



General Assembly

January Session, 2007

**Committee Bill No. 6818**

LCO No. 5857

\*05857HB06818JUD\*

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, 2007*) As used in this section  
2 and sections 2 to 8, inclusive, of this act:

3 (1) "Name" means the actual or assumed name of a living or  
4 deceased individual that is intended or used to identify the individual;

5 (2) "Persona" means the name, voice, distinctive mannerisms and  
6 gestures, signature, photograph or likeness of an individual, or any  
7 element thereof; and

8 (3) "Right of publicity" means the property right in an individual's  
9 persona for a commercial or fund raising purpose.

10 Sec. 2. (NEW) (*Effective October 1, 2007*) Each individual has a right  
11 of publicity in the use of his or her persona. Such right of publicity  
12 shall be freely transferable, assignable and licensable, in whole or in  
13 part, by any otherwise permissible form of inter vivos or testamentary  
14 transfer including, but not limited to, a will, trust, contract or  
15 cotenancy with survivorship provisions or payable on death

16 provisions or, if none is applicable, under the laws of intestate  
17 succession applicable to interests in personal property. The right of  
18 publicity shall not expire upon the death of the individual and shall  
19 exist whether or not the right of publicity was exploited for a  
20 commercial or fund raising purpose during the individual's lifetime.

21       Sec. 3. (NEW) (*Effective October 1, 2007*) No person may use any  
22 aspect of an individual's right of publicity for the following purposes  
23 during the individual's lifetime, or for seventy years after the date of  
24 the individual's death, without having obtained the prior written  
25 consent of the individual or a person, heir, executor, trustee or other  
26 fiduciary, individual or entity with proper authority to give such  
27 consent: (1) For a commercial purpose, including the advertising of  
28 products or services, (2) for a fund raising purpose or for the  
29 solicitation of donations, or (3) to create, publish or display an  
30 electronic, digital or other modification of an individual's image, voice,  
31 likeness, performance or appearance so as to (A) cause the individual  
32 to speak or appear to speak words that the person did not speak, or (B)  
33 place the individual or appear to place the individual in a place or  
34 circumstance in which the individual did not agree to be placed. A  
35 failure to obtain such prior consent shall be an infringement of the  
36 individual's right of publicity. An infringement may occur under this  
37 section without regard to whether the use or purpose is for profit or  
38 not for profit.

39       Sec. 4. (NEW) (*Effective October 1, 2007*) (a) The following persons  
40 may bring a civil action to enforce the rights set forth in sections 1 to 8,  
41 inclusive, of this act:

42       (1) A person or persons, including an individual whose right of  
43 publicity is at issue, who individually or collectively own all of an  
44 individual's right of publicity, subject to any licenses regarding the  
45 right of publicity;

46       (2) A person or persons, including a licensee of an individual's right

47 of publicity, who is expressly authorized, in writing, by an owner or  
48 owners of an individual's right of publicity to bring a civil action;

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

53 (b) Before bringing a civil action under this section, each person  
54 who owns less than all of an individual's right of publicity shall notify  
55 the individual whose right of publicity is the subject of the proposed  
56 civil action, if living, by first class mail addressed to the last-known  
57 address of the individual. The person shall also notify any person to  
58 whom the individual's right of publicity has been transferred by any  
59 means of the proposed civil action by the following means:

60 (1) First class mail addressed to the last-known address of each  
61 transferee; or

62 (2) If the address of the transferee is not known, publication in a  
63 newspaper of general circulation in the municipality in which the  
64 individual who is the subject of the proposed civil action resides or, in  
65 the case of a deceased individual, in the municipality or probate  
66 district in which the individual's estate has been or would have been  
67 admitted to probate.

68 (c) The individual whose right of publicity is the subject of the  
69 proposed civil action brought under this section, and any person to  
70 whom ownership of that right has been transferred, may object to the  
71 proposed civil action not later than twenty days after the date of the  
72 mailing of a notice pursuant to subdivision (1) of subsection (b) of this  
73 section or sixty days after the date of publication of a notice pursuant  
74 to subdivision (2) of subsection (b) of this section by giving written  
75 notice of the objection to the person proposing to bring the civil action.  
76 If the individual or transferee does not object to the civil action within  
77 the time period specified in this subsection, the individual or

78 transferee shall be forever barred from objecting to such action.

79 (d) No person may bring a civil action under this section if a person,  
80 including the individual whose right of publicity is the subject of the  
81 proposed civil action, who collectively owns more than fifty per cent of  
82 the individual's right of publicity objects to the proposed civil action.

83 (e) Each person, other than a licensee of an individual's right of  
84 publicity, who owns less than all of an individual's right of publicity  
85 and brings a civil action under this section shall account to any other  
86 persons owning an interest in that right of publicity to the extent of the  
87 other person's interest with respect to any net recovery in the civil  
88 action less the person's costs of collection and a reasonable attorney's  
89 fee.

90 Sec. 5. (NEW) (*Effective October 1, 2007*) (a) The Superior Court may  
91 grant temporary restraining orders, preliminary injunctions and  
92 permanent injunctions as may be appropriate pursuant to chapter 916  
93 of the general statutes to prevent or restrain the unauthorized use of  
94 the rights in a living or deceased individual's persona.

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

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

116 (d) As part of a final judgment or decree, the court may order the  
117 destruction or other reasonable disposition of all materials found to  
118 have been made or used in violation of the injured party's rights, and  
119 of all plates, molds, matrices, masters, tapes, films, film negatives or  
120 other electronic media and articles by means of which such materials  
121 may be reproduced.

122 (e) The court may allow the prevailing party to recover court costs, a  
123 reasonable attorney's fee and other expenses of litigation incurred in  
124 recovering any remedy or defending any action brought under this  
125 section.

126 Sec. 6. (NEW) (*Effective October 1, 2007*) The provisions of sections 1  
127 to 8, inclusive, of this act shall not apply to the use of an individual's  
128 persona in any of the following:

129 (1) Bona fide news or public affairs reporting and programs;

130 (2) Broadcast or portrayal of an elected or appointed public official  
131 or, of a candidate for public office, provided the individual's persona is  
132 not used in such broadcast or portrayal for a commercial purpose  
133 without the consent of the individual;

134 (3) Broadcast or reporting of an event or topic of general public  
135 interest;

136 (4) An original work of fine art;

137 (5) Literary works in print or text;

138 (6) Theatrical works, musical compositions, film and radio and  
139 television programs, unless the individual's image, voice, likeness,  
140 performance or appearance is modified electronically, digitally or by  
141 other means so as to (A) cause the individual to speak or appear to  
142 speak words that the person did not speak, or (B) place the individual  
143 or appear to place the individual in a place or circumstance in which  
144 the individual did not agree to be placed;

145 (7) Promotional material or an advertisement for a news reporting  
146 or entertainment medium for work that is exempt pursuant to this  
147 section and that (A) uses all or part of a past edition of the medium's  
148 own broadcast or production, and (B) does not convey or reasonably  
149 suggest that the individual endorses the news reporting or  
150 entertainment medium; or

151 (8) The use of an individual's name to truthfully identify the  
152 individual as the author of a written work or the performer of a  
153 recorded performance under circumstances in which the written work  
154 or recorded performance is otherwise rightfully reproduced, exhibited  
155 or broadcast.

156 Sec. 7. (NEW) (*Effective October 1, 2007*) The provisions of sections 1  
157 to 8, inclusive, of this act apply to any act that occurs in this state  
158 regardless of the domicile, residence or citizenship of the individual  
159 whose right of publicity is at issue and to an act enumerated in section  
160 52-59b of the general statutes.

161 Sec. 8. (NEW) (*Effective October 1, 2007*) The rights and remedies  
162 provided by sections 1 to 7, inclusive, of this act are cumulative and  
163 shall be in addition to any other rights and remedies available at law,  
164 or in equity, to any person.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2007</i>	New section

Sec. 2	October 1, 2007	New section
Sec. 3	October 1, 2007	New section
Sec. 4	October 1, 2007	New section
Sec. 5	October 1, 2007	New section
Sec. 6	October 1, 2007	New section
Sec. 7	October 1, 2007	New section
Sec. 8	October 1, 2007	New section

**Statement of Purpose:**

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

*[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.]*

Co-Sponsors: REP. SPALLONE, 36th Dist.; REP. MIOLI, 136th Dist.  
REP. DREW, 132nd Dist.

H.B. 6818