

# HOUSE BILL 1271

D3

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By: **Delegate Rosenberg**

Introduced and read first time: February 8, 2013

Assigned to: Judiciary

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## A BILL ENTITLED

AN ACT concerning

### **Courts – Unauthorized Use of Name or Likeness**

FOR the purpose of authorizing a certain individual whose name or likeness has commercial value and is used for a commercial or advertising purpose without the written consent of the individual or a certain person to bring an action to enjoin the unauthorized use and to recover damages for loss or injury sustained by the use; authorizing certain individuals or persons to bring a certain action after the death of a certain individual; prohibiting an action under this Act from being filed after a certain period; prohibiting certain persons from being held liable under this Act under certain circumstances; authorizing an individual to extinguish the right of all persons to license the use of the individual's name or likeness for commercial or advertising purposes after the death of the individual by testamentary instrument; providing for the construction and application of this Act; defining certain terms; and generally relating to the unauthorized use of a name or likeness of an individual.

BY adding to

Article – Courts and Judicial Proceedings

Section 3–1901 through 3–1904 to be under the new subtitle “Subtitle 19.  
Unauthorized Use of Name or Likeness”

Annotated Code of Maryland

(2006 Replacement Volume and 2012 Supplement)

BY adding to

Article – Estates and Trusts

Section 4–415

Annotated Code of Maryland

(2011 Replacement Volume and 2012 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



**Article – Courts and Judicial Proceedings****SUBTITLE 19. UNAUTHORIZED USE OF NAME OR LIKENESS.****3–1901.**

**(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.**

**(1) (I) “COMMERCIAL OR ADVERTISING PURPOSE” INCLUDES THE PUBLIC USE OF AN INDIVIDUAL’S NAME OR LIKENESS:**

**1. ON OR IN CONNECTION WITH THE OFFERING FOR SALE OR THE LEASE OF A PRODUCT, MERCHANDISE, GOODS, A SERVICE, OR A BUSINESS;**

**2. FOR THE PURPOSE OF ADVERTISING OR PROMOTING A PRODUCT, MERCHANDISE, GOODS, OR A SERVICE OF A BUSINESS; OR**

**3. FOR THE PURPOSE OF FUNDRAISING.**

**(II) “COMMERCIAL OR ADVERTISING PURPOSE” DOES NOT INCLUDE THE PUBLIC USE OF AN INDIVIDUAL’S NAME OR LIKENESS IN A COMMUNICATIONS MEDIUM IF:**

**1. THE INDIVIDUAL APPEARS AS A MEMBER OF THE PUBLIC AND THE INDIVIDUAL IS NOT NAMED OR OTHERWISE IDENTIFIED;**

**2. THE USE IS ASSOCIATED WITH A NEWS REPORT OR NEWS PRESENTATION HAVING PUBLIC INTEREST;**

**3. THE USE IS IN AN EXPRESSIVE WORK;**

**4. THE USE IS IN AN ORIGINAL WORK OF FINE ART;**

**5. THE USE IS ASSOCIATED WITH AN ANNOUNCEMENT FOR A COMMERCIAL OR ADVERTISING PURPOSE FOR A USE AUTHORIZED BY ITEMS 2, 3, OR 4 OF THIS SUBPARAGRAPH; OR**

**6. THE USE IS ASSOCIATED WITH THE IDENTIFICATION OF AN INDIVIDUAL AS THE AUTHOR OF OR CONTRIBUTOR TO A WRITTEN WORK OR THE PERFORMER OF A RECORDED PERFORMANCE UNDER**

CIRCUMSTANCES IN WHICH THE WRITTEN WORK OR THE RECORDED PERFORMANCE IS LAWFULLY PRODUCED, REPRODUCED, EXHIBITED, OR BROADCAST.

(2) “COMMERCIAL VALUE” MEANS A VALUABLE INTEREST IN AN INDIVIDUAL’S NAME OR LIKENESS THAT IS DEVELOPED THROUGH THE INVESTMENT OF TIME, EFFORT, OR MONEY.

(3) “COMMUNICATIONS MEDIUM” INCLUDES A NEWSPAPER, A MAGAZINE, A BOOK, A NEWSLETTER, A BILLBOARD, A TELEPHONE, A RADIO, A TELEVISION, A RECORDING, COMPUTER SOFTWARE, A DIGITAL COMMUNICATIONS NETWORK, A TRANSIT AD, AN AUDIOVISUAL WORK, OR A GLOBAL COMMUNICATIONS NETWORK.

(4) “EXPRESSIVE WORK” MEANS A LITERARY, DRAMATIC, FICTIONAL, HISTORICAL, AUDIOVISUAL, OR MUSICAL WORK REGARDLESS OF THE COMMUNICATIONS MEDIUM BY WHICH THE WORK IS EXHIBITED, DISPLAYED, PERFORMED, OR TRANSMITTED, OTHER THAN WHEN USED OR EMPLOYED FOR A COMMERCIAL OR ADVERTISING PURPOSE.

(5) “INDIVIDUAL” INCLUDES A DECEASED INDIVIDUAL WHO WAS DOMICILED WITHIN THIS STATE AT THE TIME OF THE INDIVIDUAL’S DEATH.

(6) “NAME” OR “LIKENESS” MEANS AN ATTRIBUTE OF AN INDIVIDUAL THAT SERVES TO IDENTIFY THAT INDIVIDUAL TO AN ORDINARY, REASONABLE VIEWER OR LISTENER, INCLUDING THE NAME, SIGNATURE, PHOTOGRAPH, IMAGE, LIKENESS, VOICE, OR A SUBSTANTIALLY SIMILAR IMITATION OF ONE OR MORE THOSE ATTRIBUTES.

3-1902.

(A) AN INDIVIDUAL WHOSE NAME OR LIKENESS HAS COMMERCIAL VALUE AND IS USED FOR A COMMERCIAL OR ADVERTISING PURPOSE WITHOUT THE WRITTEN CONSENT OF THE INDIVIDUAL OR A PERSON DESCRIBED IN SUBSECTION (B) OF THIS SECTION MAY BRING AN ACTION TO ENJOIN THE UNAUTHORIZED USE AND TO RECOVER DAMAGES FOR LOSS OR INJURY SUSTAINED BY THE USE.

(B) (1) IF THE INDIVIDUAL IS ALIVE, AN ACTION DESCRIBED IN SUBSECTION (A) OF THIS SECTION MAY BE BROUGHT BY:

(I) THE INDIVIDUAL;

(II) A PARENT OR GUARDIAN OF THE INDIVIDUAL, IF THE INDIVIDUAL IS A MINOR; OR

(III) A PERSON AUTHORIZED IN WRITING BY THE INDIVIDUAL TO LICENSE THE INDIVIDUAL'S NAME OR LIKENESS FOR COMMERCIAL OR ADVERTISING PURPOSES.

(2) IF THE INDIVIDUAL IS DECEASED AND DID NOT EXPRESSLY EXTINGUISH IN A TESTAMENTARY INSTRUMENT THE RIGHT OF ALL PERSONS TO LICENSE THE USE OF THE INDIVIDUAL'S NAME OR LIKENESS FOR COMMERCIAL OR ADVERTISING PURPOSES AS DESCRIBED IN § 4-415 OF THE ESTATES AND TRUSTS ARTICLE, AN ACTION DESCRIBED IN SUBSECTION (A) OF THIS SECTION MAY BE BROUGHT BY:

(I) THE DECEASED INDIVIDUAL'S SURVIVING SPOUSE OR, IF THERE IS NO SURVIVING SPOUSE, ANY OTHER HEIR OR GROUP OF HEIRS ENTITLED TO RECEIVE, INDIVIDUALLY OR COLLECTIVELY, MORE THAN A 50% INTEREST IN THE DECEASED INDIVIDUAL'S ESTATE; OR

(II) A PERSON AUTHORIZED IN WRITING TO LICENSE THE USE OF THE INDIVIDUAL'S NAME OR LIKENESS FOR COMMERCIAL OR ADVERTISING PURPOSES BY A PERSON DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH.

3-1903.

A RIGHT TO ENJOIN UNAUTHORIZED USE AND RECOVER DAMAGES DOES NOT EXIST MORE THAN 70 YEARS AFTER THE DEATH OF THE INDIVIDUAL WHOSE NAME OR LIKENESS WAS USED.

3-1904.

A PERSON IN THE BUSINESS OF PRODUCING, MANUFACTURING, PUBLISHING, OR DISSEMINATING MATERIAL FOR COMMERCIAL OR ADVERTISING PURPOSES BY A COMMUNICATIONS MEDIUM MAY NOT BE HELD LIABLE UNDER THIS SUBTITLE UNLESS THE PERSON KNEW OR SHOULD HAVE KNOWN OF THE UNAUTHORIZED USE OF THE NAME OR LIKENESS OF AN INDIVIDUAL.

#### Article – Estates and Trusts

4-415.

**A TESTATOR MAY EXTINGUISH BY TESTAMENTARY INSTRUMENT THE RIGHT OF ALL PERSONS FROM LICENSING THE USE OF THE TESTATOR'S NAME OR LIKENESS FOR COMMERCIAL OR ADVERTISING PURPOSES AS DEFINED IN TITLE 3, SUBTITLE 19 OF THE COURTS ARTICLE AFTER THE DEATH OF THE TESTATOR.**

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any cause of action arising from the use of a name or likeness before the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2013.