A bill for an act

relating to civil actions; recognizing a property right in a person's name, voice, signature, photograph, or likeness; prohibiting unauthorized use; providing remedies; proposing coding for new law in Minnesota Statutes, chapter 604.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. [604.25] RIGHT OF PUBLICITY; CAUSE OF ACTION.

Subdivision 1. Definitions. "Photograph" means a film or digital photograph or photographic reproduction, still or moving, or a videotape or live television transmission.

Subd. 2. Cause of action for right of publicity. (a) A person is liable in a civil action for violating an individual's right of publicity if that person uses another individual or a deceased individual's name, voice, signature, photograph, or likeness, in any manner, without consent from the person or persons consistent with paragraph (b):

(1) on or in products, merchandise, goods, or services;

(2) for purposes of advertising or selling; or

(3) for soliciting purchases of products, merchandise, goods, or services.

(b) A person must have the prior consent of an individual to use their likeness for any of the purposes listed in paragraph (a). When an individual has assigned or licensed their right of publicity, a person must have the consent of the person holding the right of the license or assignment to use their likeness for any of the purposes listed in paragraph (a), which may extend beyond the individual's lifetime when provided for in the license or assignment. In the case of a minor, a person must have the prior consent of a minor's parent or legal guardian. For the purposes of a deceased individual, the person must have the consent of the personal representative, administrator, heir, or devisee of such deceased individual, or an assignee of the rights, consistent with subdivision 5.
(c) For the purposes of this section, the individual in the photograph must be readily
identifiable, which means a reasonable person could determine who the individual
depicted in the photograph is without using technology to enhance the image.
(d) The individual whose right of publicity is the basis for the action must be
domiciled in Minnesota, or have been domiciled in Minnesota, at the time of their death
to maintain an action under this section.

Subd. 3. **Damages.** (a) A person who violates subdivision 2, is liable for:

(1) actual damages;

(2) an amount equal to the profits earned through the unauthorized use of an
individual or deceased individual's likeness; and

(3) punitive damages consistent with section 549.20.

(b) In determining the amount of profit earned under paragraph (a), clause (2), the
injured party shall be required to present proof only of the gross revenue attributable to the
use of another's likeness and the burden to prove deductible expenses from that amount
shall be on the party defending the action.

(c) A prevailing party in an action under subdivision 2, shall be entitled to reasonable
attorneys fees and costs.

Subd. 4. **Injunctive relief.** In an action brought under this section, the court may
grant injunctive relief to prevent or restrain the unauthorized use of an individual's name,
voice, signature, photograph, or likeness, including enjoining a defendant from further
creation or distribution of materials that were used to violate an individual or deceased
individual's right of publicity.

Subd. 5. **Right of publicity of decedent.** (a) The right of publicity in subdivision 2 is
transferable and descendible, in whole or in part, by contract or by means of any governing
instrument. The rights recognized under this section shall be deemed to have existed at the
time of death of any deceased individual and shall vest in the persons entitled to these
property rights under a contract or other governing instrument. For the purposes of this
section, "governing instrument" has the meaning given in section 524.1-201, clause (26).

(b) In the absence of an express transfer in a governing instrument consistent
with paragraph (a), the deceased individual's rights in his or her name, voice, signature,
photograph, or likeness, shall be distributed pursuant to a provision in the governing
instrument that provides for the disposition of the residue of the deceased individual's
assets, and shall be effective to transfer the rights recognized under this section.

(c) In the absence of a contract or governing document consistent with paragraph (a)
or (b), the right of publicity of an individual shall descend to the heirs of the individual
pursuant to chapter 524.
(d) The rights provided for in this section are exclusive to the individual, subject to
the assignment or licensing of the rights, during the individual's lifetime.

(e) After the death of the individual, the rights provided for in this section are
exclusive to the personal representative, trustee, administrator, heirs, devisees, or
assignees for a minimum period of 50 years after the death of the individual, however may
be maintained for up to 100 years so long as the right has not been abandoned. A right of
publicity of a decedent is considered abandoned when the personal representative, trustee,
administrator, heir, devisee, or assignee has failed to use the right for commercial purposes
for two consecutive years after the initial 50-year period following the individual's death.

Subd. 6. Fair use: exceptions. A person is not liable under this section when an
individual or deceased individual's name, voice, signature, photograph, or likeness is
used in connection with media reporting of news, public affairs, sports broadcasting,
or commentary and criticism. A person also is not liable under this section when an
individual or deceased individual's name, voice, signature, photograph, or likeness is
used in the following works as long as such use does not constitute an advertisement,
endorsement, or solicitation for the sale or purchase of another product or service: a play,
book, or other literary work; a theatrical work; a musical composition, musical sound
recording, or similar musical work; a documentary, film, motion picture, or television
program; a single work of original art; or an advertisement or commercial or promotional
announcement for any of the permitted uses identified in this subdivision.

Subd. 7. Commercial sponsorship. The use of an individual or deceased
individual's name, voice, signature, photograph, or likeness is not a violation of
subdivision 2 solely because the use of an individual or deceased individual's name,
voice, signature, photograph, or likeness appears in the medium that contains commercial
sponsorship or paid advertising. It is a question of fact whether or not the use of the
complaining individual's or deceased individual's name, voice, signature, photograph or
likeness was so directly connected with the commercial sponsorship or with the paid
advertising as to constitute a violation of subdivision 2.

Subd. 8. Immunity: publications. Owners or employees of a medium of
distribution or publication used for advertising, including but not limited to newspapers,
magazines, radio and television networks and stations, cable television systems, billboard
owners, and transit authorities or organizations, shall not be found liable under this section
for the publication or dissemination of an advertisement or solicitation that violates this
section, unless the owner or employee had knowledge that the use of the individual or
deceased individual's name, voice, signature, photograph, or likeness was unauthorized
or without prior consent.
4.1 Subd. 9. Application; chapter 333. This section applies to an individual otherwise entitled to the protections afforded under chapter 333.

4.2 Subd. 10. Cumulative. The remedies provided for in this section are cumulative and are in addition to other remedies provided for by law or in equity.

4.5 EFFECTIVE DATE. This section is effective August 1, 2016, and applies to causes of action brought on or after that date. This section applies to the rights of a deceased individual who was domiciled in Minnesota at the time of their death and who died after August 1, 1966.