

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

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4 ENGROSSED

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7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

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11 To create the Alabama Right of Publicity Act; to  
12 statutorily define the right, the elements and scope of  
13 liability for its infringement, define the remedies available,  
14 and set forth defenses; to provide that there is a right of  
15 publicity in any indicia of identity of every person which  
16 endures for the life of the person and for 55 years after  
17 death; to provide that the right is freely transferable and  
18 descendible; to further provide for liability for persons who  
19 wrongfully use another person's indicia of identity whether or  
20 not for profit; to provide for defenses from liability under  
21 certain circumstances; and to provide that a person who  
22 establishes by substantial evidence that his or her right of  
23 publicity has been violated would be entitled to statutory  
24 damages in the amount of \$5,000, or actual damages at his or  
25 her election, and any other damages available under law.  
26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

12           (2) PERSON. A natural person or a deceased natural  
13 person who at any time resided in this state or died while in  
14 this state or whose estate is, or was, probated in any county  
15 in this state.

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

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

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

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

11 Section 4. (a) It is a fair use and not a violation  
12 of Section 3 if (1) the use of the indicia of identity is used  
13 in connection with a news, public affairs, or account of  
14 public interest, or a political campaign or (2) the use of a  
15 person's indicia of identity is part of an artistic or  
16 expressive work, such as a live performance, work of art,  
17 literary work, theatrical work, musical work, audiovisual  
18 work, motion picture, film, television program, radio program  
19 or the like, or any advertising or promotion of the same.

20 (b) The commercial use of person's indicia of  
21 identity in a commercial medium does not constitute a  
22 violation of Section 3 if the material containing the  
23 commercial use is authorized by the person or the person's  
24 authorized representative or agent for commercial sponsorship  
25 or paid advertising.

26 (c) Any action brought pursuant to this act shall be  
27 commenced within two years from the act or omission giving

1 rise to the claim. If the cause of action is not discovered  
2 and could not reasonably have been discovered within that time  
3 period, then the action may be commenced within six months  
4 from the date of such discovery or the date of discovery of  
5 facts which would reasonably lead to such discovery, whichever  
6 is earlier. In no event may the action be commenced more than  
7 four years after the act or omission giving rise to the claim.

8 (d) Those who lawfully obtain authorized products  
9 containing indicia of identity are not liable under this  
10 section for the resale of such products.

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

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

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

25 b. Any other damages available under Alabama law,  
26 including punitive damages. An election of statutory damages

1 does not preclude the recovery of punitive damages if such  
2 damages are available under Alabama law.

3 (2) Injunctive relief. A violation of this act is  
4 deemed to constitute a rebuttable presumption of irreparable  
5 harm for the purposes of injunctive relief.

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

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Senate

Read for the first time and referred to the Senate  
committee on Judiciary..... 10-MAR-15

Read for the second time and placed on the calen-  
dar 1 amendment..... 18-MAR-15

Read for the third time and passed as amended .... 19-MAR-15

Yeas 24  
Nays 1

Patrick Harris  
Secretary