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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 3994

05/09/2016 Authored by Hoppe, Lesch, Zerwas and Smith

The bill was read for the first time and referred to the Committee on Civil Law and Data Practices

1.1 A bill for an act
1.2 relating to civil actions; recognizing a property right in a person's name, voice,
1.3 signature, photograph, or likeness; prohibiting unauthorized use; providing
1.4 remedies; proposing coding for new law as Minnesota Statutes, chapter 564.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. **[564.01] DEFINITIONS.**

1.7 Subdivision 1. **Terms.** For purposes of this chapter, the terms in this section have
1.8 the meanings given them.

1.9 Subd. 2. **Definable group.** "Definable group" means an assemblage of individuals
1.10 existing or brought together with or without interrelation, orderly form, or arrangement,
1.11 including but not limited to a crowd at a sporting event, a crowd in a street or public
1.12 building, and the audience at a theatrical or stage production.

1.13 Subd. 3. **Individual.** "Individual" means a human being, living or dead.

1.14 Subd. 4. **Person.** "Person" means a person, firm, association, partnership,
1.15 corporation, joint stock company, syndicate, receiver, common law trust, conservator,
1.16 statutory trust, or other concern by whatever name known or however organized, formed,
1.17 or created, and includes not-for-profit corporations, associations, educational and religious
1.18 institutions, political parties, and community, civic, or other organizations.

1.19 Subd. 5. **Photograph.** "Photograph" means a photograph or photographic
1.20 reproduction, still or moving, or a videotape or live television transmission, of an
1.21 individual, so that the individual is readily identifiable. An individual is readily identifiable
1.22 from a photograph if one who views the photograph with the naked eye can reasonably
1.23 determine who the individual depicted in the photograph is.

2.1 Sec. 2. **[564.02] RIGHT IN USE OF NAME, VOICE, SIGNATURE,**
 2.2 **PHOTOGRAPH, AND LIKENESS.**

2.3 Subdivision 1. **Property rights.** An individual has a property right in the use of that
 2.4 individual's name, voice, signature, photograph, and likeness in any medium in any manner.

2.5 Subd. 2. **Scope.** The rights provided in subdivision 1 are freely assignable and
 2.6 licensable and do not expire upon the death of the individual so protected, whether or not
 2.7 the rights were commercially exploited by the individual during the individual's lifetime.
 2.8 The rights are descendible to the executors, assigns, heirs, or devisees of the individual so
 2.9 protected by this section.

2.10 Sec. 3. **[564.03] EXCLUSIVE RIGHTS; COMMERCIAL EXPLOITATION**
 2.11 **AFTER DEATH.**

2.12 The rights provided for in this chapter are exclusive to the individual, subject to the
 2.13 assignment or licensing of the rights as provided in section 564.02 during the individual's
 2.14 lifetime and to the executors, administrators, heirs, devisees, or assignees for a minimum
 2.15 period of 50 years after the death of the individual. After the initial 50-year period, the
 2.16 executor, administrator, heir, devisee, or assignee shall maintain the right until the right is
 2.17 terminated by proof of nonuse for commercial purposes by an executor, administrator,
 2.18 heir, devisee, or assignee, or licensees thereof, for a period of two years subsequent to
 2.19 the initial 50-year period following the individual's death.

2.20 Sec. 4. **[564.04] UNAUTHORIZED USE.**

2.21 Subdivision 1. **Generally.** A person who uses another individual's name, voice,
 2.22 signature, photograph, or likeness, in any manner:

2.23 (1) on or in products, merchandise, or goods;

2.24 (2) for purposes of advertising or selling, or soliciting purchases of, products,
 2.25 merchandise, goods, or services; or

2.26 (3) for purposes of fund-raising or soliciting donations, without the individual's prior
 2.27 consent, or, in the case of a minor, the prior consent of the minor's parent or legal guardian,
 2.28 or in the case of a deceased individual, the consent of the executor, administrator, heir, or
 2.29 devisee of such deceased individual, or an assignee of rights under section 564.02,
 2.30 is liable in a civil action.

2.31 Subd. 2. **Limitation.** It is no defense to the unauthorized use defined in subdivision
 2.32 1 that the photograph includes more than one individual so identifiable if the individual or
 2.33 individuals complaining of the use are represented as individuals per se rather than solely
 2.34 as members of a definable group represented in the photograph.

3.1 Subd. 3. **Seizure of property.** If an unauthorized use as defined in subdivision 1 is
3.2 by means of products, merchandise, goods, or other tangible personal property, all the
3.3 property, including all instrumentalities used in connection with the unauthorized use by
3.4 the person violating this section, is contraband and subject to seizure by, and forfeiture
3.5 to, the state in the same manner as is provided by law for the seizure and forfeiture of
3.6 other contraband items.

3.7 **Sec. 5. [564.05] REMEDIES.**

3.8 Subdivision 1. **Injunction.** The district court having jurisdiction in an action arising
3.9 pursuant to this chapter may grant injunctions on terms it considers reasonable to prevent
3.10 or restrain the unauthorized use of an individual's name, voice, signature, photograph,
3.11 or likeness. As part of the injunction, the court may authorize the confiscation of all
3.12 unauthorized items and seize all instrumentalities used in connection with the violation
3.13 of the individual's rights.

3.14 Subd. 2. **Impoundment.** At any time while an action under this chapter is pending,
3.15 the court may order the impounding, on terms it considers reasonable, of all materials
3.16 or any part thereof claimed to have been made or used in violation of the individual's
3.17 rights, and the court may enjoin the use of all plates, molds, matrices, masters, tapes, film
3.18 negatives, or other articles by means of which the materials may be reproduced.

3.19 Subd. 3. **Disposition of materials.** As part of a final judgment or decree, the
3.20 court may order the destruction or other reasonable disposition of all materials found to
3.21 have been made or used in violation of the individual's rights, and of all plates, molds,
3.22 matrices, masters, tapes, film negatives, or other articles by means of which the materials
3.23 may be reproduced.

3.24 Subd. 4. **Actual damages.** An individual may recover the actual damages suffered
3.25 as a result of the use of the individual's rights and profits that are attributable to the use or
3.26 infringement that are not taken into account in computing the actual damages. Profit or
3.27 lack thereof by the unauthorized use or infringement of an individual's rights is not criteria
3.28 for determining liability. In establishing these profits, the injured party or parties shall be
3.29 required to present proof only of the gross revenue attributable to the use, and the person
3.30 who violated this section is required to prove the deductible expenses. Punitive damages
3.31 may also be awarded to the injured party or parties. The prevailing party or parties in an
3.32 action under this section shall also be entitled to attorney fees and costs.

3.33 Subd. 5. **Cumulative.** The remedies provided for in this section are cumulative
3.34 and are in addition to other remedies provided for by law.

4.1 Sec. 6. **[564.06] FAIR USE.**

4.2 Subdivision 1. **Generally.** It is deemed a fair use and no violation of an individual's
4.3 rights if the use of a name, voice, signature, photograph, or likeness is in connection with
4.4 a news, public affairs, or sports broadcast or account.

4.5 Subd. 2. **Commercial sponsorship.** The use of a name, voice, signature,
4.6 photograph, or likeness in a commercial medium does not constitute a use for purposes of
4.7 advertising or soliciting solely because the material containing the use is commercially
4.8 sponsored or contains paid advertising. It is a question of fact whether or not the use of the
4.9 complainant individual's name, voice, signature, photograph, or likeness was so directly
4.10 connected with the commercial sponsorship or with the paid advertising as to constitute a
4.11 use for purposes of advertising or soliciting.

4.12 Subd. 3. **Nonapplication.** This section does not apply to the owners or employees
4.13 of a medium used for advertising, including but not limited to newspapers, magazines,
4.14 radio and television networks and stations, cable television systems, billboards, and transit
4.15 ads, who have published or disseminated an advertisement or solicitation in violation of
4.16 this chapter unless it is established that the owners or employees had knowledge of the
4.17 unauthorized use of the individual's name, voice, signature, photograph, or likeness as
4.18 prohibited by this section.

4.19 Sec. 7. **[564.07] APPLICATION OF LAW.**

4.20 This section applies to an individual otherwise entitled to the protection afforded
4.21 under chapter 333.

4.22 Sec. 8. **EFFECTIVE DATE; APPLICATION.**

4.23 This act is effective August 1, 2016. The rights recognized by this act are expressly
4.24 made retroactive, including to those deceased individuals who died before the effective
4.25 date of this act.