

ARKANSAS SENATE
90th General Assembly - Regular Session, 2015
Amendment Form

Subtitle of Senate Bill No. 965
TO REGULATE PUBLICITY RIGHTS.

Amendment No. 1 to Senate Bill No. 965

Amend Senate Bill No. 965 as originally introduced:

Page 1, delete line 9 and substitute the following:
"AN ACT TO REGULATE PUBLICITY RIGHTS; TO PROTECT THE PROPERTY RIGHTS OF AN
INDIVIDUAL TO THE USE OF THE INDIVIDUAL'S NAME, VOICE, SIGNATURE, AND
LIKENESS; AND FOR OTHER"

AND

Delete the subtitle in its entirety and substitute:
"TO REGULATE PUBLICITY RIGHTS; AND TO
PROTECT THE PROPERTY RIGHTS OF AN
INDIVIDUAL TO THE USE OF THE
INDIVIDUAL'S NAME, VOICE, SIGNATURE, AND
LIKENESS."

AND

Delete everything following the enacting clause and substitute the following:
"SECTION 1. Arkansas Code Title 4, Chapter 75, is amended to add an
additional subchapter to read as follows:

Subchapter 10 – Personal Rights Protection Act

4-75-1001. Title.

This subchapter shall be known and may be cited as the "Personal Rights
Protection Act".

4-75-1002. Findings and legislative intent.

(a) The General Assembly finds that citizens of this state:

(1) Are renowned for their hard work and accomplishments in many
areas that contribute to the public health, welfare, and pursuit of
happiness;

(2) Often spend most of their lives developing and maintaining
reputations of honesty and integrity;

(3) Have a vested interest in maintaining the memory of personal



traits that characterize them and their accomplishments; and

(4) Should have the use of their names, voices, signatures, photographs, and likenesses protected for their benefit and the benefit of their families.

(b) It is the intent of the General Assembly by the enactment of this subchapter to:

(1) Protect the names, voices, signatures, photographs, and likenesses of the citizens of this state from exploitation and unauthorized commercial use without a citizen's consent;

(2) Provide a method for the fair administration of the right to use a citizen's name, voice, signature, photograph, or likeness; and

(3) Provide appropriate remedies for the exploitation and unauthorized commercial use of a citizen's name, voice, signature, photograph, or likeness.

4-75-1003. Definitions.

As used in this subchapter:

(1)(A) "Commercial use" means the use of an individual's name, voice, signature, photograph, or likeness in the following manners:

(i) For advertising or promoting products, merchandise, goods, services, or businesses;

(ii) For fundraising; or

(iii) On in connection with a place, product, merchandise, good, service, or other commercial activity not exempted under this subchapter.

(B) "Commercial use" does not mean the use of an individual's name, voice, signature, photograph, or likeness to identify the individual for the purpose of:

(i) Data collection or data reporting and supplying the data collected or reported; or

(ii) Data processing, data matching, data distribution, or data licensing;

(2) "Individual" means a natural person, alive or dead;

(3) "Likeness" means a reproduction of the image of an individual by any means other than a photograph;

(4)(A) "Person" means an individual or entity.

(B) "Person" includes:

(i) A partnership, a corporation, a company, an association, or any other business entity;

(ii) A not-for-profit corporation or association;

(iii) An educational or religious institution;

(iv) A political party; and

(v) A community, civic, or other organization;

(5) "Photograph" means a reproduction of the image of an individual that readily identifies the individual, whether made by photography, videotape, live transmission, or other means; and

(6) "Successor in interest" means an owner or the beneficial owner of a property right provided by this subchapter under:

(A) A transfer, assignment, or license of the property right; or

(B) Section 4-75-1004(b)(3).

4-75-1004. Property right in use of name, voice, signature, photograph, or likeness – Prior consent.

(a) An individual has a property right in the use by any medium in any manner without the individual's prior consent of:

(1) The individual's name, voice, signature, photograph, or likeness; and

(2) Any combination of the individual's name, voice, signature, photograph, or likeness.

(b) The property right provided under subsection (a) of this section:

(1) Is freely transferable, assignable, licensable, and descendible, in whole or in part, by contract or by a trust, testamentary, or other instrument executed before or after the effective date of this subchapter;

(2) Does not expire upon the death of an individual, whether or not the rights were commercially used by the individual during the individual's lifetime; and

(3)(A) Upon an individual's death, vests in the individual's executors, administrators, heirs, devisees, and assigns according to:

(i) The terms of a testamentary instrument; or

(ii) Except as provided in subdivision (b)(3)(B) of this section, if a testamentary instrument does not expressly provide for the transfer of a property right provided by subsection (a) of this section, the laws of this state governing intestate succession to personalty.

(B) In the absence of an express transfer in a testamentary instrument of an individual's rights in his or her name, voice, signature, photograph, or likeness, a provision in the testamentary instrument that provides for the disposition of the residue of the individual's assets is effective to transfer the rights recognized under this section in accordance with the terms of the provision.

(c) Subject to the terms of a transfer, assignment, or license of a property right provided by this section, the consent required by subsection (a) of this section shall be exercised by:

(1) The individual during the individual's lifetime;

(2) A person or persons to whom all or part of the right of consent has been transferred, assigned, or licensed; or

(3) After an individual's death, as provided by § 4-75-1005.

4-75-1005. Exercise of rights after death.

(a) Subject to the terms of a transfer, assignment, or license of property rights under § 4-74-1004, after the death of an individual, consent to the use of an individual's name, voice, signature, photograph, or likeness shall be granted by no less than fifty-one percent (51%) of the owners of the right to use the individual's name, voice, signature, photograph, or likeness under § 4-75-1004(b)(3).

(b) Compensation or other remuneration received under subsection (a) of this section for the use of an individual's name, voice, signature, photograph, or likeness shall be shared by all owners of the right to use the individual's name, voice, signature, photograph, or likeness according to each owner's respective ownership interest.

4-75-1006. Registration.

(a) A successor in interest shall register a claim of property rights

under this subchapter in the manner provided by this section.

(b) Unless a claim of property rights under this subchapter is registered under this section, a successor in interest shall not recover damages from a person or obtain any other legal or equitable remedy on the claim for a commercial use prohibited by this subchapter unless the person knew of the claim of the successor in interest before the person undertook efforts or expense to make the commercial use.

(c)(1) A successor in interest shall register the claim with the Secretary of State:

(A) On a form prescribed by the Secretary of State; and

(B) By paying a filing fee prescribed by the Secretary of State not to exceed twenty-five dollars (\$25.00).

(2) The form shall:

(A) Be verified under oath;

(B) Include the name and, if applicable, date of death of the individual; and

(C) Include the name and address of the claimant, the basis of the claim, and the rights claimed.

(d)(1) Upon receipt the Secretary of State shall file and post the form along with the entire registry of persons claiming to be an individual's successor in interest on the website of the Secretary of State.

(2) The Secretary of State may microfilm or otherwise reproduce a filing or form and destroy the original filing or form.

(3) The microfilm or other reproduction of a filing or form under this section is admissible in any court of law.

(4) A filing or form under this section is a public record.

4-75-1007. Exclusive rights – Expiration.

Subject to a transfer, an assignment, or a licensing agreement, the property rights provided by this subchapter are exclusive to:

(1) An individual during the individual's lifetime; and

(2) The executors, administrators, heirs, devisees, and assigns of an individual for fifty (50) years after the individual's death.

4-75-1008. Unauthorized commercial use.

(a)(1) Except as provided in § 4-75-1010, a person who commercially uses an individual's name, voice, signature, photograph, or likeness is liable to the holder of the property right provided by this subchapter for damages and disgorgement of profits, funds, goods, or services if the commercial use was not authorized under § 4-75-1004(c).

(2) If a minor is the holder of the property right, a parent or legal guardian of the minor may consent on the minor's behalf.

(b) If a violation of this section occurs through the use of a product, merchandise, goods, or other tangible personal property, the product, merchandise, goods, or other tangible personal property and the instrumentalities used by the person violating this section are considered contraband and are subject to seizure and forfeiture to the state under § 4-75-1009.

4-75-1009. Civil actions – Injunctions, impounding, or destruction of materials – Damages.

(a) An aggrieved party may file a civil action in the county where:

- (1) One (1) or more defendants reside; or
 - (2) A violation of this subchapter occurred.
- (b) Upon finding a violation of this subchapter, the court may:
 - (1) Issue an injunction to prevent or restrain the unauthorized commercial use of an individual's name, voice, signature, photograph, or likeness; and
 - (2) Authorize the confiscation and restoration to the rightful owner of an item considered contraband under § 4-75-1008.
- (c) An instrumentality seized under § 4-75-1008 may be:
 - (1) Awarded to the holder of the property right that was violated; or
 - (2) Liquidated and the proceeds used to satisfy damages, costs, or attorney's fees if damages, costs, or attorney's fees are recovered by the holder of a property right under this subchapter.
- (d) As part of a final judgment or decree, the court may order the destruction or other reasonable disposition of all materials found to have been made or used in violation of the individual's rights.
- (e)(1) The holder of a property right provided by this subchapter is entitled to recover:
 - (A) The actual damages the holder suffers as a result of a commercial use of the property right; and
 - (B) Any profits that are attributable to the commercial use.
- (2) Profits that are attributable to the commercial use shall not be considered in computing the actual damages.
- (3) The existence or nonexistence of profits from the unauthorized commercial use shall not be a criterion for determining liability.

4-75-1010. Fair use – Commercial sponsorship.

- (a)(1) It is not a violation of this subchapter if a name, voice, signature, photograph, or likeness is used:
 - (A) In connection with a news, public affairs, or sports broadcast, including the promotion of and advertising for a sports broadcast, an account of public interest, or a political campaign;
 - (B) In:
 - (i) A play, book, magazine, newspaper, musical composition, visual work, work of art, audiovisual work, or radio or television program if it is fictional or nonfictional entertainment, or a dramatic, literary, or musical work;
 - (ii) A work of political, public interest, or newsworthy value; or
 - (iii) An advertisement or commercial announcement for any of the works described in this subdivision (a)(1)(A) or (a)(1)(B);
 - (C) In a photograph or likeness where the individual appears as a member of the public and the individual is not named or otherwise identified;
 - (D) By an institution of higher education or by a nonprofit organization, club, or supporting foundation that is authorized by the institution and established solely to advance the purposes of the institution if:
 - (i) The use is for educational purposes or to

promote the institution and its educational, athletic, or other institutional objectives; and

(ii) The individual is or was affiliated with the institution, including without limitation as a:

(a) Student or member of the faculty or staff;

(b) Donor or campus visitor; or

(c) Contractor, subcontractor, or employee; or

(E) By any person practicing the profession of photography or his or her representative, to exhibit and display photographs in a personal portfolio, but not for sale or for use in an advertisement, unless the exhibit and display is continued by the person practicing the profession of photography after written notice objecting to the exhibit and display has been given by the individual portrayed or his or her representative.

(2) The use of an individual's name, voice, signature, photograph, or likeness within a work that is protected under subdivision (a)(1)(B) of this section is not a fair use protected by subdivision (a)(1) of this section if the claimant proves that the use is so directly connected with a product, article of merchandise, good, or service other than the work itself as to constitute an act of advertising, selling, or soliciting purchases of the product, article of merchandise, good, or service by the individual without the prior consent required by this subchapter.

(b)(1) The commercial use of an individual's name, voice, signature, photograph, or likeness in a commercial medium does not constitute a commercial use for purposes of advertising or solicitation if the material containing the commercial use is authorized by the individual for commercial sponsorship or paid advertising.

(2) A determination of whether or not the commercial use of an individual's name, voice, signature, photograph, or likeness is so directly connected with the commercial sponsorship or paid advertising as to constitute an authorized use for purposes of advertising or solicitation is a question of fact.

4-75-1011. Exclusive remedies.

(a) The remedies granted by this subchapter shall constitute the exclusive basis for asserting a claim for the unauthorized commercial use of an individual's name, voice, signature, photograph, or likeness.

(b) Except as provided in this subchapter, a right of publicity in the use of an individual's name, voice, signature, photograph, or likeness does not exist.

4-75-1012. Construction.

This subchapter:

(1) Shall be liberally construed to accomplish its intent and purposes; and

(2) Does not render invalid or unenforceable a contract or license entered into before or after the effective date of this subchapter by an individual during his or her lifetime by which the individual transferred, assigned, or licensed all or part of the right to use his or her name, voice, signature, photograph, or likeness.

4-75-1013. Applicability.

(a) The property rights granted by this subchapter vest with respect to an individual on the effective date of this subchapter.

(b) This subchapter applies only to individuals maintaining a domicile or residence in the State of Arkansas on or after the effective date of this section."

The Amendment was read the first time, rules suspended and read the second time and _____

By: Senator J. Woods

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Secretary