

AN ACT

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

Be it enacted by the General Assembly of the State of Ohio:

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

Sec. 1345.07. (A) If the attorney general, by the attorney general's own inquiries or as a result of complaints, has reasonable cause to believe that a supplier has engaged or is engaging in an act or practice that violates this chapter, and that the action would be in the public interest, the attorney general may bring any of the following:

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

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

injunction to restrain and prevent the act or practice. ~~On~~

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

(ii) If the court issues under this section a temporary restraining order, preliminary injunction, or permanent injunction to restrain and prevent an act or practice that is a violation of section 1345.02 and division (A) of section 1349.81 of the Revised Code, on motion of the attorney general, or on its own motion, the court may impose a civil penalty of not less than five thousand dollars and not more than fifteen thousand dollars for each day of violation of the temporary restraining order, preliminary injunction, or permanent injunction, if the supplier received notice of the action. The civil penalties shall be paid as provided in division (G) of this section.

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

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

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

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

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

(B) On motion of the attorney general and without bond, in the attorney general's action under this section, the court may make appropriate orders, including appointment of a referee or a receiver, for sequestration of assets, to reimburse consumers found to have been damaged, to carry out a

transaction in accordance with a consumer's reasonable expectations, to strike or limit the application of unconscionable clauses of contracts so as to avoid an unconscionable result, or to grant other appropriate relief. The court may assess the expenses of a referee or receiver against the supplier.

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

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

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

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

following circumstances apply:

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

(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.

(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.

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

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

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

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



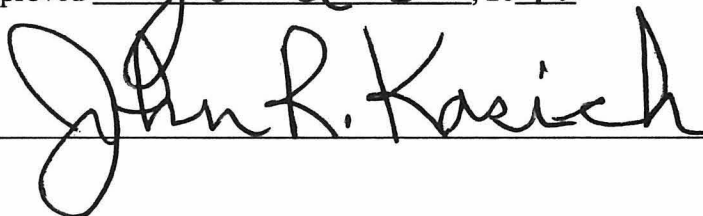
Speaker _____ of the House of Representatives.



President _____ of the Senate.

Passed June 21, 2011

Approved June 30, 2011

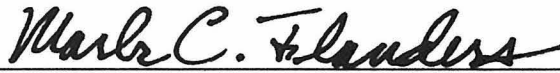


Governor.

S. B. No. 84

129th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.



Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 1st day of July, A. D. 2011.



Secretary of State.

File No. 31

Effective Date 9/30/11

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Introduced by

Senator Oelslager

Cosponsors: Senators Skindell, Kearney, Wagoner, Bacon, Beagle, Daniels, Hughes, Jones, LaRose, Obhof, Patton, Sawyer, Seitz, Smith, Stewart, Wilson
Representatives Garland, Winburn, Coley, Slaby, Anielski, Bubb, Carney, Combs, Letson, Patmon, Yuko
Speaker Batchelder

Passed by the Senate,

April 6, 2011

Passed by the House of Representatives,

June 21, 2011

*Filed in the office of the Secretary of State at
Columbus, Ohio, on the*

1st day of July, A. D. 2011


Secretary of State.