

1 SB197
2 168394-2
3 By Senator Smitherman
4 RFD: Judiciary
5 First Read: 10-MAR-15

1 SB197

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4 ENROLLED, An Act,

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

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

23 Section 2. For the purposes of this act, the
24 following terms shall have the following meanings unless the
25 context clearly indicates otherwise:

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

7 (2) PERSON. A natural person or a deceased natural
8 person who at any time resided in this state or died while in
9 this state or whose estate is, or was, probated in any county
10 in this state.

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

20 Section 3. (a) Except as otherwise provided in this
21 act, any person or entity who uses or causes the use of the
22 indicia of identity of a person, on or in products, goods,
23 merchandise, or services entered into commerce in this state,
24 or for purposes of advertising or selling, or soliciting
25 purchases of, products, goods, merchandise, or services, or

1 for purposes of fund-raising or solicitation of donations, or
2 for false endorsement, without consent shall be liable under
3 this act to that person, or to a holder of that person's
4 rights.

5 (b) Liability may be found under this section
6 without regard as to whether the use is for profit or not for
7 profit.

8 Section 4. (a) Nothing in this act will allow for
9 an abridgement of free speech rights under the First Amendment
10 of the United States Constitution and Section 4 of the
11 Constitution of Alabama of 1901.

12 (b) It is a fair use and not a violation of Section
13 3 if the use of the indicia of identity is in connection with
14 a news, public affairs, or public interest account, political
15 speech or a political campaign, live or prerecorded broadcast
16 or streaming of a sporting event or photos, clips, or
17 highlights included in broadcasts or streaming of sports news
18 or talk shows, or documentaries, or any advertising or
19 promotion of the same (public interest work), or is part of an
20 artistic or expressive work, such as a live performance, work
21 of art, literary work, theatrical work, musical work,
22 audiovisual work, motion picture, film, television program,
23 radio program or the like (artistic work), or any advertising
24 or promotion of the same, unless the claimant proves, subject
25 to subsection (a), that the use in an artistic work is such a

1 replica as to constitute a copy of the person's indicia of
2 identity for the purposes of trade.

3 (c) With respect to advertising and promotion of
4 public interest works and artistic works, except for the
5 advertising or promotion of a public interest work itself as
6 permitted by subsection (b), it shall not be deemed a fair use
7 if the claimant proves that his or her indicia of identity has
8 been directly connected to and affirmatively used in a
9 commercial manner to advertise, promote, or endorse a product,
10 good, or service.

11 (d) The commercial use of a person's indicia of
12 identity in a commercial medium does not constitute a
13 violation of Section 3 if the material containing the
14 commercial use is authorized by the person or the person's
15 authorized representative or agent for commercial sponsorship
16 or paid advertising.

17 (e) It is not a fair use and is a violation of
18 Section 3 if a person's indicia of identity is used, without
19 such person's permission, in a manner stating or implying that
20 such person has endorsed or supports a candidate for public
21 office.

22 (f) Those who lawfully obtain authorized products
23 containing indicia of identity are not liable under this
24 section for their resale of such products.

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

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

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

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

24 b. Any other damages available under Alabama law,
25 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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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB197

Senate 19-MAR-15

I hereby certify that the within Act originated in and passed the Senate, as amended.

Senate 12-MAY-15

I hereby certify that the within Act originated in and passed the Senate, as amended by Conference Committee Report.

Patrick Harris
Secretary

House of Representatives

Passed: 23-APR-15, as amended

House of Representatives

Passed: 12-MAY-2015, as amended by Conference Committee Report.

By: Senator Smitherman