

Civil rights; other; right of publicity; create.
Civil rights: other; Civil procedure: remedies; Property:
personal; Torts: property interests

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A bill to create certain 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, or likeness.

6 (b) "Commercial purpose" means the use of a personality's
7 attribute on or in a product or good, or for the purpose of
8 advertising, selling, or soliciting purchases of a product, good or
9 service.

1 (c) "Name" means the actual or assumed name of a living or
2 deceased individual that is intended to identify that particular
3 individual.

4 (d) "News reporting or entertainment medium" means any medium
5 now known or hereafter used or invented that publishes, broadcasts,
6 or disseminates news, entertainment, or advertising.

7 (e) "Person" means a business, individual, proprietorship,
8 firm, partnership, joint venture, syndicate, business trust, labor
9 organization, company, corporation, association, committee, or any
10 other organization or group of persons acting jointly.

11 (f) "Personality" means a living or deceased individual, 1 or
12 more of whose attributes have commercial value, whether or not the
13 individual uses or authorizes the use of his or her right of
14 publicity for a commercial purpose during the individual's
15 lifetime.

16 (g) "Right of publicity" means the right to control use of a
17 personality's attributes for a commercial purpose as provided in
18 this Act.

19 Sec. 5. (1) A personality has a transferable interest in his or
20 her right of publicity for his or her lifetime plus 50 years as
21 provided in this Act.

22 (2) The right recognized under this Act is freely transferable,
23 in whole or in part, by contract, license, gift, trust, will,
24 operation of law, or intestate succession as defined in the Michigan
25 Estate and Protected Individuals Code, Sec. 2101 et seq., by the
26 personality or by a subsequent owner of the personality's right under
27 this Act.

1 (3) In the absence of an express transfer of a deceased
2 personality's right of publicity in a will, a provision in the will
3 that provides for the disposition of the residue of the personality's
4 assets shall be effective to transfer the right under this Act in
5 accordance with the terms of that provision.

6 (4) If any deceased personality's right of publicity is not
7 transferred under this Act by contract, license, gift, trust, or
8 will, and there are no surviving persons as described in the Michigan
9 Estate and Protected Individuals Code, Sec. 2101 et seq., then the
10 right shall not pass to the State of Michigan but shall terminate as
11 of the date of death. Any pending litigation over the right of
12 publicity of the personality shall be dismissed.

13 Sec. 7. (1) Except as provided in subsections (2), (4), (5)
14 and (6), a person is liable for the violation of a personality's
15 right of publicity if the person knowingly uses an attribute of the
16 personality for a commercial purpose in this state during the
17 personality's lifetime or within 50 years after the date of the
18 personality's death without the consent of the personality or of a
19 person to whom the personality's right of publicity has been
20 transferred as provided in this Act.

21 (2) Unless the predominant purpose of the work is to
22 advertise, promote, or solicit purchases of a product or service,
23 consent is not required for use of an attribute of a personality in
24 any of the following works in any medium now known or hereafter
25 used or devised, regardless of length or format:

1 (a) A book, play, story, magazine, newspaper, article,
2 newsletter, other periodical, or graphic novel.

3 (b) A musical composition or sound recording.

4 (c) A motion picture, television program, or other audiovisual
5 work; a documentary.

6 (d) A video game.

7 (e) A radio or other audio program.

8 (f) A photograph, original work of art, art reproduction, or
9 other work derived from any such work.

10 (g) A work of political or newsworthy value or an
11 informational work.

12 (h) An editorial, fictional, artistic, or other expressive
13 work.

14 (3) Consent is not required for the nominative use of a
15 personality's attribute in any medium or for comparative advertising,
16 provided that the nominative use or comparative advertising does not
17 falsely suggest an endorsement or sponsorship by the personality of
18 any product, good, or service that the personality has not endorsed
19 or sponsored.

20 () Consent is not required for use of an attribute of a
21 personality in, or to display, an advertisement, promotion, or
22 solicitation for any work or use that is excluded from the
23 requirement for consent under subsections (2), (4) or (6).

24 (6) Consent is not required for use of an attribute of a
25 personality that is incidental, de minimus, parody, or protected
26 speech .

27 Sec. 9. (1) A personality or, if the personality's right of

1 publicity has been transferred, the holder or holders of a greater
2 than 50% interest in the right of publicity that is registered
3 under section 10, may bring a civil action for a violation of
4 section 7 for damages, equitable relief, or both.

5 (2) A person who violates section 7 is liable for actual
6 damages, including profits derived from the unauthorized use, or
7 \$1,000.00, whichever is greater. The court may award treble damages
8 in an exceptional case if it finds that the defendant acted
9 egregiously.

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

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

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

16 (4) The court may award the prevailing party in a civil action
17 under this Act reasonable attorneys' fees, costs, and expenses
18 relating to an action.

19 (6) A person who brings an action to enforce the rights and
20 remedies provided in this Act shall account to any other person who
21 holds a fractional interest in the right of publicity.

22 Sec. 10. (1) A transferee of a personality's right of
23 publicity cannot bring an action or recover damages or attorneys'
24 fees under this Act if the transferee has not registered the transfer
25 of the personality's right of publicity as provided in subsection
26 (4).

27 (2) A transferee of a personality's right of publicity may only
28 recover damages, attorneys' fees or other relief for a violation of

1 the right of publicity that occurred after, but not before, the date
2 that the transferee registered the transfer under subsection (4),
3 unless:

4 (i) In the case of a transfer of a personality's right of
5 publicity directly from the personality during the personality's
6 lifetime, the transferee registered the transfer within 60 days after
7 the date of the transfer.

8 (ii) In the case of a transfer of a personality's right of
9 publicity from a prior transferee who timely registered the transfer,
10 the subsequent transferee registered the transfer within 60 days
11 after the date of such transfer.

12 (iii) In the case of a transfer of a deceased personality's
13 right of publicity by will or intestate succession, the transferee
14 registered the transfer within 90 days after the right of publicity
15 vested in the transferee.

16 (iv) In the case of any transfer that occurred prior to the
17 effective date of this Act, the transferee registered the transfer
18 within [6 months] after the effective date of this Act.

19 (3) A transferee of a deceased personality whose domicile was
20 not in this state on the date of the personality's death may not
21 bring an action or recover any remedies under this Act, and may not
22 register any transfer of a right under this Act, unless a right of
23 publicity for deceased personalities existed under the law of the
24 state in which the personality was domiciled on the date of the
25 personality's death.

26 (4) A transferee of a right of publicity may register the
27 transfer with the secretary of state on a form prescribed by the
28 secretary of state. The form shall include the name of the

1 personality, the date of the transfer, the date of death and the
2 personality's domicile or residence at the time of death if the
3 personality is deceased, the name and address of the transferee, the
4 name and address of any persons authorized to act on behalf of the
5 transferee, the method of transfer of the right, and the nature and
6 percentage of the interest in the right transferred. The information
7 provided on the form shall be verified by the transferee. The
8 secretary of state may collect a fee for the registration that does
9 not exceed the incremental costs of recording the documents and
10 maintaining the registry.

11 (5) Upon receipt of the form and any related document for
12 filing, the secretary of state shall post the document in a
13 registry of interests in transferred rights of personality on a
14 website on the internet that is accessible to and searchable by the
15 public. The secretary of state may microfilm or reproduce by other
16 means any of the forms or documents and destroy the original form or
17 document. A reproduction of a record under this section that is
18 certified by the secretary of state shall be admissible in a court of
19 law. The secretary of state shall retain a record or
20 reproduction concerning a registration under this section for no less
21 than 55 years after the death of the personality.

22 (6) A form or other document filed under this section is a
23 public record.

24 (7) The defendant's good faith reliance upon the written
25 or electronic consent of the personality or of a person who has
26 registered a transfer of a personality's right of publicity
27 shall be a complete defense in any action under this Act.

1 (8) A person who registers a transfer under this section
2 without a reasonable belief that the person is a transferee of the
3 personality's right of publicity is guilty of a misdemeanor
4 punishable by imprisonment for not more than 90 days or a fine of not
5 more than \$500.00, or both.

6 Sec. 12. (1) Nothing in this Act shall apply to the owners or
7 employees of any news reporting or entertainment medium by whom any
8 advertisement or solicitation in violation of this Act is published,
9 broadcast, or disseminated, unless it is established that the owners
10 or employees had actual knowledge that the contracting party did not
11 have authorization for the use of the personality's attribute as
12 prohibited by this Act.

13 (2) The court shall not grant an injunction against a news
14 reporting or entertainment medium that has contracted with a person
15 for the publication, broadcast, or dissemination of an advertisement
16 based on a violation of the right of publicity in that advertisement.

17 Sec. 15. (2) This Act establishes the exclusive rights and
18 remedies for the violation of the right of publicity, superseding
19 common law rights and remedies concerning the right of publicity.
20 Other than for the right of publicity, the rights and remedies
21 provided in this Act are in addition to any other rights and
22 remedies provided by law.