

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015
4

As Engrossed: S1/26/15
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.
13

Subtitle

16 TO ENACT THE PERSONAL RIGHTS PROTECTION
17 ACT; AND TO PROTECT THE PROPERTY RIGHTS
18 OF AN INDIVIDUAL TO THE USE OF THE
19 INDIVIDUAL'S NAME, VOICE, SIGNATURE, AND
20 LIKENESS.
21

22
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

28 Subchapter 10 – Personal Rights Protection Act
29

30 4-75-1001. Title.

31 This subchapter shall be known and may be cited as the "Personal Rights
32 Protection Act".
33

34 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 their reputations and
6 the memory of personal traits that characterize them and their
7 accomplishments; and

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

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

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

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

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

21
22 4-75-1003. Definitions.

23 As used in this subchapter:

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

26 (A) Advertising;

27 (B) Fundraising; or

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

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

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

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

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

2 (B) "Person" includes:

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

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

6 (iii) An educational or religious institution;

7 (iv) A political party; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18
19 4-75-1005. Exercise of rights after death.

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

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

31
32 4-75-1006. Registration.

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

35 (b) Unless a claim of property rights under this subchapter is
36 registered under this section, a successor in interest shall not recover

1 damages from a person on the claim for a commercial use prohibited by this
2 subchapter unless the person knew or should have known of the claim of the
3 successor in interest.

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).

31
32 4-75-1007. Exclusive rights – Expiration.

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

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

36 (2) Except as provided in subsection (b) of this section, the

1 executors, administrators, heirs, devisees, and assigns of an individual for
2 ten (10) years after the individual's death.

3 (b) The exclusive right of a person described in subdivision (a)(2) of
4 this section to the commercial use of a property right provided by this
5 subchapter continues until the property right is terminated by proof of the
6 person's nonuse of the name, voice, signature, photograph, and likeness of
7 the individual for commercial purposes for two (2) consecutive years after
8 the initial ten-year period following the individual's death.

9
10 4-75-1008. Unauthorized commercial use.

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

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

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

20 (c) The fact that an individual is shown as a member of a definable
21 group is not a defense to:

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

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

24 (d) If a violation of this section occurs through the use of a
25 product, merchandise, goods, or other tangible personal property, the
26 product, merchandise, goods, or other tangible personal property and the
27 instrumentalities used by the person violating this section are considered
28 contraband and are subject to seizure and forfeiture to the state under § 4-
29 75-1009.

30
31 4-75-1009. Civil actions – Injunctions, impounding, or destruction of
32 materials – Damages.

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

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

35 (2) A violation of this subchapter occurred.

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

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

4 (2) Authorize the confiscation and restoration to the rightful
5 owner of an item considered contraband under § 4-75-1008; and

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

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

9 (1) Awarded to the holder of the property right that was
10 violated; or

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

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

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

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

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

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

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

26 (f)(1)(A) The holder of a property right provided by this subchapter
27 is entitled to recover:

28 (i) The actual damages the holder suffers as a
29 result of a commercial use of the property right; and

30 (ii) Any profits that are attributable to the
31 commercial use.

32 (B) Profits that are attributable to the commercial use
33 shall not be considered in computing the actual damages.

34 (C) The existence or nonexistence of profits from the
35 unauthorized commercial use shall not be a criterion for determining
36 liability.

1 (2)(A) The holder of a property right provided by this
2 subchapter is entitled to recover three (3) times the amount to which the
3 holder is entitled under subdivision (f)(1) of this section plus reasonable
4 attorney's fees if a person commercially uses the property rights of a member
5 of the armed forces in violation of this subchapter.

6 (B) As used in subdivision (f)(2)(A) of this section,
7 "member of the armed forces" means a member of the United States Armed Forces
8 or a member of a reserve or National Guard unit of Arkansas who is in, or was
9 called into, active duty service or active duty military service of the
10 United States.

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

13
14 4-75-1010. Fair use – Commercial sponsorship.

15 (a) It is a fair use and not a violation of this subchapter if the use
16 of a name, voice, signature, photograph, or likeness is used in connection
17 with a news, public affairs, or sports broadcast or account of public
18 interest, or a political campaign.

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

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

29
30 4-75-1011. Construction.

31 This subchapter:

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

34 (2) Does not render invalid or unenforceable a contract entered
35 into before or after the effective date of this subchapter by an individual
36 during his or her lifetime by which the individual transferred, assigned, or

1 licensed all or part of the right to use his or her name, voice, signature,
2 photograph, or likeness.

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4 4-7-1012. Applicability.

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

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8 */s/J. Woods*

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