SB197

164563-1

By Senator Smitherman

RFD: Judiciary

First Read: 10-MAR-15
SYNOPSIS: Alabama has long recognized a common law right of publicity or the ability to exercise appropriate commercial control over one's name or likeness as a component of the tort of invasion of privacy.

This bill would create the Alabama Right of Publicity Act.

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

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

This bill would further provide for liability for persons who wrongfully use another person's indicia of identity whether or not for profit.
This bill would provide for defenses from liability under certain circumstances. This bill would provide that a person who establishes by substantial evidence that his or her right of publicity has been violated would be entitled to statutory damages in the amount of $5,000, or actual damages at his or her election, and any other damages available under law.

A BILL TO BE ENTITLED
AN ACT

To create the Alabama Right of Publicity Act; to statutorily define the right, the elements and scope of liability for its infringement, define the remedies available, and set forth defenses; to provide that there is a right of publicity in any indicia of identity of every person which endures for the life of the person and for 55 years after death; to provide that the right is freely transferable and descendible; to further provide for liability for persons who wrongfully use another person's indicia of identity whether or not for profit; to provide for defenses from liability under certain circumstances; and to provide that a person who establishes by substantial evidence that his or her right of publicity has been violated would be entitled to statutory
damages in the amount of $5,000, or actual damages at his or
her election, and any other damages available under law.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

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

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

Section 3. (a) Except as otherwise provided in this
act, any person or entity who uses or causes the use of the
indicia of identity of a person, on or in products, goods, merchandise, or services entered into commerce in this state, or for purposes of advertising or selling, or soliciting purchases of, products, goods, merchandise, or services, or for purposes of fund-raising or solicitation of donations, or for false endorsement, without consent shall be liable under this act to that person, or to a holder of that person’s rights.

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

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

(b) Any action brought pursuant to this act shall be commenced within two years from the act or omission giving rise to the claim. If the cause of action is not discovered and could not reasonably have been discovered within that time period, then the action may be commenced within six months from the date of such discovery or the date of discovery of facts which would reasonably lead to such discovery, whichever is earlier. In no event may the action be commenced more than four years after the act or omission giving rise to the claim.
(c) Those who lawfully obtain authorized products containing indicia of identity are not liable under this section for the resale of such products.

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

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

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

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

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

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