

SB 175 – AS AMENDED BY THE HOUSE

01/25/12 0168s

15May2012... 2008h

2011 SESSION

11-1031

05/01

SENATE BILL ***175***

AN ACT regulating the commercial use of a person's identity.

SPONSORS: Sen. Odell, Dist 8; Sen. Houde, Dist 5; Rep. Chandler, Carr 1; Rep. Daniels, Hills 6

COMMITTEE: Commerce

AMENDED ANALYSIS

This bill provides for the transferability and descendibility of the common law right to control the commercial use of one's identity.

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Explanation: Matter added to current law appears in ***bold italics***.Matter removed from current law appears [~~in brackets and struckthrough.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eleven

AN ACT regulating the commercial use of a person's identity.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Purpose. The legislature finds that:

I. A person's right to control the commercial use of his or her identity, sometimes called the "right of publicity," has been recognized by the courts of this state (see *Remsburg v. Docusearch, Inc.*, 149 N.H. 148 (2003) and *Thompson v. C&C Research Development, LLC*, 153 N.H. 446 (2006)).

II. This act will make clear that individuals who are domiciled in New Hampshire at the time of death retain a protectable right regarding the commercial use of their identities that is descendible to their heirs or successors.

III. This act will respect the New Hampshire constitution and the United States Constitution by its recognition that the substance of the protected right of publicity will be governed by the common law, which balances the right to control the commercial use of one's name and/or likeness against the rights to freedom of expression.

2 New Chapter; Descendibility; and Transferability of Rights Regarding Commercial Use of Individual Identity. Amend RSA by inserting after chapter 359- L the following new chapter:

CHAPTER 359-M

DESCENDIBILITY AND TRANSFERABILITY OF RIGHTS

REGARDING COMMERCIAL USE OF INDIVIDUAL IDENTITY

359-M:1 Recognition of the Right to Control Commercial Use of Identity. The common law recognizes that every natural person has the right to control the commercial use of his or her identity, subject to limitations imposed by the New Hampshire constitution and the United States Constitution.

359-M:2 Transferability and Descendibility of the Right to Control Commercial Use of Identity.

I. The right to control the commercial use of a person's identity, as recognized by the common law and as may be further developed under the common law, is a property right that survives death. The right is freely transferable and descendible, in whole or in part, during and after a person's life by means of:

(a) A written contract, license, conveyance, or assignment or a will, trust, or other testamentary instrument, executed before or after the enactment of this chapter, and by the original holder or his or her successor-in-interest; or

(b) Intestate succession occurring before or after the enactment of this chapter.

II. In the absence of an express transfer in a testamentary instrument of the right to control commercial use of a person's identity, a provision in a testamentary instrument that provides for the disposition of the residue of the deceased person's assets shall be effective to transfer that right in accordance with the terms of that provision.

359-M:3 Duration and Termination.

I. The right protected under this chapter endures for a term consisting of the death of the person plus 70 years after his or her death, regardless of whether the person commercially exploits the right during his or her lifetime.

II. A person's right under this chapter shall be deemed to have existed prior to the enactment of this chapter, and at the time of the death of the original holder or his or her successor-in-interest, whether that death occurs before or after the enactment of this chapter, for the purpose of determining entitlement to the right.

III. The right protected under this chapter terminates if its holder dies without having transferred or devised it, either during his or her life or through a will, trust, or other testamentary instrument, and there are no surviving natural persons to whom the right can pass by intestate succession.

IV. The right protected under this chapter applies only to any person who died a domiciliary of the state of New Hampshire.

359-M:4 Exercise and Enforcement. The right protected under this chapter, including the right to consent to the use of a deceased person's identity, may be exercised and enforced by any one person or entity who holds, or persons or entities who together hold, more than a 1/2 interest in the right.

359-M:5 Applicability. The prohibitions set forth in this chapter apply only to unauthorized use of a person's identity occurring after July 15, 2012 or upon passage, whichever occurs first.

3 Effective Date. This act shall take effect upon its passage.