

As Introduced

**129th General Assembly
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S. B. No. 84

Senator Oelslager

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To amend sections 1345.07, 1345.51, 1349.80, and 1
1349.81, to enact new section 1349.82, and to 2
repeal section 1349.82 of the Revised Code to 3
designate the offense of advertising or conducting 4
a live musical performance or production in Ohio 5
through the use of a false, deceptive, or 6
misleading affiliation, connection, or association 7
between a performing group and a recording group 8
as an unfair or deceptive act or practice, to 9
increase the civil penalty for violating a 10
temporary restraining order preliminary 11
injunction, or permanent injunction to restrain 12
and prevent that act or practice, and to eliminate 13
the duties of the attorney general regarding 14
investigations of persons alleged to have 15
committed that offense. 16

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

Section 1. That sections 1345.07, 1345.51, 1349.80, and 17
1349.81 be amended and new section 1349.82 of the Revised Code be 18
enacted to read as follows: 19

Sec. 1345.07. (A) If the attorney general, by the attorney 20

general's own inquiries or as a result of complaints, has 21
reasonable cause to believe that a supplier has engaged or is 22
engaging in an act or practice that violates this chapter, and 23
that the action would be in the public interest, the attorney 24
general may bring any of the following: 25

(1) An action to obtain a declaratory judgment that the act 26
or practice violates section 1345.02, 1345.03, or 1345.031 of the 27
Revised Code; 28

(2)(a) An action, with notice as required by Civil Rule 65, 29
to obtain a temporary restraining order, preliminary injunction, 30
or permanent injunction to restrain the act or practice. If the 31
attorney general shows by a preponderance of the evidence that the 32
supplier has violated or is violating section 1345.02, 1345.03, or 33
1345.031 of the Revised Code, the court may issue a temporary 34
restraining order, preliminary injunction, or permanent injunction 35
to restrain and prevent the act or practice. ~~On~~ 36

(b)(i) Except as provided in division (A)(2)(b)(ii) of this 37
section, on motion of the attorney general, or on its own motion, 38
the court may impose a civil penalty of not more than five 39
thousand dollars for each day of violation of a temporary 40
restraining order, preliminary injunction, or permanent injunction 41
issued under this section, if the supplier received notice of the 42
action. The civil penalties shall be paid as provided in division 43
(G) of this section. ~~Upon~~ 44

(ii) If the court issues under this section a temporary 45
restraining order, preliminary injunction, or permanent injunction 46
to restrain and prevent an act or practice that is a violation of 47
section 1345.02 and division (A) of section 1349.81 of the Revised 48
Code, on motion of the attorney general, or on its own motion, the 49
court may impose a civil penalty of not less than five thousand 50
dollars and not more than fifteen thousand dollars for each day of 51
violation of the temporary restraining order, preliminary 52

injunction, or permanent injunction, if the supplier received 53
notice of the action. The civil penalties shall be paid as 54
provided in division (G) of this section. 55

(c) Upon the commencement of an action under division (A)(2) 56
of this section against a supplier who operates under a license, 57
permit, certificate, commission, or other authorization issued by 58
the supreme court or by a board, commission, department, division, 59
or other agency of this state, the attorney general shall 60
immediately notify the supreme court or agency that such an action 61
has been commenced against the supplier. 62

(3) A class action under Civil Rule 23, as amended, on behalf 63
of consumers who have engaged in consumer transactions in this 64
state for damage caused by: 65

(a) An act or practice enumerated in division (B) or (D) of 66
section 1345.02 of the Revised Code; 67

(b) Violation of a rule adopted under division (B)(2) of 68
section 1345.05 of the Revised Code before the consumer 69
transaction on which the action is based; 70

(c) An act or practice determined by a court of this state to 71
violate section 1345.02, 1345.03, or 1345.031 of the Revised Code 72
and committed after the decision containing the determination has 73
been made available for public inspection under division (A)(3) of 74
section 1345.05 of the Revised Code. 75

(B) On motion of the attorney general and without bond, in 76
the attorney general's action under this section, the court may 77
make appropriate orders, including appointment of a referee or a 78
receiver, for sequestration of assets, to reimburse consumers 79
found to have been damaged, to carry out a transaction in 80
accordance with a consumer's reasonable expectations, to strike or 81
limit the application of unconscionable clauses of contracts so as 82
to avoid an unconscionable result, or to grant other appropriate 83

relief. The court may assess the expenses of a referee or receiver 84
against the supplier. 85

(C) Any moneys or property recovered by the attorney general 86
in an action under this section that cannot with due diligence 87
within five years be restored by a referee to consumers shall be 88
unclaimed funds reportable under Chapter 169. of the Revised Code. 89

(D) In addition to the other remedies provided in this 90
section, if the violation is an act or practice that was declared 91
to be unfair, deceptive, or unconscionable by rule adopted 92
pursuant to division (B)(2) of section 1345.05 of the Revised Code 93
before the consumer transaction on which the action is based 94
occurred or an act or practice that was determined by a court of 95
this state to violate section 1345.02, 1345.03, or 1345.031 of the 96
Revised Code and committed after the decision containing the 97
court's determination was made available for public inspection 98
pursuant to division (A)(3) of section 1345.05 of the Revised 99
Code, the attorney general may request and the court may impose a 100
civil penalty of not more than twenty-five thousand dollars 101
against the supplier. The civil penalties shall be paid as 102
provided in division (G) of this section. 103

(E) No action may be brought by the attorney general under 104
this section to recover for a transaction more than two years 105
after the occurrence of a violation. 106

(F) If a court determines that provision has been made for 107
reimbursement or other appropriate corrective action, insofar as 108
practicable, with respect to all consumers damaged by a violation, 109
or in any other appropriate case, the attorney general, with court 110
approval, may terminate enforcement proceedings brought by the 111
attorney general upon acceptance of an assurance from the supplier 112
of voluntary compliance with Chapter 1345. of the Revised Code, 113
with respect to the alleged violation. The assurance shall be 114
filed with the court and entered as a consent judgment. Except as 115

provided in division (A) of section 1345.10 of the Revised Code, a consent judgment is not evidence of prior violation of such chapter. Disregard of the terms of a consent judgment entered upon an assurance shall be treated as a violation of an injunction issued under this section.

(G) Civil penalties ordered pursuant to divisions (A) and (D) of this section shall be paid as follows: one-fourth of the amount to the treasurer of the county in which the action is brought and three-fourths to the consumer protection enforcement fund created by section 1345.51 of the Revised Code.

(H) The remedies available to the attorney general under this section are cumulative and concurrent, and the exercise of one remedy by the attorney general does not preclude or require the exercise of any other remedy. The attorney general is not required to use any procedure set forth in section 1345.06 of the Revised Code prior to the exercise of any remedy set forth in this section.

Sec. 1345.51. There is hereby created in the state treasury the consumer protection enforcement fund. The fund shall include civil penalties ordered pursuant to divisions (A) and (D) of section 1345.07 of the Revised Code and paid as provided in division (G) of that section, all civil penalties assessed under division (A) of section 1349.192 ~~or division (D) of section 1349.82~~ of the Revised Code, all costs awarded to the attorney general and all penalties imposed under section 4549.48 of the 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~~ section 146
1349.81 ~~to 1349.83~~ of the Revised Code: 147

(A) "Performing group" means a vocal or instrumental group 148
seeking to use the name of a recording group that previously 149
released a commercial sound recording under the recording group's 150
name. 151

(B) "Recording group" means a vocal or instrumental group 152
that includes at least one member who satisfies both of the 153
following criteria: 154

(1) The member previously released a commercial sound 155
recording under the vocal or instrumental group's name. 156

(2) The member has a legal right to the vocal or instrumental 157
group's name by virtue of use of or operation under that group 158
name or affiliation with the group. 159

(C) "Commercial sound recording" means a work that results 160
from the fixation on a material object of a series of musical, 161
spoken, or other sounds, regardless of the nature of the material 162
object, including, but not limited to, a compact disc, cassette 163
tape, or phonograph album in which sounds are embodied. 164

Sec. 1349.81. (A) Except as otherwise provided in division 165
(B) of this section, no person shall advertise or conduct a live 166
musical performance or production in this state through the use of 167
a false, deceptive, or misleading affiliation, connection, or 168
association between a performing group and a recording group. 169

(B) Division (A) of this section does not apply to a person 170
if any of the following circumstances apply: 171

(1) The performing group is the authorized registrant and 172
owner of a federal service mark for that group registered in the 173
United States patent and trademark office or is the owner of a 174

valid trademark for that group under the "Lanham Act," 60 Stat. 175
427-443 (1946), 15 U.S.C. 1125(a), as amended. 176

(2) At least one member of the performing group is a member 177
of the recording group and has a legal right to that group name by 178
virtue of use or operation under the group name without having 179
abandoned the name or affiliation with the group. 180

(3) The live musical performance or production is identified 181
in all advertising and promotion for the performance as a salute 182
or tribute to the recording group. 183

(4) The advertising does not relate to a live musical 184
performance or production that the performing group conducts in 185
this state. 186

(5) The performance or production is authorized expressly in 187
writing by at least one member of the recording group. 188

Sec. 1349.82. A violation of division (A) of section 1349.81 189
of the Revised Code is an unfair or deceptive act or practice in 190
violation of section 1345.02 of the Revised Code. 191

Section 2. That existing sections 1345.07, 1345.51, 1349.80, 192
and 1349.81 and section 1349.82 of the Revised Code are hereby 193
repealed. 194