



General Assembly

February Session, 2006

**Raised Bill No. 5811**

LCO No. 3245

\*03245\_\_\_\_\_JUD\*

Referred to Committee on Judiciary

Introduced by:  
(JUD)

***AN ACT CONCERNING A RIGHT OF PUBLICITY.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2006*) As used in sections 1 to 8,  
2 inclusive, of this act, "right of publicity" means the property right of an  
3 individual provided in section 2 of this act; and "name" means the  
4 actual or assumed name of a living or deceased individual that is  
5 intended or used to identify the individual.

6 Sec. 2. (NEW) (*Effective October 1, 2006*) Every individual has a  
7 property right in the use of his or her name, voice, signature,  
8 photograph, image, likeness, distinctive appearance, gestures or  
9 mannerisms and such right shall be freely transferable, assignable and  
10 licensable, in whole or in part, by any otherwise permissible form of  
11 inter vivos or testamentary transfer including, without limitation, a  
12 will, trust, contract or cotenancy with survivorship provisions or  
13 payable on death provisions or, if none is applicable, under the laws of  
14 intestate succession applicable to interests in personal property. The  
15 right does not expire upon the death of the individual. The right exists  
16 whether or not it was commercially exploited during the individual's

17 lifetime.

18 Sec. 3. (NEW) (*Effective October 1, 2006*) A person may not use an  
19 aspect of an individual's right of publicity for a commercial purpose  
20 including the advertising of products or services or for the purposes of  
21 fund raising or the solicitation of donations during the individual's  
22 lifetime or for seventy years after the date of the individual's death  
23 without having obtained the prior written consent of the individual or  
24 a person, heir, executor, trustee or other fiduciary or entity with proper  
25 authority to give such consent. A failure to obtain such prior consent  
26 shall be an infringement of the individual's right of publicity. An  
27 infringement may occur under this section without regard to whether  
28 the use or activity is for profit or not for profit.

29 Sec. 4. (NEW) (*Effective October 1, 2006*) (a) The following persons  
30 may bring a civil action to enforce the rights set forth in sections 1 to 8,  
31 inclusive, of this act:

32 (1) A person or persons, including an individual whose right of  
33 publicity is at issue, who individually or collectively own all of an  
34 individual's right of publicity, subject to any licenses regarding that  
35 right of publicity;

36 (2) A person, including a licensee of an individual's right of  
37 publicity, who is expressly authorized, in writing, by an owner or  
38 owners of an individual's right of publicity to bring a civil action;

39 (3) Except as otherwise provided by an agreement transferring an  
40 aspect of an individual's right of publicity and subject to subsection (c)  
41 of this section, a person to whom ownership or any portion of  
42 ownership of an individual's right of publicity has been transferred.

43 (b) Before bringing a civil action under this section, a person who  
44 owns less than all of an individual's right of publicity shall notify the  
45 individual whose right of publicity is the subject of the proposed civil  
46 action, if living, by regular mail addressed to the last-known address

47 of the individual. The person shall also notify any person to whom the  
48 individual's right of publicity has been transferred by any means of the  
49 proposed civil action by the following means:

50 (1) Regular mail addressed to the last-known address of each  
51 transferee; or

52 (2) If the address of the transferee is not known, publication in a  
53 newspaper of general circulation in the municipality in which the  
54 individual who is the subject of the proposed civil action resides or, in  
55 the case of a deceased individual, in the municipality or probate  
56 district in which the individual's estate has been or would have been  
57 admitted to probate.

58 (c) The individual whose right of publicity is the subject of the  
59 proposed civil action brought under this section, and any person to  
60 whom ownership of that right has been transferred, may object to the  
61 proposed civil action not later than twenty days after the date of the  
62 mailing of the notice specified in subdivision (1) of subsection (b) of  
63 this section or sixty days after the date of publication of the notice  
64 specified in subdivision (2) of subsection (b) of this section by giving  
65 written notice of the objection to the person proposing to bring the  
66 civil action. If the individual or transferee does not object to the civil  
67 action within the time period specified in this subsection, the  
68 individual or transferee is forever barred from objecting to such action.  
69 A person may not bring a civil action under this section if a person or  
70 persons, including the individual whose right of publicity is the subject  
71 of the proposed civil action, who collectively own more than fifty per  
72 cent of the individual's right of publicity object to the proposed civil  
73 action.

74 (d) A person, other than a licensee of an individual's right of  
75 publicity, who owns less than all of an individual's right of publicity  
76 and brings a civil action under this section shall account to any other  
77 persons owning an interest in that right of publicity to the extent of the

78 other person's interest with respect to any net recovery in the civil  
79 action less the person's costs of collection and a reasonable attorney's  
80 fee.

81 Sec. 5. (NEW) (*Effective October 1, 2006*) (a) The superior court may  
82 grant temporary restraining orders, preliminary injunctions and  
83 permanent injunctions as may be appropriate pursuant to chapter 916  
84 of the general statutes to prevent or restrain the unauthorized use of  
85 the rights in a living or deceased individual's name, voice, signature,  
86 photograph, image, likeness, distinctive appearance, gestures or  
87 mannerisms.

88 (b) Any person who infringes the rights set forth in sections 1 to 8,  
89 inclusive, of this act shall be liable for the greater of two thousand  
90 dollars or the actual damages sustained as a result of the infringement,  
91 and any profits that are attributable to the infringement and not taken  
92 into account when calculating actual damages. To prove profits under  
93 this subsection, the injured party or parties shall submit proof of gross  
94 revenues attributable to the infringement, and the infringing party  
95 shall be required to prove such party's properly deductible expenses.  
96 For the purposes of computing statutory damages, use of a name,  
97 voice, signature, photograph, image, likeness, distinctive appearance,  
98 gestures or mannerisms related to one work constitutes a single act of  
99 infringement regardless of the number of copies made or the number  
100 of times the name, voice, signature, photograph, image, likeness,  
101 distinctive appearance, gestures or mannerisms are displayed.

102 (c) At any time while an action under sections 1 to 8, inclusive, of  
103 this act is pending, the court may order the impounding of all  
104 materials or any part thereof claimed to have been made or used in  
105 violation of the injured party's rights, and the court may enjoin the use  
106 of all plates, molds, matrices, masters, tapes, films, film negatives or  
107 other articles by means of which such materials may be reproduced.

108 (d) As part of a final judgment or decree, the court may order the

109 destruction or other reasonable disposition of all materials found to  
110 have been made or used in violation of the injured party's rights, and  
111 of all plates, molds, matrices, masters, tapes, films, film negatives or  
112 other articles by means of which such materials may be reproduced.

113 (e) A court may allow the prevailing party to recover court costs, a  
114 reasonable attorney's fee and other expenses of litigation incurred in  
115 recovering any remedy or defending any action brought under this  
116 section.

117 Sec. 6. (NEW) (*Effective October 1, 2006*) The provisions of sections 1  
118 to 8, inclusive, of this act do not apply to:

119 (1) The use of an individual's name, voice, signature, photograph,  
120 image, likeness, distinctive appearance, gestures or mannerisms in any  
121 of the following:

122 (A) News or public affairs reporting and programs;

123 (B) The broadcast or reporting of an event or topic of general or  
124 public interest;

125 (C) Single, original works of fine art;

126 (D) Literary works;

127 (E) Theatrical works, musical compositions, film and radio and  
128 television programs, except when the individual's name, voice,  
129 signature, photograph, image, likeness, distinctive appearance,  
130 gestures or mannerisms are used electronically or digitally to create a  
131 performance to which the individual did not consent; or

132 (F) Promotional material or an advertisement for a news reporting  
133 or entertainment medium for work that is exempt pursuant to this  
134 section and that (i) uses all or part of a past edition of the medium's  
135 own broadcast or production, and (ii) does not convey or reasonably  
136 suggest that an individual endorses the news reporting or

137 entertainment medium; and

138 (2) The use of an individual's name to truthfully identify the  
 139 individual as the author of a written work or the performer of a  
 140 recorded performance, under circumstances in which the written work  
 141 or recorded performance is otherwise rightfully reproduced, exhibited  
 142 or broadcast.

143 Sec. 7. (NEW) (*Effective October 1, 2006*) The provisions of sections 1  
 144 to 8, inclusive, of this act apply to an act that occurs in this state  
 145 regardless of the domicile, residence or citizenship of the individual  
 146 whose right of publicity is at issue and to an act enumerated in section  
 147 52-59b of the general statutes.

148 Sec. 8. (NEW) (*Effective October 1, 2006*) The rights and remedies  
 149 provided by sections 1 to 8, inclusive, of this act are cumulative and  
 150 shall be in addition to any other rights and remedies available at law,  
 151 or in equity, to any person.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2006</i>	New section
Sec. 2	<i>October 1, 2006</i>	New section
Sec. 3	<i>October 1, 2006</i>	New section
Sec. 4	<i>October 1, 2006</i>	New section
Sec. 5	<i>October 1, 2006</i>	New section
Sec. 6	<i>October 1, 2006</i>	New section
Sec. 7	<i>October 1, 2006</i>	New section
Sec. 8	<i>October 1, 2006</i>	New section

**Statement of Purpose:**

To protect from infringement by others an individual's right in the use of his or her name, voice, signature, photograph, image, distinctive appearance, gestures or mannerisms.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*