

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

As Engrossed: S4/1/15

# A Bill

SENATE BILL 965

5 By: Senator J. Woods  
6 By: Representative Leding  
7

## For An Act To Be Entitled

9 *AN ACT TO REGULATE PUBLICITY RIGHTS; TO PROTECT THE*  
10 *PROPERTY RIGHTS OF AN INDIVIDUAL TO THE USE OF THE*  
11 *INDIVIDUAL'S NAME, VOICE, SIGNATURE, AND LIKENESS;*  
12 *AND FOR OTHER PURPOSES.*

## Subtitle

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16 *TO REGULATE PUBLICITY RIGHTS; AND TO*  
17 *PROTECT THE PROPERTY RIGHTS OF AN*  
18 *INDIVIDUAL TO THE USE OF THE INDIVIDUAL'S*  
19 *NAME, VOICE, SIGNATURE, AND LIKENESS.*  
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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24 *SECTION 1. Arkansas Code Title 4, Chapter 75, is amended to add an*  
25 *additional subchapter to read as follows:*  
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27 *Subchapter 10 – Personal Rights Protection Act*  
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29 *4-75-1001. Title.*

30 *This subchapter shall be known and may be cited as the "Personal Rights*  
31 *Protection Act".*  
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33 *4-75-1002. Findings and legislative intent.*

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

35 *(1) Are renowned for their hard work and accomplishments in many*  
36 *areas that contribute to the public health, welfare, and pursuit of*



1 happiness;

2 (2) Often spend most of their lives developing and maintaining  
3 reputations of honesty and integrity;

4 (3) Have a vested interest in maintaining the memory of personal  
5 traits that characterize them and their accomplishments; and

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

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

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

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

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

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20 4-75-1003. Definitions.

21 As used in this subchapter:

22 (1)(A) "Commercial use" means the use of an individual's name,  
23 voice, signature, photograph, or likeness in the following manners:

24 (i) For advertising or promoting products,  
25 merchandise, goods, services, or businesses;

26 (ii) For fundraising; or

27 (iii) On in connection with a place, product,  
28 merchandise, good, service, or other commercial activity not exempted under  
29 this subchapter.

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

33 (i) Data collection or data reporting and supplying  
34 the data collected or reported; or

35 (ii) Data processing, data matching, data  
36 distribution, or data licensing;

1 (2) "Individual" means a natural person, alive or dead;

2 (3) "Likeness" means a reproduction of the image of an  
3 individual by any means other than a photograph;

4 (4)(A) "Person" means an individual or entity.

5 (B) "Person" includes:

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

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

9 (iii) An educational or religious institution;

10 (iv) A political party; and

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

12 (5) "Photograph" means a reproduction of the image of an  
13 individual that readily identifies the individual, whether made by  
14 photography, videotape, live transmission, or other means; and

15 (6) "Successor in interest" means an owner or the beneficial  
16 owner of a property right provided by this subchapter under:

17 (A) A transfer, assignment, or license of the property  
18 right; or

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

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21 4-75-1004. Property right in use of name, voice, signature,  
22 photograph, or likeness – Prior consent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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22           4-75-1005. Exercise of rights after death.

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

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

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35           4-75-1006. Registration.

36           (a) A successor in interest shall register a claim of property rights

1 under this subchapter in the manner provided by this section.

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

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

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

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

13 (2) The form shall:

14 (A) Be verified under oath;

15 (B) Include the name and, if applicable, date of death of  
16 the individual; and

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

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

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

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

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

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28 4-75-1007. Exclusive rights – Expiration.

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

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

32 (2) The executors, administrators, heirs, devisees, and assigns  
33 of an individual for fifty (50) years after the individual's death.

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35 4-75-1008. Unauthorized commercial use.

36 (a)(1) Except as provided in § 4-75-1010, a person who commercially

1 uses an individual's name, voice, signature, photograph, or likeness is  
2 liable to the holder of the property right provided by this subchapter for  
3 damages and disgorgement of profits, funds, goods, or services if the  
4 commercial use was not authorized under § 4-75-1004(c).

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

7 (b) If a violation of this section occurs through the use of a  
8 product, merchandise, goods, or other tangible personal property, the  
9 product, merchandise, goods, or other tangible personal property and the  
10 instrumentalities used by the person violating this section are considered  
11 contraband and are subject to seizure and forfeiture to the state under § 4-  
12 75-1009.

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14 4-75-1009. Civil actions – Injunctions, impounding, or destruction of  
15 materials – Damages.

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

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

18 (2) A violation of this subchapter occurred.

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

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

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

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

26 (1) Awarded to the holder of the property right that was  
27 violated; or

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

31 (d) As part of a final judgment or decree, the court may order the  
32 destruction or other reasonable disposition of all materials found to have  
33 been made or used in violation of the individual's rights.

34 (e)(1) The holder of a property right provided by this subchapter is  
35 entitled to recover:

36 (A) The actual damages the holder suffers as a

1 result of a commercial use of the property right; and

2 (B) Any profits that are attributable to the  
3 commercial use.

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

6 (3) The existence or nonexistence of profits from the  
7 unauthorized commercial use shall not be a criterion for determining  
8 liability.

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10 4-75-1010. Fair use – Commercial sponsorship.

11 (a)(1) It is not a violation of this subchapter if a name, voice,  
12 signature, photograph, or likeness is used:

13 (A) In connection with a news, public affairs, or sports  
14 broadcast, including the promotion of and advertising for a sports broadcast,  
15 an account of public interest, or a political campaign;

16 (B) In:

17 (i) A play, book, magazine, newspaper, musical  
18 composition, visual work, work of art, audiovisual work, or radio or  
19 television program if it is fictional or nonfictional entertainment, or a  
20 dramatic, literary, or musical work;

21 (ii) A work of political, public interest, or  
22 newsworthy value; or

23 (iii) An advertisement or commercial announcement  
24 for any of the works described in this subdivision (a)(1)(A) or (a)(1)(B);

25 (C) In a photograph or likeness where the individual  
26 appears as a member of the public and the individual is not named or  
27 otherwise identified;

28 (D) By an institution of higher education or by a  
29 nonprofit organization, club, or supporting foundation that is authorized by  
30 the institution and established solely to advance the purposes of the  
31 institution if:

32 (i) The use is for educational purposes or to  
33 promote the institution and its educational, athletic, or other institutional  
34 objectives; and

35 (ii) The individual is or was affiliated with the  
36 institution, including without limitation as a:

1 (a) Student or member of the faculty or staff;

2 (b) Donor or campus visitor; or

3 (c) Contractor, subcontractor, or employee; or

4 (E) By any person practicing the profession of photography  
5 or his or her representative, to exhibit and display photographs in a  
6 personal portfolio, but not for sale or for use in an advertisement, unless  
7 the exhibit and display is continued by the person practicing the profession  
8 of photography after written notice objecting to the exhibit and display has  
9 been given by the individual portrayed or his or her representative.

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

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

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

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29 4-75-1011. Exclusive remedies.

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

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

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1 4-75-1012. Construction.

2 This subchapter:

3 (1) Shall be liberally construed to accomplish its intent and  
4 purposes; and

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

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11 4-75-1013. Applicability.

12 (a) The property rights granted by this subchapter vest with respect  
13 to an individual on the effective date of this subchapter.

14 (b) This subchapter applies only to individuals maintaining a domicile  
15 or residence in the State of Arkansas on or after the effective date of this  
16 section.

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18 /s/J. Woods  
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