

ASSEMBLY, No. 3536

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED DECEMBER 15, 2008

Sponsored by:

Assemblywoman VALERIE VAINIERI HUTTLE
District 37 (Bergen)

SYNOPSIS

Establishes the “Celebrity Image Protection Act.”

CURRENT VERSION OF TEXT

As introduced.



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1 AN ACT concerning unauthorized use of a celebrity's image and
2 supplementing Title 2A of the New Jersey Statutes.

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4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

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7 1. This act shall be known and may be cited as the "Celebrity
8 Image Protection Act."

9

10 2. a. Any person who uses a deceased personality's name, voice,
11 signature, photograph, or likeness, in any manner, on or in products,
12 merchandise, or goods, or for purposes of advertising or selling, or
13 soliciting purchases of, products, merchandise, goods, or services,
14 without prior consent from the person specified in subsection h.,
15 shall be liable for any damages sustained by the person injured as a
16 result thereof.

17 b. In addition, in any action brought under this section, a person
18 who violates the section shall be liable to the injured party in an
19 amount equal to \$1,000 or the actual damages suffered by the
20 injured party or parties as a result of the unauthorized use
21 whichever is greater, and any profits from the unauthorized use that
22 are attributable to the use and are not taken into account in
23 computing the actual damages.

24 c. Punitive damages may be awarded to the injured party.

25 d. The prevailing party in any action under this section shall also
26 be entitled to attorneys' fees and costs.

27 e. For purposes of this section, a play, book, magazine,
28 newspaper, musical composition, audiovisual work, radio or
29 television program, Internet broadcast, single and original work of
30 art, work of political or newsworthy value, or an advertisement or
31 commercial announcement for any of these works, shall not be
32 considered a product, article of merchandise, good, or service if it is
33 fictional or nonfictional entertainment, or a dramatic, literary, or
34 musical work.

35 f. If a work that is protected under subsection e. of this section
36 includes within it a use in connection with a product, article of
37 merchandise, good, or service, this use shall not be exempt under
38 this section, notwithstanding the unprotected use's inclusion in a
39 work otherwise exempt under this section, if the claimant proves
40 that this use is so directly connected with a product, article of
41 merchandise, good, or service as to constitute an act of advertising,
42 selling, or soliciting purchases of that product, article of
43 merchandise, good, or service by the deceased personality without
44 prior consent from the person specified in subsection h.

45 g. The rights recognized under this section are property rights,
46 freely transferable, in whole or in part, by contract or by means of
47 trust or testamentary documents, whether the transfer occurs before
48 the death of the deceased personality, by the deceased personality or

1 his transferees, or, after the death of the deceased personality, by
2 the person in whom the rights vest under this section or the
3 transferees of that person.

4 h. The consent required by this section shall be exercisable by
5 the person to whom the right of consent, or portion thereof, has
6 been transferred in accordance with subsection g. of this section, or
7 if no transfer has occurred, then by the person to whom the right of
8 consent, or portion thereof, has passed in accordance with
9 subsection i of this section.

10 i. Subject to subsection g. and h. of this section, after the death of
11 any person, the rights under this section shall belong to the
12 following persons and may be exercised, on behalf of and for the
13 benefit of all of those persons, by those persons who, in the
14 aggregate, are entitled to more than a one-half interest in the rights:

15 (1) The entire interest in those rights belong to the surviving
16 spouse, civil union partner or domestic partner of the deceased
17 personality unless there are any surviving children or grandchildren
18 of the deceased personality, in which case one-half of the entire
19 interest in those rights belong to the surviving spouse.

20 (2) The entire interest in those rights belong to the surviving
21 children of the deceased personality and to the surviving children of
22 any dead child of the deceased personality unless the deceased
23 personality has a surviving spouse, in which case the ownership of a
24 one-half interest in those rights is divided among the surviving
25 children and grandchildren.

26 (3) If there is no surviving spouse, and no surviving children or
27 grandchildren, then the entire interest in those rights belong to the
28 surviving parent or parents of the deceased personality.

29 j. If any deceased personality did not transfer his rights under
30 this section by contract, or by means of a trust or testamentary
31 document, and there are no surviving persons as described in
32 subsection i. of this section, then the rights set forth in subsection a.
33 shall terminate.

34 k. A successor in interest to the rights of a deceased personality
35 under this section or a licensee thereof may not recover damages for
36 a use prohibited by this section that occurs before the successor in
37 interest or licensee registers a claim of the rights under subsection l.
38 of this section.

39 l. Any person claiming to be a successor in interest to the rights
40 of a deceased personality under this section or a licensee thereof
41 may register that claim with the Secretary of State on a form
42 prescribed by the Secretary of State. The Secretary of State shall
43 impose a fee for the filing of a form pursuant to this section. The
44 form shall be verified and shall include the name and date of death
45 of the deceased personality, the name and address of the claimant,
46 the basis of the claim, and the rights claimed.

47 m. Upon receipt and after filing of any document under this
48 section, the Secretary of State shall post the document along with

1 the entire registry of persons claiming to be a successor in interest
2 to the rights of a deceased personality or a registered licensee under
3 this section on the Secretary of State's official Internet website.
4 The Secretary of State may microfilm or reproduce by other
5 techniques any of the filings or documents and destroy the original
6 filing or document. The microfilm or other reproduction of any
7 document under the provisions of this section shall be admissible in
8 any court of law.

9 n. Claims registered under this section shall be public records.

10 o. No action shall be brought under this section by reason of any
11 use of a deceased personality's name, voice, signature, photograph,
12 or likeness occurring after the expiration of 70 years after the death
13 of the deceased personality.

14 p. As used in this section:

15 "Deceased personality" means any natural person whose name,
16 voice, signature, photograph, or likeness has commercial value at
17 the time of his death, whether or not during the lifetime of that
18 natural person the person used his or her name, voice, signature,
19 photograph, or likeness on or in products, merchandise or goods, or
20 for purposes of advertising or selling, or solicitation of purchase of,
21 products, merchandise, goods, or services. A "deceased personality"
22 shall include, without limitation, any such natural person who has
23 died within 70 years prior to January 1, 2008.

24 "Internet" means the international computer network of both
25 federal and non-federal interoperable packet switched data
26 networks.

27 "Photograph" means any photograph or photographic
28 reproduction, still or moving, or any video tape or live television
29 transmission, of any person, such that the deceased personality is
30 readily identifiable. A deceased personality shall be deemed to be
31 readily identifiable from a photograph when one who views the
32 photograph with the naked eye can reasonably determine the
33 identity of the person depicted in the photograph.

34 q. For purposes of this section, a use of a name, voice, signature,
35 photograph, or likeness in connection with any news, public affairs,
36 or sports broadcast or account, or any political campaign, shall not
37 constitute a use for which consent is required under this section.

38 r. The use of a name, voice, signature, photograph, or likeness in
39 a commercial medium shall not constitute a use for which consent is
40 required under this section solely because the material containing
41 the use is commercially sponsored or contains paid advertising.
42 Rather, it shall be a question of fact whether or not the use of the
43 deceased personality's name, voice, signature, photograph, or
44 likeness was so directly connected with the commercial sponsorship
45 or with the paid advertising as to constitute a use for which consent
46 is required under this section.

47 s. Nothing in this section shall apply to the owners or employees
48 of any medium used for advertising, including, but not limited to,

1 newspapers, magazines, radio and television networks and stations,
2 cable television systems, billboards, and transit ads, by whom any
3 advertisement or solicitation in violation of this section is published
4 or disseminated, unless it is established that the owners or
5 employees had knowledge of the unauthorized use of the deceased
6 personality's name, voice, signature, photograph, or likeness as
7 prohibited by this section.

8 t. The remedies provided for in this section shall be in addition to
9 and not in lieu of any other action, injunctive relief or any other
10 remedy available at law.

11 u. This section shall apply to the adjudication of liability and the
12 imposition of any damages or other remedies in cases in which the
13 liability, damages, and other remedies arise from acts occurring
14 directly in this State. For purposes of this section, acts giving rise to
15 liability shall be limited to the use, on or in products, merchandise,
16 goods, or services, or the advertising or selling, or soliciting
17 purchases of, products, merchandise, goods, or services prohibited
18 by this section.

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20 3. This act shall take effect immediately.

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STATEMENT

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25 This bill would enact the "Celebrity Image Protection Act,"
26 concerning the unauthorized use of a deceased celebrity's likeness.
27 The bill is modeled after California's "Astaire Celebrity Protection
28 Act." It would provide for a civil action for the unauthorized use of
29 a deceased personality's name or image for commercial purposes.

30 Under the provisions of the bill, any person who uses a deceased
31 personality's name, voice, signature, photograph, or likeness, in any
32 manner, on or in products, merchandise, or goods, or for purposes
33 of advertising or selling, or soliciting purchases of, products,
34 merchandise, goods, or services, without prior consent, would be
35 liable for any damages sustained. The bill defines a "deceased
36 personality" as any natural person whose name, voice, signature,
37 photograph, or likeness has commercial value at the time of his
38 death, whether or not during the lifetime of that natural person the
39 person used his name, voice, signature, photograph, or likeness on
40 or in products, merchandise or goods, or for purposes of advertising
41 or selling, or solicitation of purchase of, products, merchandise,
42 goods, or services. A "deceased personality" includes, without
43 limitation, any such natural person who has died within 70 years
44 prior to January 1, 2008.

45 The bill provides that in an action brought under the bill, the
46 person would be liable to injured party in the amount equal to
47 \$1,000 or the actual damages suffered by the injured party as the
48 result of the unauthorized use, whichever is greater. Punitive

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1 damages may be awarded and the prevailing party would be entitled
2 to attorney fees and costs under the provisions of the bill.

3 The rights recognized under the bill are property rights, freely
4 transferable, in whole or in part, by contract or by means of trust or
5 testamentary documents, whether the transfer occurs before the
6 death of the deceased personality, by the deceased personality or his
7 transferees, or, after the death of the deceased personality, by the
8 person in whom the rights vest under the bill.

9 In addition, the bill requires any person claiming to be a
10 successor in interest to the rights of a deceased personality to
11 register a claim with the Secretary of State. Upon receipt of the
12 claim, the Secretary of State shall post the document, along with the
13 entire registry of persons claiming to be a successor in interest to
14 the rights of the deceased personality, on the Secretary's Internet
15 website.

16 The bill provides that no action may be brought after the
17 expiration of 70 years from the death of the deceased celebrity.