

1 SB197
2 164563-1
3 By Senator Smitherman
4 RFD: Judiciary
5 First Read: 10-MAR-15

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8 SYNOPSIS: Alabama has long recognized a common law
9 right of publicity or the ability to exercise
10 appropriate commercial control over one's name or
11 likeness as a component of the tort of invasion of
12 privacy.

13 This bill would create the Alabama Right of
14 Publicity Act.

15 This bill would statutorily define this
16 right, the elements and scope of liability for its
17 infringement, define the remedies available, and
18 set forth defenses.

19 This bill would provide that there is a
20 right of publicity in any indicia of identity of
21 every person which endures for the life of the
22 person and for 55 years after death, the right
23 being freely transferable and descendible.

24 This bill would further provide for
25 liability for persons who wrongfully use another
26 person's indicia of identity whether or not for
27 profit.

1 This bill would provide for defenses from
2 liability under certain circumstances.

3 This bill would provide that a person who
4 establishes by substantial evidence that his or her
5 right of publicity has been violated would be
6 entitled to statutory damages in the amount of
7 \$5,000, or actual damages at his or her election,
8 and any other damages available under law.

9
10 A BILL

11 TO BE ENTITLED

12 AN ACT

13
14 To create the Alabama Right of Publicity Act; to
15 statutorily define the right, the elements and scope of
16 liability for its infringement, define the remedies available,
17 and set forth defenses; to provide that there is a right of
18 publicity in any indicia of identity of every person which
19 endures for the life of the person and for 55 years after
20 death; to provide that the right is freely transferable and
21 descendible; to further provide for liability for persons who
22 wrongfully use another person's indicia of identity whether or
23 not for profit; to provide for defenses from liability under
24 certain circumstances; and to provide that a person who
25 establishes by substantial evidence that his or her right of
26 publicity has been violated would be entitled to statutory

1 damages in the amount of \$5,000, or actual damages at his or
2 her election, and any other damages available under law.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. This act shall be known and may be cited
5 as the Alabama Right of Publicity Act.

6 Section 2. For the purposes of this act, the
7 following terms shall have the following meanings unless the
8 context clearly indicates otherwise:

9 (1) INDICIA OF IDENTITY. Include those attributes of
10 a person that serve to identify that person to an ordinary,
11 reasonable viewer or listener, including, but not limited to,
12 name, signature, photograph, image, likeness, voice, or a
13 substantially similar imitation of one or more of those
14 attributes.

15 (2) PERSON. A natural person or a deceased natural
16 person.

17 (3) RIGHT OF PUBLICITY. There is a right of
18 publicity in any indicia of identity, both singular and
19 plural, of every person, whether or not famous, which right
20 endures for the life of the person and for 55 years after his
21 or her death, whether or not the person commercially exploits
22 the right during his or her lifetime. The right is freely
23 transferable and descendible, in whole or in part, and shall
24 be considered property of the estate of the decedent unless
25 otherwise transferred.

26 Section 3. (a) Except as otherwise provided in this
27 act, any person or entity who uses or causes the use of the

1 indicia of identity of a person, on or in products, goods,
2 merchandise, or services entered into commerce in this state,
3 or for purposes of advertising or selling, or soliciting
4 purchases of, products, goods, merchandise, or services, or
5 for purposes of fund-raising or solicitation of donations, or
6 for false endorsement, without consent shall be liable under
7 this act to that person, or to a holder of that person's
8 rights.

9 (b) Liability may be found under this section
10 without regard as to whether the use is for profit or not for
11 profit.

12 Section 4. (a) The right of publicity in this act
13 shall not circumscribe the right to freedom of expression
14 granted by the First Amendment to the United States
15 Constitution and the freedom of speech and press granted by
16 Article I, Section 4, of the Constitution of Alabama of 1901.

17 (b) Any action brought pursuant to this act shall be
18 commenced within two years from the act or omission giving
19 rise to the claim. If the cause of action is not discovered
20 and could not reasonably have been discovered within that time
21 period, then the action may be commenced within six months
22 from the date of such discovery or the date of discovery of
23 facts which would reasonably lead to such discovery, whichever
24 is earlier. In no event may the action be commenced more than
25 four years after the act or omission giving rise to the claim.

1 (c) Those who lawfully obtain authorized products
2 containing indicia of identity are not liable under this
3 section for the resale of such products.

4 Section 5. A plaintiff, who establishes by
5 substantial evidence that his or her right of publicity has
6 been violated, shall be eligible to receive the following
7 damages, remedies, and relief:

8 (1) Monetary relief. The measure of damages shall
9 be:

10 a. Statutory damages in the amount of five thousand
11 dollars (\$5,000) per case or compensatory damages, including
12 the defendant's profits derived from such use. The plaintiff,
13 within a reasonable time after the close of discovery, shall
14 elect whether to claim statutory damages or to instead receive
15 such monetary relief as the fact finder may independently
16 determine to award in accordance with this section.

17 b. Any other damages available under Alabama law,
18 including punitive damages. An election of statutory damages
19 does not preclude the recovery of punitive damages if such
20 damages are available under Alabama law.

21 (2) Injunctive relief. A violation of this act is
22 deemed to constitute irreparable harm for the purposes of
23 injunctive relief.

24 Section 6. This act shall become effective on the
25 first day of the third month following its passage and
26 approval by the Governor, or its otherwise becoming law.