

**SENATE . . . . . No. 1630**

The Commonwealth of Massachusetts

PRESENTED BY:

***Stanley C. Rosenberg***

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act protecting the commercial value of artists, entertainers, and other notable personalities.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Stanley C. Rosenberg</i>	<i>Hampshire, Franklin and Worcester</i>
<i>Benjamin B. Downing</i>	<i>Berkshire, Hampshire, Franklin and Hampden</i>
<i>Gale D. Candaras</i>	<i>First Hampden and Hampshire</i>
<i>Garrett J. Bradley</i>	<i>3rd Plymouth</i>
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>
<i>William Smitty Pignatelli</i>	<i>4th Berkshire</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>
<i>Paul W. Mark</i>	<i>2nd Berkshire</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>
<i>Stephen Kulik</i>	<i>1st Franklin</i>
<i>Ellen Story</i>	<i>3rd Hampshire</i>
<i>Aaron Vega</i>	<i>5th Hampden</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>

**SENATE . . . . . No. 1630**

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By Mr. Rosenberg, a petition (accompanied by bill, Senate, No. 1630) of Stanley C. Rosenberg, Benjamin B. Downing, Gale D. Candaras, Garrett J. Bradley and other members of the General Court for legislation relative to the protection of the commercial value of artists, entertainers, and other notable personalities. Tourism, Arts and Cultural Development.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. 2382 OF 2011-2012.]

**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Thirteen**  
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An Act protecting the commercial value of artists, entertainers, and other notable personalities.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Chapter 214 of the General Laws is hereby amended by striking out section  
2 3A, as appearing in the 2010 Official Edition, and inserting in place thereof the following  
3 section:-

4 Section 3A. (a) As used in this section, the following words shall, unless the context  
5 clearly requires otherwise, have the following meanings:-

6 “Aspect”, 1 part of a personality’s identity, such as a name or image, for which the right  
7 of publicity may be transferred separately from the right of publicity for other parts of a  
8 personality’s identity under paragraph (1) of subsection (d).

9 "Commercial use", the use of a personality’s identity (A) on or in goods, products or  
10 services, (B) for the purpose of advertising goods, products or services or (C) for fundraising;  
11 provided, that commercial use shall not include: (i) use of a personality’s identity as part of a  
12 news report or commentary or as part of an artistic or expressive work, such as a live  
13 performance, work of art, literary work, theatrical work, musical work, audiovisual work,  
14 motion picture, television program, radio program or the like, (ii) use of a personality’s identity  
15 in an advertisement, promotion or commercial announcement for any such news report,

16 commentary or work containing the personality's identity, (iii) use of a personality's identity in  
17 the personality's role as a member of the public where the personality is not named or similarly  
18 identified, (iv) use of a personality's identity or a group of personalities' identities in a manner  
19 that is incidental or de minimis or (v) use of a personality's identity in a manner that is otherwise  
20 permitted by law.

21 "Identity", a personality's name, likeness, voice or signature that uniquely identifies that  
22 particular personality.

23 "Name", the actual or assumed name or nickname of a personality that identifies that  
24 particular personality.

25 "Person", any individual, firm, association, partnership, corporation, joint stock company,  
26 limited liability company, syndicate, receiver, common law trust, conservator, statutory trust or  
27 any other concern or entity, however named, organized, formed or created; provided, that this  
28 shall include not-for-profit corporations, associations, educational and religious institutions,  
29 political parties, campaign committees and community, civic and other organizations.

30 "Personality", an individual whose identity has commercial value.

31 "Right of Publicity", the property interest established in subsection (b).

32 (b) A personality shall have a property interest in such personality's identity and shall  
33 have the exclusive right to control the commercial use of the personality's identity during the  
34 personality's lifetime and for 70 years after the date of the personality's death, unless terminated  
35 earlier under paragraph (5) of subsection (d).

36 (c) (1) Except as otherwise provided in this section, a person who knowingly makes  
37 a commercial use of a personality's identity in the commonwealth during the personality's  
38 lifetime or for 70 years after the date of the personality's death, without written consent of the  
39 personality or of the person or persons who collectively own more than 50 per cent of the aspect  
40 of the personality's right of publicity that was commercially used, shall have infringed the  
41 personality's right of publicity.

42 (2) Paragraph (1) shall not apply to an owner of any medium used for advertising  
43 through which an infringing use is published, broadcast or disseminated, unless it is established  
44 that the owner had actual knowledge that the use of the personality's identity was an  
45 infringement of the personality's right of publicity.

46 (3) A person who owns, or persons who collectively own, more than 50 per cent  
47 of the commercially used aspect of a personality's right of publicity, and only such person or  
48 persons, may enforce the personality's right of publicity by bringing a civil action against a  
49 person who has infringed or is infringing the right of publicity to prevent and restrain the

50 infringement, including restraint on a preliminary basis, and to recover damages as described in  
51 paragraph (5).

52 (4) This section shall apply only in the following circumstances: (i) the  
53 personality's domicile is in the commonwealth, (ii) in the case of a deceased personality, the  
54 deceased personality's domicile was in the commonwealth on the date of the personality's death  
55 or (iii) the infringing use is directed only to persons in the commonwealth and, if the personality  
56 is deceased, on the date of the personality's death the personality was a domiciliary of a state that  
57 recognized a descendible right of publicity for the personality and the persons owning the  
58 infringed aspect of such right of publicity has registered such interest under any applicable laws  
59 of such state.

60 (5) Damages for infringement of the right of publicity shall be awarded in an  
61 amount equal to the greater of (i) \$1,000 or (ii) the actual damages suffered as a result of the  
62 infringement, including any profit of the infringer attributable to the infringement that is not  
63 taken into account in computing the actual damages. In establishing such profit, the person  
64 alleging the infringement shall prove the gross revenue attributable to the infringement and the  
65 alleged infringer shall prove any deductible expenses.

66 (6) The court may award the prevailing party in an action under this section  
67 reasonable attorney's fees, expenses and court costs incurred in recovering any remedy or  
68 defending any claim under this section.

69 (7) A defendant's reliance upon the written consent of a personality or a person  
70 or persons who collectively own more than 50 per cent of the commercially used aspect of the  
71 personality's right of publicity and who have registered the transfer of such interest: (i) under  
72 paragraph (3) of subsection (d); (ii) in another state that is the domicile of a living personality; or  
73 (iii) if the personality is deceased, in another state that is the personality's last domicile, shall be  
74 a complete defense in any action under this section.

75 (d) (1) A personality's right of publicity is freely transferable, in whole or in part, by  
76 any form of inter vivos or testamentary transfer, including, but not limited to, by written contract,  
77 assignment, license, gift, trust, testamentary document or intestate succession; provided, that no  
78 interest in the right of publicity shall escheat to any state, commonwealth or other jurisdiction.  
79 Notwithstanding section 3-101 of chapter 190B of the General Laws, insofar as a personality  
80 does not transfer the right of publicity, in whole or in part, during life, a deceased personality's  
81 personal representative or voluntary personal representative shall be the transferee from the  
82 personality's death until the deceased personality's right of publicity is transferred by such  
83 personal representative.

84 (2) A person or persons meeting the requirements of paragraph (3) of subsection  
85 (c) to whom an interest in a personality's right of publicity has been transferred shall not bring a

86 civil action under this section unless the transferee has or all such transferees have registered the  
87 transfer or transfers with the state secretary under this subsection.

88 (3) A transferee shall register the transfer with the state secretary on a form  
89 prescribed by the secretary. The form shall include the name of the personality, the date of the  
90 transfer, the date of death and the personality's domicile at the time of death if the personality is  
91 deceased, the name and address of the transferee, the name and address of any persons  
92 authorized to act on behalf of the transferee, the method of transfer and the nature and percentage  
93 of the interest in the right transferred. The information provided on the form and related  
94 documents shall be submitted by the transferee under the pains and penalties of perjury. The  
95 state secretary may collect a fee for the registration that does not exceed the incremental costs of  
96 recording the documents and maintaining the registry. Upon receipt of the form and related  
97 documents for filing, the state secretary shall post the form and documents in a registry of  
98 interests in transferred rights of publicity on the state secretary's website. A reproduction of a  
99 record under this section that is certified by the state secretary shall be admissible in a court of  
100 law. The state secretary shall not be required to retain a record or reproduction concerning a  
101 registration under this section for more than 80 years after the date of the personality's death. A  
102 form or other document filed under this section shall be considered a public record under clause  
103 Twenty-sixth of section 7 of chapter 4 or chapter 66.

104 (4) A person or persons meeting the requirements of paragraph (3) of subsection  
105 (c) to whom an interest in a personality's right of publicity has been transferred shall not recover  
106 damages or other relief for an infringement that occurred before the date that the transferee has  
107 or all such transferees have registered the transfer or transfers under paragraph (3); provided, that  
108 a transferee or transferees may recover for infringements that occurred during the period alleged  
109 in a civil action properly commenced by the personality or transferor prior to the transfer.

110 (5) A deceased personality's right of publicity shall terminate (i) if at any time  
111 there is no transferee or (ii) upon proof that no transferee has registered a transfer during the  
112 personality's life or within 5 years after the personality's death.

113 (6) No action shall be brought under this section for any commercial use of a  
114 personality's identity occurring more than 70 years after the date of the personality's death.

115 SECTION 2. Section 3A of chapter 214 of the General Laws shall provide the exclusive  
116 rights and remedies for infringement of the right of publicity occurring after the effective date of  
117 this act and shall supersede any common law or statutory rights and remedies.