

HOUSE BILL No. 5986

April 15, 2008, Introduced by Rep. Sak 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

1 attribute on or in connection with a product, good, service, or
2 commercial activity for the purpose of fund-raising, advertising,
3 or soliciting purchases.

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

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

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

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

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

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

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

1 (b) Creates or causes to be created any goods, merchandise, or
2 other materials that incorporate an attribute of a personality.

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

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

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

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

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

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

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

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

26 (5) The court shall not grant an injunction against a news
27 reporting or entertainment medium that has contracted with a person

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

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

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

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

19 Sec. 13. It is an affirmative defense to an action under this
20 act that a person had implied consent for the use or that the use
21 was 1 or more of the following:

22 (a) Incidental.

23 (b) Fictional.

24 (c) Transformative.

25 (d) Parody.

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

1 entertainment medium.

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

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

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

8 (c) An original work of fine art.

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

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

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

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

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