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2 90th General Assembly

A Bill

3 Regular Session, 2015

SENATE BILL 79

4

5 By: Senator J. Woods

6 By: Representative Leding

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8

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

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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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

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Subchapter 10 – Personal Rights Protection Act

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4-75-1001. Title.

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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.

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

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

25 (i) Advertising;

26 (ii) Fundraising; or

27 (iii) Obtaining money, goods, or services.

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

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

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

35 (2) "Definable group" means a group of two (2) or more persons
36 existing or organized with or without mutual agreement or arrangement,

1 including without limitation a crowd at a sporting event or in a street or
2 public building, the audience at a theatrical or stage production, a glee
3 club, or a sports team;

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

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

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

8 (B) "Person" includes:

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

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

12 (iii) An educational or religious institution;

13 (iv) A political party; and

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

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

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

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

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

23
24 4-75-1004. Property right in use of name, voice, signature,
25 photograph, or likeness – Prior consent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24
25 4-75-1005. Exercise of rights after death.

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

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

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2 4-75-1006. Registration.

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

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

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

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

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

16 (2) The form shall:

17 (A) Be verified under oath;

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

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

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

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

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

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

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

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

35 (2) The filing of a continuation form creates a rebuttable
36 presumption that the property right has not expired due to nonuse under § 4-

1 75-1007(b).

2
3 4-75-1007. Exclusive rights – Expiration.

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

6 (1) An individual during the individual’s lifetime; and

7 (2) The executors, administrators, heirs, devisees, and assigns
8 of an individual for fifty (50) years after 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) Unless an individual’s likeness or photograph is used to represent
19 the individual as a member of a definable group solely as a result of being
20 present at the time the photograph was taken and does not single out the
21 individual for a commercial use prohibited by this subchapter, the fact that
22 an individual is shown as a member of a definable group is not a defense to
23 an action under subsection (a) of this section.

24 (c) 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) The holder of a property right provided by this subchapter is
27 entitled to recover:

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

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

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

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

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2 4-75-1010. Fair use – Commercial sponsorship.

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

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

7 (B) In:

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

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

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

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

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

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

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

35
36 4-75-1011. Exclusive remedies.

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

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

7
8 4-75-1012. Construction.

9 This subchapter:

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

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

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18 4-75-1013. Applicability.

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

21
22 /s/J. Woods
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