

# HOUSE BILL No. 5567

December 13, 2007, Introduced by Reps. Byrnes, LeBlanc, Lindberg, Coulouris, Lemmons, Polidori, Hood, Gaffney, Meisner, Tobocman, Bieda, Gillard, Cushingberry and Clack and referred to the Committee on Judiciary.

A bill to create certain property rights in attributes of an individual that have commercial value; to recognize transfer of those rights; to provide exceptions for certain purposes and entities; and to provide remedies.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 1. This act shall be known and may be cited as the "right  
2 of publicity act".

3           Sec. 3. As used in this act:

4           (a) "Attribute" means an individual's name, voice, signature,  
5 image, likeness, or persona and includes distinctive  
6 characteristics of the individual's appearance, gestures, or  
7 mannerisms.

8           (b) "Commercial purpose" means the use of a personality's  
9 attribute on or in connection with a product, good, service, or

1 commercial activity for the purpose of fund-raising, advertising,  
2 or soliciting purchases.

3 (c) "Name" means the actual or assumed name of a living or  
4 deceased natural person that is intended to identify the person.

5 (d) "News reporting or entertainment medium" means a medium  
6 that publishes, broadcasts, or disseminates advertising in the  
7 normal course of its business, such as a newspaper, magazine, radio  
8 or television network or station, or cable television station.

9 (e) "Personality" means a living or deceased individual whose  
10 name has commercial value, whether or not the individual uses or  
11 authorizes the use of his or her right of publicity for a  
12 commercial purpose during the individual's lifetime.

13 (f) "Right of publicity" means the right to control commercial  
14 use of a personality's attributes as provided in this act.

15 Sec. 5. Except as provided in section 15, a personality has a  
16 transferable property interest in his or her right of publicity for  
17 his or her lifetime plus 50 years as provided in this act.

18 Sec. 7. A person is liable for a violation of a right of  
19 publicity if the person does any of the following in this state  
20 during the personality's lifetime or within 50 years after the date  
21 of the personality's death without the consent of the personality  
22 or of a person to whom the personality's right of publicity has  
23 been transferred by contract, license, gift, trust, testamentary  
24 document, or operation of law:

25 (a) Uses an attribute of a personality for a commercial  
26 purpose.

27 (b) Creates or causes to be created any goods, merchandise, or

1 other materials that incorporate an attribute of a personality.

2 (c) Knowingly transports or causes to be transported into or  
3 within this state any goods, merchandise, or other materials that  
4 incorporate an attribute of a personality.

5 (d) Knowingly causes advertising or promotional material  
6 featuring an attribute of a personality to be published,  
7 distributed, exhibited, or disseminated.

8 Sec. 9. (1) Subject to subsection (6), a personality or a  
9 person to whom the personality's right of publicity has been  
10 transferred may bring a civil action for a violation of section 7  
11 for damages, equitable relief, or both.

12 (2) A person who violates section 7 is liable for actual  
13 damages, including profits derived from the unauthorized use, or  
14 \$1,000.00, whichever is greater. If the violation is willful,  
15 knowing, or intentional, the violator is liable for treble damages.

16 (3) The burden of proof in establishing the profits from the  
17 violation of the right of publicity is as follows:

18 (a) The plaintiff bears the burden of proof as to the gross  
19 revenue attributable to the unauthorized use.

20 (b) The defendant bears the burden of proof as to any expenses  
21 deductible from the gross profits.

22 (4) The court shall award the prevailing party in a civil  
23 action under this act reasonable attorney fees, costs, and expenses  
24 relating to an action.

25 (5) The court shall not grant an injunction against a news  
26 reporting or entertainment medium that has contracted with a person  
27 for the publication or broadcast of an advertisement and that

1 incorporated the advertisement in tangible form into material that  
2 is prepared for broadcast or publication.

3 (6) A person who holds a 50% or greater interest in a  
4 personality's right of publicity may exercise and enforce the  
5 rights and remedies provided in this act and shall account to any  
6 other person who holds a fractional interest in the right of  
7 publicity.

8 Sec. 11. (1) A court may order the impoundment of any goods,  
9 merchandise, or other materials alleged to have been made or used  
10 in violation of section 7 for any period that an action under this  
11 act is pending. Impounded materials may include plates, molds,  
12 matrices, masters, tapes, negatives, or other items from which  
13 those goods, merchandise, or other materials are manufactured or  
14 reproduced.

15 (2) As part of a final judgment, the court may order the  
16 destruction or other reasonable disposition of items manufactured  
17 or used in violation of section 7.

18 Sec. 13. It is an affirmative defense to an action under this  
19 act that a person had implied consent for the use or that the use  
20 was one of the following:

- 21 (a) Incidental.
- 22 (b) Fictional.
- 23 (c) Transformative.
- 24 (d) Parody.

25 Sec. 15. (1) This act does not supersede a right or privilege  
26 recognized under any other law that applies to a news reporting or  
27 entertainment medium.

1           (2) This act does not create a right of publicity in any of  
2 the following:

3           (a) The use of a personality's attributes in a literary or  
4 theatrical work, musical composition, film, or radio or television  
5 program.

6           (b) Material that has political or newsworthy value.

7           (c) An original work of fine art.

8           (d) Promotional material or advertising for a news reporting  
9 or entertainment medium, if it uses all or part of past material  
10 from the medium's own broadcast or publication and does not convey  
11 or suggest that the personality endorses the news reporting or  
12 entertainment medium.

13           (e) The use of a personality's name to truthfully identify the  
14 personality in connection with work of the personality.

15           (f) Use of a personality's attributes in connection with the  
16 broadcast or reporting of an event or topic of general or public  
17 interest.

18           (g) An advertisement or commercial announcement for a use  
19 described in subdivisions (a) to (f).

20           Sec. 17. The rights and remedies provided in this act are in  
21 addition to any other rights and remedies provided by law.