

1 State of Arkansas  
2 90th General Assembly  
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4

*As Engrossed: S1/26/15 S2/2/15*

# A Bill

SENATE BILL 79

5 By: Senator J. Woods  
6 By: Representative Leding  
7

## For An Act To Be Entitled

9 AN ACT TO ENACT THE PERSONAL RIGHTS PROTECTION ACT;  
10 TO PROTECT THE PROPERTY RIGHTS OF AN INDIVIDUAL TO  
11 THE USE OF THE INDIVIDUAL'S NAME, VOICE, SIGNATURE,  
12 AND LIKENESS; AND FOR OTHER PURPOSES.  
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## Subtitle

15 TO ENACT THE PERSONAL RIGHTS PROTECTION  
16 ACT; AND TO PROTECT THE PROPERTY RIGHTS  
17 OF AN INDIVIDUAL TO THE USE OF THE  
18 INDIVIDUAL'S NAME, VOICE, SIGNATURE, AND  
19 LIKENESS.  
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
24

25 SECTION 1. Arkansas Code Title 4, Chapter 75, is amended to add an  
26 additional subchapter to read as follows:  
27

### Subchapter 10 – Personal Rights Protection Act

#### 4-75-1001. Title.

31 This subchapter shall be known and may be cited as the "Personal Rights  
32 Protection Act".  
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#### 4-75-1002. Findings and legislative intent.

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

36 (1) Are renowned for their hard work and accomplishments in many



1 areas that contribute to the public health, welfare, and pursuit of  
2 happiness;

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

5 (3) Have a vested interest in *maintaining* the memory of personal  
6 traits that characterize them and their accomplishments; and

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

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

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

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

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

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21 4-75-1003. Definitions.

22 As used in this subchapter:

23 (1) "Commercial use" means the use of an individual's name,  
24 voice, signature, photograph, or likeness for:

25 (A) Advertising;

26 (B) Fundraising; or

27 (C) Obtaining money, goods, or services;

28 (2) "Definable group" means a group of two (2) or more persons  
29 existing or organized with or without mutual agreement or arrangement,  
30 including without limitation a crowd at a sporting event or in a street or  
31 public building, the audience at a theatrical or stage production, a glee  
32 club, or a sports team;

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

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

36 (5)(A) "Person" means an individual or entity.

1 (B) "Person" includes:

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

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

5 (iii) An educational or religious institution;

6 (iv) A political party; and

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

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

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

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

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

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17 4-75-1004. Property right in use of name, voice, signature,  
18 photograph, or likeness – Prior consent.

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

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

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

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

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

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

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

35 (i) The terms of a testamentary instrument; or

36 (ii) Except as provided in subdivision (b)(3)(B) of

1 this section, if a testamentary instrument does not expressly provide for the  
2 transfer of a property right provided by subsection (a) of this section, the  
3 laws of this state governing intestate succession to personalty.

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

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

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

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

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

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18 4-75-1005. Exercise of rights after death.

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

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

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31 4-75-1006. Registration.

32 (a) A successor in interest shall register a claim of property rights  
33 under this subchapter in the manner provided by this section.

34 (b) Unless a claim of property rights under this subchapter is  
35 registered under this section, a successor in interest shall not recover  
36 damages from a person or obtain any other legal or equitable remedy on the

1 claim for a commercial use prohibited by this subchapter unless the person  
2 knew of the claim of the successor in interest before the person undertook  
3 efforts or expense to make the commercial use.

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

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

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

9 (2) The form shall:

10 (A) Be verified under oath;

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

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

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

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

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

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

23 (e)(1)(A) A claim to a property right under this subchapter may be re-  
24 registered under this section for successive ten-year periods by filing a  
25 continuation form with the Secretary of State.

26 (B) Subsections (c) and (d) of this section apply to a  
27 continuation form.

28 (2) The filing of a continuation form creates a rebuttable  
29 presumption that the property right has not expired due to nonuse under § 4-  
30 75-1007(b).

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32 4-75-1007. Exclusive rights – Expiration.

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

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

36 (2) The executors, administrators, heirs, devisees, and assigns

1 of an individual for *fifty (50) years* after the individual's death.

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3 4-75-1008. Unauthorized commercial use.

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

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

11 (b) The unauthorized commercial use of a property right under this  
12 subchapter is a Class A misdemeanor.

13 (c) Unless an individual's likeness or photograph is used to represent  
14 the individual as a member of a definable group solely as a result of being  
15 present at the time the photograph was taken and does not single out the  
16 individual for a commercial use prohibited by this subchapter, the fact that  
17 an individual is shown as a member of a definable group is not a defense to:

18 (1) An action under subsection (a) of this section; or

19 (2) A prosecution under subsection (b) of this section.

20 (d) If a violation of this section occurs through the use of a  
21 product, merchandise, goods, or other tangible personal property, the  
22 product, merchandise, goods, or other tangible personal property and the  
23 instrumentalities used by the person violating this section are considered  
24 contraband and are subject to seizure and forfeiture to the state under § 4-  
25 75-1009.

26  
27 4-75-1009. Civil actions – Injunctions, impounding, or destruction of  
28 materials – Damages.

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

30 (1) One (1) or more defendants reside; or

31 (2) A violation of this subchapter occurred.

32 (b) Upon finding a violation of this subchapter, the court may:

33 (1) Issue an injunction to prevent or restrain the unauthorized  
34 commercial use of an individual's name, voice, signature, photograph, or  
35 likeness;

36 (2) Authorize the confiscation and restoration to the rightful

1 owner of an item considered contraband under § 4-75-1008; and

2 (3) Seize the instrumentalities used in connection with the  
3 violation.

4 (c) An instrumentality seized under § 4-75-1008 may be:

5 (1) Awarded to the holder of the property right that was  
6 violated; or

7 (2) Liquidated and the proceeds used to satisfy damages, costs,  
8 or attorney's fees if damages, costs, or attorney's fees are recovered by the  
9 holder of a property right under this subchapter.

10 (d) If an action under this subchapter is pending, the court may:

11 (1) Impound materials claimed to have been made or used in  
12 violation of an individual's rights; and

13 (2) Enjoin the use of all plates, molds, matrices, masters,  
14 tapes, film negatives, or other articles by which the materials may be  
15 reproduced.

16 (e) As part of a final judgment or decree, the court may order the  
17 destruction or other reasonable disposition of:

18 (1) All materials found to have been made or used in violation  
19 of the individual's rights; and

20 (2) All plates, molds, matrices, masters, tapes, film negatives,  
21 or other articles by which the materials may be reproduced.

22 (f)(1) The holder of a property right provided by this subchapter is  
23 entitled to recover:

24 (A) The actual damages the holder suffers as a  
25 result of a commercial use of the property right; and

26 (B) Any profits that are attributable to the  
27 commercial use.

28 (2) Profits that are attributable to the commercial use  
29 shall not be considered in computing the actual damages.

30 (3) The existence or nonexistence of profits from the  
31 unauthorized commercial use shall not be a criterion for determining  
32 liability.

33 (g) The remedies provided for in this section are  
34 cumulative and shall be in addition to any other remedies provided for by  
35 law.

36

1 4-75-1010. Fair use – Commercial sponsorship.

2 (a)(1) It is a fair use and not a violation of this subchapter if a  
3 name, voice, signature, photograph, or likeness is used:

4 (A) In connection with a news, public affairs, or sports  
5 broadcast or account of public interest, or a political campaign; or

6 (B) In:

7 (i) A play, book, magazine, newspaper, musical  
8 composition, audiovisual work, or radio or television program if it is  
9 fictional or nonfictional entertainment, or a dramatic, literary, or musical  
10 work;

11 (ii) A single and original work of art that is not a  
12 portrait, photograph, or likeness of an individual;

13 (iii) A work of political or newsworthy value; or

14 (iv) An advertisement or commercial announcement for  
15 any of the works described in this subdivision (a)(1)(B).

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

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

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

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35 4-75-1011. Exclusive remedies.

36 (a) The remedies granted by this subchapter shall constitute the



1 exclusive basis for asserting a claim for the unauthorized commercial use of  
2 an individual's name, voice, signature, photograph, or likeness.

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

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7 4-75-1012. Construction.

8 This subchapter:

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

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

16  
17 4-75-1013. Applicability.

18 The property rights granted by this subchapter vest with respect to an  
19 individual on the effective date of this subchapter.

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21 /s/J. Woods  
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