

**As Reported by the Senate Judiciary--Civil Justice Committee**

**127th General Assembly**

**Regular Session**

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**S. B. No. 269**

**Senator Schuler**

**Cosponsors: Senators Jacobson, Goodman, Schuring, Mason, Fedor,**

**Kearney**

**—**

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

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

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

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

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

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

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

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

(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 50  
owner of a federal service mark for that group registered in the 51  
United States patent and trademark office. 52

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

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

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

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

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

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

(1) A description of the activity in which the party is 77

engaging or has engaged that allegedly violates that division; 78

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

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

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

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