to qualify within ten days after receiving the certificate of election, the office shall be deemed vacant and shall be filled according to law.

After one such petition and special election, no further recall petition shall be filed against the same officer during the term for which he was elected. This article shall be self executing and all of its provisions shall be treated as mandatory. Laws may be enacted to facilitate its operation, but no law shall be enacted to hamper, restrict or impair the right of recall.

Filed March 8, 1939.

COPYRIGHT

CHAPTER 115

S. B. No. 284—(Committee on Delayed Bills)

COPYRIGHT ACT

An act relating to copyrights and public performing rights in musical compositions and dramatico-musical compositions, requiring lists thereof to be filed, regulating the issue of licenses with respect thereto, prohibiting discrimination, providing for service of process, levying a privilege tax, providing penalties, and repealing inconsistent acts.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. As used in this act, "person" means any individual, resident or non-resident, of this State, and every domestic or foreign or alien partnership, society, association or corporation; the words "performing rights" refer to "public performance for profit"; the word "user" means any person who directly or indirectly performs or causes to be performed musical compositions for profit; the term "blanket license" includes any device whereby public performance for profit is authorized of the combined copyrights of two or more owners; the term "blanket royalty or fee" includes any device

whereby prices for performing rights are not based on the separate performance of individual copyrights.

§ 2. It shall be unlawful for any person to sell, license the use of, or in any manner whatsoever dispose of, in this State, the performing rights in or to any musical composition or dramatico-musical composition which has been copyrighted, and is the subject of a valid existing copyright, under the laws of the United States, or to collect any compensation on account of any such sale, license or other disposition, unless such person:

(a) Shall first have filed with the Secretary of State a list in triplicate describing each such musical composition and dramatico-musical composition, the performing rights in which said person intends to sell, license or otherwise dispose of in this State, which description shall include the following: The name and title of the copyrighted composition, the date of the copyright, the number or other identifying symbol given thereto in the United States copyright office, the name of the author, the name of the publisher, the name of the present owner of the copyright to said composition, and the name of the present owner of the performing rights thereto. Additional lists of such copyrighted compositions may be filed by any such person from time to time, and shall be subject to all the provisions of this act. No payment or filing fee shall be required by the Secretary of State for filing any list under this act.

(b) Shall simultaneously file an affidavit which shall describe the performance rights to be sold, licensed or otherwise disposed of and shall state that the compositions so listed are copyrighted under the laws of the United States, that the facts contained in the list to which said affidavit relates are true, that affiant has full authority to sell, license or otherwise dispose of the performing rights in such compositions; and the affidavit shall set forth the name, age, occupation and resident of the affiant; and if an agent, the name occupation and residence of his principal.

§ 3. The list provided for in the preceding section shall be made available by the Secretary of State to all persons for examination, and taking copies, in order that any user of such compositions in this State may be fully advised concerning the performing rights therein, and avoid being over-reached by false claims of ownership of said performing rights, and also avoid committing innocent infringements of said works. A duplicate of any list so filed by any such person shall at his request be certified by the Secretary of State at the expense of the person or persons making the request and shall by the Secretary of State be given or delivered to such person, who shall exhibit the same on demand of anyone to whom such person seeks to sell, license or otherwise dispose of said performing rights.

§ 4. It shall be unlawful for two or more owners of the copy-

rights of musical compositions or dramatico-musical compositions to associate or combine together in any manner, directly or indirectly, for the purpose of issuing blanket licenses for the public performance for profit of their compositions upon a blanket royalty or fee covering more than one, or all, of such compositions owned or controlled by the members of such association unless each individual copyright owner included in such association, or such association in behalf of each individual copyright owner, also shall make available to each user of such compositions within the State, at the option of the user, the right to perform publicly for profit each such copyrighted musical composition owned by him or it at a price established for each separate performance of each such composition. To this end, there shall be filed with the Secretary of State, either as a part of the list required by Section 2 hereof or as a separate document by such copyright owner, or by such association in behalf of such owner, a schedule of prices for the performing rights to each separate performance for profit of each such composition contained in such list, together with an affidavit of the copyright owner of such compositions that the price so stated has been determined by such copyright owner acting for himself and not either directly or indirectly in concert or by agreement with the owner or owners of any other copyrights. Such schedule of prices may contain reasonable classifications determined by use and function, or either, of the users of said compositions, with separate price for each classification, provided that there is equal treatment of all persons within each classification and that there is no unreasonable discrimination between classifications. Any copyright owner or such association acting in his behalf, may at his election fix one price which shall be applicable to each rendition of each of such compositions owned by him except to the extent that he elects to name specific compositions and to fix other prices for each rendition thereof; and said prices shall remain in force and effect until a new schedule of prices with respect to the performing rights to such compositions has been similarly filed in the office of the Secretary of State, at any time, at the election of such owner or such association acting in his behalf, changes in prices to become effective seven days from the date of filing thereof. Provided, however, it shall be unlawful for any person selling, licensing the use of, or in any manner whatsoever disposing of, or contracting to dispose of, in this State, the performing rights in or to any musical composition or dramatico-musical composition, to make any charge, or to contract for or collect, any compensation, as a condition of using said performing rights, based in whole or in part, on any program not containing any such composition; and any such charge or contract for compensation shall be valid and enforceable only to the extent that it is based and computed upon a program in which such composition is rendered. The schedule of prices provided for herein shall be made

available by the Secretary of State to all persons for examination and the taking of copies.

§ 5. Any person issuing a blanket license for performance rights shall file with the Secretary of State within thirty days from the date such blanket license is issued a true and complete copy of each such license issued or sold with respect to performance within this State, together with the affidavit of such person that such copy is a true and complete copy of the original and that it sets forth each and every agreement between the parties thereto with respect to performing rights.

§ 6. At the time of filing the information required in Sections 2 and 3, the owner of said performing rights shall likewise execute and deliver to the Secretary of State, on a form to be furnished by the Secretary of State, an authorization empowering the Secretary of State to accept service of process on such person in any action or proceeding, whether cognizable at law or in equity, arising under this act, and designating the address of such person until the same shall be changed by a new form similarly filed; and service of process may thereafter be effected in this State on such person in any such action or proceeding by serving the Secretary of State with duplicate copies of such process; and immediately upon receipt thereof the Secretary of State shall mail one of the duplicate copies by registered mail to the address of such person as stated on the authorization last filed by him.

§ 7. No person shall be entitled to commence or maintain any action or proceeding in any court with respect to such performing rights, or to collect any compensation on account of any sale, license or other disposition of such performing rights, in this State, except upon pleading and proving compliance with the provisions of this act.

Copies, certified by the Secretary of State as such, of each or all of the lists, license agreements, affidavits and other documents filed with the Secretary of State pursuant to the requirements of this act, shall be furnished by the Secretary of State at his direction and at the expense of any person requesting the same. Such certified copies shall be admitted in evidence in any action or proceeding in any court to the same extent as the original thereof.

§ 8. From and after the effective date of this act there is hereby levied, and there shall be collected, a tax, for the act or privilege of selling, licensing, or otherwise disposing of performing rights in such compositions in this State, in an amount equal to three per cent of the gross receipts of all such sales, licenses or other dispositions of performing rights in this State, payable to the State Treasurer, for the benefit of the General Fund of the State, on or before the fifteenth day of March, 1940, with respect to all such gross receipts for the portion of the calendar year 1939

after the effective date of this act, and annually thereafter, on or before the fifteenth of March of each succeeding year, with respect to the gross receipts of the preceding calendar year. The State Treasurer shall adopt and publish rules and regulations not in conflict herewith, as well as a form of return and any other forms to carry out the provisions of this section.

§ 9. It shall be unlawful for any person, without the consent of the owner thereof, if said owner shall have complied with the provisions of this act, publicly to perform for profit, in this State, any such composition, or for any person knowingly to participate in the public performance for profit of such composition, or any part thereof.

§ 10. Any violation of this act shall constitute a misdemeanor, to be punished as provided elsewhere in the laws of this State.

§ 11. All laws or portions thereof whether general, special or local, which relate to the same subject matter as this act and which are inconsistent with the provisions of this act, are hereby superseded by the provisions of this act to the extent that such inconsistency exists.

Nothing contained in this act shall be so construed as to impair or affect the obligation of any contract or license which was lawfully entered into prior to the effect date of this act.

§ 12. If any section, sentence, clause or word of this act shall be held to be unconstitutional, the invalidity of such section, sentence, clause or word shall not affect the validity of any other portion of this act, it being the intent of this legislature to enact each of the provisions of this act insofar as they conform to the Constitution of this State and of the United States.

Approved March 15, 1939.