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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 3994

05/09/2016 Authored by Hoppe, Lesch, Zerwas and Smith

The bill was read for the first time and referred to the Committee on Civil Law and Data Practices

05/12/2016 Adoption of Report: Placed on the General Register as Amended

Pursuant to Joint Rule 2.03 and in accordance with Senate Concurrent Resolution No. 8,
re-referred to the Committee on Rules and Legislative Administration

1.1 A bill for an act
1.2 relating to civil actions; recognizing a property right in a person's name, voice,
1.3 signature, photograph, or likeness; prohibiting unauthorized use; providing
1.4 remedies; proposing coding for new law in Minnesota Statutes, chapter 604.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. **[604.25] RIGHT OF PUBLICITY; CAUSE OF ACTION.**

1.7 Subdivision 1. **Definitions.** "Photograph" means a film or digital photograph or
1.8 photographic reproduction, still or moving, or a videotape or live television transmission.

1.9 Subd. 2. **Cause of action for right of publicity.** (a) A person is liable in a civil
1.10 action for violating an individual's right of publicity if that person uses another individual
1.11 or a deceased individual's name, voice, signature, photograph, or likeness, in any manner,
1.12 without consent from the person or persons consistent with paragraph (b):

1.13 (1) on or in products, merchandise, goods, or services;

1.14 (2) for purposes of advertising or selling; or

1.15 (3) for soliciting purchases of products, merchandise, goods, or services.

1.16 (b) A person must have the prior consent of an individual to use their likeness for
1.17 any of the purposes listed in paragraph (a). When an individual has assigned or licensed
1.18 their right of publicity, a person must have the consent of the person holding the right of
1.19 the license or assignment to use their likeness for any of the purposes listed in paragraph
1.20 (a), which may extend beyond the individual's lifetime when provided for in the license
1.21 or assignment. In the case of a minor, a person must have the prior consent of a minor's
1.22 parent or legal guardian. For the purposes of a deceased individual, the person must have
1.23 the consent of the personal representative, administrator, heir, or devisee of such deceased
1.24 individual, or an assignee of the rights, consistent with subdivision 5.

2.1 (c) For the purposes of this section, the individual in the photograph must be readily
2.2 identifiable, which means a reasonable person could determine who the individual
2.3 depicted in the photograph is without using technology to enhance the image.

2.4 (d) The individual whose right of publicity is the basis for the action must be
2.5 domiciled in Minnesota, or have been domiciled in Minnesota, at the time of their death
2.6 to maintain an action under this section.

2.7 Subd. 3. **Damages.** (a) A person who violates subdivision 2, is liable for:

2.8 (1) actual damages;

2.9 (2) an amount equal to the profits earned through the unauthorized use of an
2.10 individual or deceased individual's likeness; and

2.11 (3) punitive damages consistent with section 549.20.

2.12 (b) In determining the amount of profit earned under paragraph (a), clause (2), the
2.13 injured party shall be required to present proof only of the gross revenue attributable to the
2.14 use of another's likeness and the burden to prove deductible expenses from that amount
2.15 shall be on the party defending the action.

2.16 (c) A prevailing party in an action under subdivision 2, shall be entitled to reasonable
2.17 attorneys fees and costs.

2.18 Subd. 4. **Injunctive relief.** In an action brought under this section, the court may
2.19 grant injunctive relief to prevent or restrain the unauthorized use of an individual's name,
2.20 voice, signature, photograph, or likeness, including enjoining a defendant from further
2.21 creation or distribution of materials that were used to violate an individual or deceased
2.22 individual's right of publicity.

2.23 Subd. 5. **Right of publicity of decedent.** (a) The right of publicity in subdivision 2 is
2.24 transferable and descendible, in whole or in part, by contract or by means of any governing
2.25 instrument. The rights recognized under this section shall be deemed to have existed at the
2.26 time of death of any deceased individual and shall vest in the persons entitled to these
2.27 property rights under a contract or other governing instrument. For the purposes of this
2.28 section, "governing instrument" has the meaning given in section 524.1-201, clause (26).

2.29 (b) In the absence of an express transfer in a governing instrument consistent
2.30 with paragraph (a), the deceased individual's rights in his or her name, voice, signature,
2.31 photograph, or likeness, shall be distributed pursuant to a provision in the governing
2.32 instrument that provides for the disposition of the residue of the deceased individual's
2.33 assets, and shall be effective to transfer the rights recognized under this section.

2.34 (c) In the absence of a contract or governing document consistent with paragraph (a)
2.35 or (b), the right of publicity of an individual shall descend to the heirs of the individual
2.36 pursuant to chapter 524.

3.1 (d) The rights provided for in this section are exclusive to the individual, subject to
3.2 the assignment or licensing of the rights, during the individual's lifetime.

3.3 (e) After the death of the individual, the rights provided for in this section are
3.4 exclusive to the personal representative, trustee, administrator, heirs, devisees, or
3.5 assignees for a minimum period of 50 years after the death of the individual, however may
3.6 be maintained for up to 100 years so long as the right has not been abandoned. A right of
3.7 publicity of a decedent is considered abandoned when the personal representative, trustee,
3.8 administrator, heir, devisee, or assignee has failed to use the right for commercial purposes
3.9 for two consecutive years after the initial 50-year period following the individual's death.

3.10 Subd. 6. **Fair use; exceptions.** A person is not liable under this section when an
3.11 individual or deceased individual's name, voice, signature, photograph, or likeness is
3.12 used in connection with media reporting of news, public affairs, sports broadcasting,
3.13 or commentary and criticism. A person also is not liable under this section when an
3.14 individual or deceased individual's name, voice, signature, photograph, or likeness is
3.15 used in the following works as long as such use does not constitute an advertisement,
3.16 endorsement, or solicitation for the sale or purchase of another product or service: a play,
3.17 book, or other literary work; a theatrical work; a musical composition, musical sound
3.18 recording, or similar musical work; a documentary, film, motion picture, or television
3.19 program; a single work of original art; or an advertisement or commercial or promotional
3.20 announcement for any of the permitted uses identified in this subdivision.

3.21 Subd. 7. **Commercial sponsorship.** The use of an individual or deceased
3.22 individual's name, voice, signature, photograph, or likeness is not a violation of
3.23 subdivision 2 solely because the use of an individual or deceased individual's name,
3.24 voice, signature, photograph, or likeness appears in the medium that contains commercial
3.25 sponsorship or paid advertising. It is a question of fact whether or not the use of the
3.26 complaining individual's or deceased individual's name, voice, signature, photograph or
3.27 likeness was so directly connected with the commercial sponsorship or with the paid
3.28 advertising as to constitute a violation of subdivision 2.

3.29 Subd. 8. **Immunity; publications.** Owners or employees of a medium of
3.30 distribution or publication used for advertising, including but not limited to newspapers,
3.31 magazines, radio and television networks and stations, cable television systems, billboard
3.32 owners, and transit authorities or organizations, shall not be found liable under this section
3.33 for the publication or dissemination of an advertisement or solicitation that violates this
3.34 section, unless the owner or employee had knowledge that the use of the individual or
3.35 deceased individual's name, voice, signature, photograph, or likeness was unauthorized
3.36 or without prior consent.

4.1 Subd. 9. **Application; chapter 333.** This section applies to an individual otherwise
4.2 entitled to the protections afforded under chapter 333.

4.3 Subd. 10. **Cumulative.** The remedies provided for in this section are cumulative
4.4 and are in addition to other remedies provided for by law or in equity.

4.5 **EFFECTIVE DATE.** This section is effective August 1, 2016, and applies to causes
4.6 of action brought on or after that date. This section applies to the rights of a deceased
4.7 individual who was domiciled in Minnesota at the time of their death and who died after
4.8 August 1, 1966.