

1 HB181  
2 164563-1  
3 By Representatives Givan, Forte, Beckman, Robinson, Jones,  
4 McClammy and England  
5 RFD: Judiciary  
6 First Read: 05-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.