

As Introduced

**127th General Assembly
Regular Session
2007-2008**

S. B. No. 269

Senator Schuler

Cosponsor: Senator Jacobson

—

A B I L L

To amend section 1345.51 and to enact sections 1
1349.80 to 1349.82 of the Revised Code to prohibit 2
any person from advertising or conducting a live 3
musical performance or production in Ohio through 4
the use of a false, deceptive, or misleading 5
affiliation, connection, or association between a 6
performing group and a recording group. 7

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 1345.51 be amended and sections 8
1349.80, 1349.81, and 1349.82 of the Revised Code be enacted to 9
read as follows: 10

Sec. 1345.51. There is hereby created in the state treasury 11
the consumer protection enforcement fund. The fund shall include 12
civil penalties ordered pursuant to divisions (A) and (D) of 13
section 1345.07 of the Revised Code and paid as provided in 14
division (G) of that section, all civil penalties assessed under 15
division (A) of section 1349.192 or division (D) of section 16
1349.82 of the Revised Code, all costs awarded to the attorney 17
general and all penalties imposed under section 4549.48 of the 18
Revised Code, and all money unclaimed under section 4549.50 of the 19

Revised Code. The money in the consumer protection enforcement 20
fund shall be used for the sole purpose of paying expenses 21
incurred by the consumer protection section of the office of the 22
attorney general. 23

Sec. 1349.80. As used in this section and sections 1349.81 to 24
1349.83 of the Revised Code: 25

(A) "Performing group" means a vocal or instrumental group 26
seeking to use the name of a recording group that previously 27
released a commercial sound recording under the recording group's 28
name. 29

(B) "Recording group" means a vocal or instrumental group 30
that includes at least one member who satisfies both of the 31
following criteria: 32

(1) The member previously released a commercial sound 33
recording under the vocal or instrumental group's name. 34

(2) The member has a legal right to the vocal or instrumental 35
group's name by virtue of use of or operation under that group 36
name or affiliation with the group. 37

(C) "Commercial sound recording" means a work that results 38
from the fixation on a material object of a series of musical, 39
spoken, or other sounds, regardless of the nature of the material 40
object, including, but not limited to, a compact disc, cassette 41
tape, or phonograph album in which sounds are embodied. 42

Sec. 1349.81. (A) Except as otherwise provided in division 43
(B) of this section, no person shall advertise or conduct a live 44
musical performance or production in this state through the use of 45
a false, deceptive, or misleading affiliation, connection, or 46
association between a performing group and a recording group. 47

(B) Division (A) of this section does not apply to a person 48

if any of the following circumstances apply: 49

(1) The performing group is the authorized registrant and owner of a federal service mark for that group registered in the United States patent and trademark office. 50
51
52

(2) At least one member of the performing group is a member of the recording group and has a legal right to that group name by virtue of use or operation under the group name without having abandoned the name or affiliation with the group. 53
54
55
56

(3) The live musical performance or production is identified in all advertising and promotion for the performance as a salute or tribute to the recording group. 57
58
59

(4) The advertising does not relate to a live musical performance or production that the performing group conducts in this state. 60
61
62

(5) The performance or production is authorized expressly in writing by at least one member of the recording group. 63
64

Sec. 1349.82. (A) The attorney general may investigate any person who has allegedly violated division (A) of section 1349.81 of the Revised Code. The attorney general has the same powers to investigate an alleged violation of division (A) of section 1349.81 of the Revised Code as those powers specified in section 1345.06 of the Revised Code. 65
66
67
68
69
70

(B) If, after an investigation, the attorney general determines that reasonable evidence exists of a violation of division (A) of section 1349.81 of the Revised Code, the attorney general, within seven days after that determination, shall send the party who is the subject of the investigation, a written notice, by regular mail, that includes all of the following: 71
72
73
74
75
76

(1) A description of the activity in which the party is engaging or has engaged that allegedly violates that division; 77
78

(2) A statement that the attorney general will hold a hearing regarding that alleged violation and the date and place of that hearing; 79
80
81

(3) A statement informing the party that the party or the party's attorney may appear in person at the hearing and present evidence and examine witnesses appearing for and against the party, or the party may submit written testimony stating any positions, arguments, or contentions. 82
83
84
85
86

(C) The attorney general shall conduct a hearing to hear the testimony of all parties present pursuant to division (B)(3) of this section and shall consider any written testimony submitted pursuant to that division, and determine whether there has been a violation of division (A) of section 1349.81 of the Revised Code. The attorney general shall maintain a transcript of the proceedings of the hearing and issue a written opinion to all parties, citing the findings of the attorney general and grounds for any action taken. 87
88
89
90
91
92
93
94
95

(D) If the attorney general finds, pursuant to a hearing held in accordance with division (C) of this section, that a violation of division (A) of section 1349.81 of the Revised Code has occurred, the attorney general may assess a civil penalty of not less than five thousand dollars nor more than fifteen thousand dollars per violation. Each performance or production performed in violation of division (A) of section 1349.81 of the Revised Code constitutes a separate violation. The attorney general shall determine the terms of payment. A civil penalty assessed under this division shall be deposited into the consumer protection enforcement fund, which is created in the state treasury under section 1345.51 of the Revised Code. The civil penalty assessed pursuant to this division is in addition to any other relief that may be granted pursuant to division (E) of this section. 96
97
98
99
100
101
102
103
104
105
106
107
108
109

(E) In addition to any other action the attorney general 110

takes pursuant to this section, if the attorney general has reason 111
to believe that any person is violating or is about to violate 112
division (A) of section 1349.81 of the Revised Code and that 113
proceedings would be in the public interest, the attorney general 114
may bring an action in the name of the state against the person in 115
the court of common pleas in the county where the violation is 116
occurring or is about to occur to restrain by temporary or 117
permanent injunction the activity that results in the person 118
violating that division. 119

Whenever a court issues a permanent injunction to restrain 120
and prevent violations of division (A) of section 1349.81 of the 121
Revised Code as authorized under this division, the court may, in 122
its discretion, direct that the defendant restore to any person in 123
interest any moneys or property, real or personal, that may have 124
been acquired by means of any violation of division (A) of section 125
1349.81 of the Revised Code, under terms and conditions 126
established by the court. 127

Section 2. That existing section 1345.51 of the Revised Code 128
is hereby repealed. 129