



General Assembly

**Amendment**

February Session, 2006

LCO No. 4166

**\*HB0580104166SRO\***

Offered by:

SEN. DELUCA, 32<sup>nd</sup> Dist.  
SEN. MCKINNEY, 28<sup>th</sup> Dist.  
SEN. FREEDMAN, 26<sup>th</sup> Dist.  
SEN. KISSEL, 7<sup>th</sup> Dist.

To: House Bill No. 5801

File No. 224

Cal. No. 323

**"AN ACT CONCERNING TRUTH IN MUSIC ADVERTISING."**

1 After the last section, add the following and renumber sections and  
2 internal references accordingly:

3 "Sec. 501. (NEW) (*Effective October 1, 2006*) As used in sections 501 to  
4 508, inclusive, of this act, "right of publicity" means the property right  
5 of an individual provided in section 502 of this act; and "name" means  
6 the actual or assumed name of a living or deceased individual that is  
7 intended or used to identify the individual.

8 Sec. 502. (NEW) (*Effective October 1, 2006*) Every individual has a  
9 property right in the use of his or her name, voice, signature,  
10 photograph, image, likeness or distinctive appearance and such right  
11 shall be freely transferable, assignable and licensable, in whole or in  
12 part, by any otherwise permissible form of inter vivos or testamentary  
13 transfer including, without limitation, a will, trust, contract or

14 cotenancy with survivorship provisions or payable on death  
15 provisions or, if none is applicable, under the laws of intestate  
16 succession applicable to interests in personal property. The right does  
17 not expire upon the death of the individual. The right exists whether or  
18 not it was commercially exploited during the individual's lifetime.

19 Sec. 503. (NEW) (*Effective October 1, 2006*) A person may not use an  
20 aspect of an individual's right of publicity for a commercial purpose  
21 including the advertising of products or services or for the purposes of  
22 fund raising or the solicitation of donations during the individual's  
23 lifetime or for seventy years after the date of the individual's death  
24 without having obtained the prior written consent of the individual or  
25 a person, heir, executor, trustee or other fiduciary or entity with proper  
26 authority to give such consent. A failure to obtain such prior consent  
27 shall be an infringement of the individual's right of publicity. An  
28 infringement may occur under this section without regard to whether  
29 the use or activity is for profit or not for profit.

30 Sec. 504. (NEW) (*Effective October 1, 2006*) (a) The following persons  
31 may bring a civil action to enforce the rights set forth in sections 501 to  
32 508, inclusive, of this act:

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

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

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

44 (b) Before bringing a civil action under this section, a person who

45 owns less than all of an individual's right of publicity shall notify the  
46 individual whose right of publicity is the subject of the proposed civil  
47 action, if living, by regular mail addressed to the last-known address  
48 of the individual. The person shall also notify any person to whom the  
49 individual's right of publicity has been transferred by any means of the  
50 proposed civil action by the following means:

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

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

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

75 (d) A person, other than a licensee of an individual's right of  
76 publicity, who owns less than all of an individual's right of publicity

77 and brings a civil action under this section shall account to any other  
78 persons owning an interest in that right of publicity to the extent of the  
79 other person's interest with respect to any net recovery in the civil  
80 action less the person's costs of collection and a reasonable attorney's  
81 fee.

82 Sec. 505. (NEW) (*Effective October 1, 2006*) (a) The superior court may  
83 grant temporary restraining orders, preliminary injunctions and  
84 permanent injunctions as may be appropriate pursuant to chapter 916  
85 of the general statutes to prevent or restrain the unauthorized use of  
86 the rights in a living or deceased individual's name, voice, signature,  
87 photograph, image, likeness or distinctive appearance.

88 (b) Any person who infringes the rights set forth in sections 501 to  
89 508, 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 or distinctive appearance  
98 related to one work constitutes a single act of infringement regardless  
99 of the number of copies made or the number of times the name, voice,  
100 signature, photograph, image, likeness or distinctive appearance are  
101 displayed.

102 (c) At any time while an action under sections 501 to 508, inclusive,  
103 of 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. 506. (NEW) (*Effective October 1, 2006*) The provisions of sections  
118 501 to 508, inclusive, of this act do not apply to:

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

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

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

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

125 (D) Literary works;

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

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

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

142       Sec. 507. (NEW) (*Effective October 1, 2006*) The provisions of sections  
143 501 to 508, inclusive, of this act apply to an act that occurs in this state  
144 regardless of the domicile, residence or citizenship of the individual  
145 whose right of publicity is at issue and to an act enumerated in section  
146 52-59b of the general statutes.

147       Sec. 508. (NEW) (*Effective October 1, 2006*) The rights and remedies  
148 provided by sections 501 to 508, inclusive, of this act are cumulative  
149 and shall be in addition to any other rights and remedies available at  
150 law, or in equity, to any person."