A Bill

For An Act To Be Entitled

AN ACT TO ENACT THE PERSONAL RIGHTS PROTECTION ACT;
TO PROTECT THE PROPERTY RIGHTS OF AN INDIVIDUAL TO
THE USE OF THE INDIVIDUAL’S NAME, VOICE, SIGNATURE,
AND LIKENESS; AND FOR OTHER PURPOSES.

Subtitle

TO ENACT THE PERSONAL RIGHTS PROTECTION
ACT; AND TO PROTECT THE PROPERTY RIGHTS
OF AN INDIVIDUAL TO THE USE OF THE
INDIVIDUAL’S NAME, VOICE, SIGNATURE, AND
LIKENESS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 4, Chapter 75, is amended to add an
additional subchapter to read as follows:

Subchapter 10 – Personal Rights Protection Act

4-75-1001. Title.
This subchapter shall be known and may be cited as the "Personal Rights Protection Act".

4-75-1002. Findings and legislative intent.
(a) The General Assembly finds that citizens of this state:
(1) Are renowned for their hard work and accomplishments in many
areas that contribute to the public health, welfare, and pursuit of
happiness;

(2) Often spend most of their lives developing and maintaining
reputations of honesty and integrity;

(3) Have a vested interest in maintaining their reputations and
the memory of personal traits that characterize them and their
accomplishments; and

(4) Should have the use of their names, voices, signatures,
photographs, and likenesses protected for their benefit and the benefit of
their families.

(b) It is the intent of the General Assembly by the enactment of this
subchapter to:

(1) Protect the names, voices, signatures, photographs, and
likenesses of the citizens of this state from exploitation and unauthorized
commercial use without a citizen’s consent;

(2) Provide a method for the fair administration of the right to
use a citizen’s name, voice, signature, photograph, or likeness; and

(3) Provide appropriate remedies for the exploitation and
unauthorized commercial use of a citizen’s name, voice, signature,
photograph, or likeness.

4-75-1003. Definitions.
As used in this subchapter:

(1) "Commercial use" means the use of an individual’s name,
voice, signature, photograph, or likeness for:

(A) Advertising;

(B) Fundraising; or

(C) Obtaining money, goods, or services;

(2) “Definable group” means a group of two (2) or more persons
existing or organized with or without mutual agreement or arrangement,
including without limitation a crowd at a sporting event or in a street or
public building, the audience at a theatrical or stage production, a glee
club, or a sports team;

(3) "Individual" means a natural person, alive or dead;

(4) “Likeness” means a reproduction of the image of an
individual by any means other than a photograph;
(5)(A) “Person” means an individual or entity.

(B) "Person" includes:

(i) A partnership, a corporation, a company, an association, or any other business entity;

(ii) A not-for-profit corporation or association;

(iii) An educational or religious institution;

(iv) A political party; and

(v) A community, civic, or other organization;

(6) “Photograph” means a reproduction of the image of an individual that readily identifies the individual, whether made by photography, videotape, live transmission, or other means; and

(7) "Successor in interest" means an owner or the beneficial owner of a property right provided by this subchapter under:

(A) A transfer, assignment, or license of the property right; or

(B) Section 4-75-1004(b)(3).

4-75-1004. Property right in use of name, voice, signature, photograph, or likeness — Prior consent.

(a) An individual has a property right in the use by any medium in any manner without the individual’s prior consent of:

(1) The individual’s name, voice, signature, photograph, or likeness; and

(2) Any combination of the individual’s name, voice, signature, photograph, or likeness.

(b) The property right provided under subsection (a) of this section:

(1) Is freely transferable, assignable, licensable, and descendible, in whole or in part, by contract or by a trust, testamentary, or other instrument executed before or after the effective date of this subchapter;

(2) Does not expire upon the death of an individual, whether or not the rights were commercially used by the individual during the individual’s lifetime; and

(3)(A) Upon an individual’s death, vests in the individual’s executors, administrators, heirs, devisees, and assigns according to:

(i) The terms of a testamentary instrument; or
(ii) Except as provided in subdivision (b)(3)(B) of this section, if a testamentary instrument does not expressly provide for the transfer of a property right provided by subsection (a) of this section, the laws of this state governing intestate succession to personalty.

(B) In the absence of an express transfer in a testamentary instrument of an individual’s rights in his or her name, voice, signature, photograph, or likeness, a provision in the testamentary instrument that provides for the disposition of the residue of the individual’s assets is effective to transfer the rights recognized under this section in accordance with the terms of the provision.

(c) Subject to the terms of a transfer, assignment, or license of a property right provided by this section, the consent required by subsection (a) of this section shall be exercised by:

(1) The individual during the individual’s lifetime;

(2) A person or persons to whom all or part of the right of consent has been transferred, assigned, or licensed; or

(3) After an individual's death, as provided by § 4-75-1005.

4-75-1005. Exercise of rights after death.

(a) Subject to the terms of a transfer, assignment, or license of property rights under § 4-74-1004, after the death of an individual, consent to the use of an individual's name, voice, signature, photograph, or likeness shall be granted by no less than fifty-one percent (51%) of the owners of the right to use the individual's name, voice, signature, photograph, or likeness under § 4-75-1004(b)(3).

(b) Compensation or other remuneration received under subsection (a) of this section for the use of an individual’s name, voice, signature, photograph, or likeness shall be shared by all owners of the right to use the individual’s name, voice, signature, photograph, or likeness according to each owner’s respective ownership interest.

4-75-1006. Registration.

(a) A successor in interest shall register a claim of property rights under this subchapter in the manner provided by this section.

(b) Unless a claim of property rights under this subchapter is registered under this section, a successor in interest shall not recover
damages from a person on the claim for a commercial use prohibited by this subchapter unless the person knew or should have known of the claim of the successor in interest.

(c)(1) A successor in interest shall register the claim with the Secretary of State:

(A) On a form prescribed by the Secretary of State; and
(B) By paying a filing fee prescribed by the Secretary of State not to exceed twenty-five dollars ($25.00).

(2) The form shall:

(A) Be verified under oath;
(B) Include the name and, if applicable, date of death of the individual; and
(C) Include the name and address of the claimant, the basis of the claim, and the rights claimed.

(d)(1) Upon receipt the Secretary of State shall file and post the form along with the entire registry of persons claiming to be an individual’s successor in interest on the website of the Secretary of State.

(2) The Secretary of State may microfilm or otherwise reproduce a filing or form and destroy the original filing or form.

(3) The microfilm or other reproduction of a filing or form under this section is admissible in any court of law.

(4) A filing or form under this section is a public record.

(e)(1)(A) A claim to a property right under this subchapter may be re-registered under this section for successive ten-year periods by filing a continuation form with the Secretary of State.

(B) Subsections (c) and (d) of this section apply to a continuation form.

(2) The filing of a continuation form creates a rebuttable presumption that the property right has not expired due to nonuse under § 4-75-1007(b).

4-75-1007. Exclusive rights — Expiration.

(a) Subject to a transfer, an assignment, or a licensing agreement, the property rights provided by this subchapter are exclusive to:

(1) An individual during the individual’s lifetime; and
(2) Except as provided in subsection (b) of this section, the
executors, administrators, heirs, devisees, and assigns of an individual for ten (10) years after the individual’s death.

(b) The exclusive right of a person described in subdivision (a)(2) of this section to the commercial use of a property right provided by this subchapter continues until the property right is terminated by proof of the person’s nonuse of the name, voice, signature, photograph, and likeness of the individual for commercial purposes for two (2) consecutive years after the initial ten-year period following the individual’s death.

4-75-1008. Unauthorized commercial use.

(a)(1) Except as provided in § 4-75-1010, a person who commercially uses an individual’s name, voice, signature, photograph, or likeness is liable to the holder of the property right provided by this subchapter for damages and disgorgement of profits, funds, goods, or services if the commercial use was not authorized under § 4-75-1004(c).

(2) If a minor is the holder of the property right, a parent or legal guardian of the minor may consent on the minor’s behalf.

(b) The unauthorized commercial use of a property right under this subchapter is a Class A misdemeanor.

(c) The fact that an individual is shown as a member of a definable group is not a defense to:

(1) An action under subsection (a) of this section; or

(2) A prosecution under subsection (b) of this section.

(d) If a violation of this section occurs through the use of a product, merchandise, goods, or other tangible personal property, the product, merchandise, goods, or other tangible personal property and the instrumentalities used by the person violating this section are considered contraband and are subject to seizure and forfeiture to the state under § 4-75-1009.

4-75-1009. Civil actions — Injunctions, impounding, or destruction of materials — Damages.

(a) An aggrieved party may file a civil action in the county where:

(1) One (1) or more defendants reside; or

(2) A violation of this subchapter occurred.

(b) Upon finding a violation of this subchapter, the court may:
(1) Issue an injunction to prevent or restrain the unauthorized commercial use of an individual’s name, voice, signature, photograph, or likeness;

(2) Authorize the confiscation and restoration to the rightful owner of an item considered contraband under § 4-75-1008; and

(3) Seize the instrumentalities used in connection with the violation.

(c) An instrumentality seized under § 4-75-1008 may be:

(1) Awarded to the holder of the property right that was violated; or

(2) Liquidated and the proceeds used to satisfy damages, costs, or attorney's fees if damages, costs, or attorney's fees are recovered by the holder of a property right under this subchapter.

(d) If an action under this subchapter is pending, the court may:

(1) Impound materials claimed to have been made or used in violation of an individual’s rights; and

(2) Enjoin the use of all plates, molds, matrices, masters, tapes, film negatives, or other articles by which the materials may be reproduced.

(e) As part of a final judgment or decree, the court may order the destruction or other reasonable disposition of:

(1) All materials found to have been made or used in violation of the individual’s rights; and

(2) All plates, molds, matrices, masters, tapes, film negatives, or other articles by which the materials may be reproduced.

(f)(1)(A) The holder of a property right provided by this subchapter is entitled to recover:

(i) The actual damages the holder suffers as a result of a commercial use of the property right; and

(ii) Any profits that are attributable to the commercial use.

(B) Profits that are attributable to the commercial use shall not be considered in computing the actual damages.

(C) The existence or nonexistence of profits from the unauthorized commercial use shall not be a criterion for determining liability.
(2)(A) The holder of a property right provided by this subchapter is entitled to recover three (3) times the amount to which the holder is entitled under subdivision (f)(1) of this section plus reasonable attorney’s fees if a person commercially uses the property rights of a member of the armed forces in violation of this subchapter.

(B) As used in subdivision (f)(2)(A) of this section, “member of the armed forces” means a member of the United States Armed Forces or a member of a reserve or National Guard unit of Arkansas who is in, or was called into, active duty service or active duty military service of the United States.

(g) The remedies provided for in this section are cumulative and shall be in addition to any other remedies provided for by law.

4-75-1010. Fair use — Commercial sponsorship.

(a) It is a fair use and not a violation of this subchapter if the use of a name, voice, signature, photograph, or likeness is:

(1) Used in connection with a news, public affairs, or sports broadcast or account of public interest; and

(2) Not used for advertising purposes.

(b)(1) The commercial use of an individual's name, voice, signature, photograph, or likeness in a commercial medium does not constitute a commercial use for purposes of advertising or solicitation if the material containing the commercial use is authorized by the individual for commercial sponsorship or paid advertising.

(2) A determination of whether or not the commercial use of an individual’s name, voice, signature, photograph, or likeness is so directly connected with the commercial sponsorship or paid advertising as to constitute an authorized use for purposes of advertising or solicitation is a question of fact.

4-75-1011. Construction.

This subchapter:

(1) Shall be liberally construed to accomplish its intent and purposes; and

(2) Does not render invalid or unenforceable a contract entered into before or after the effective date of this subchapter by an individual
during his or her lifetime by which the individual transferred, assigned, or
licensed all or part of the right to use his or her name, voice, signature,
photograph, or likeness.

4-7-1012. Applicability.
The property rights granted by this subchapter vest with respect to an
individual on the effective date of this subchapter.