

1 State of Arkansas
2 90th General Assembly
3 Third Extraordinary Session, 2016
4

A Bill

Call Item 6
SENATE BILL 9

5 By: Senators J. Woods, U. Lindsey
6 By: Representatives Leding, Eads, Neal
7

For An Act To Be Entitled

9 AN ACT CONCERNING PUBLICITY RIGHTS; TO PROTECT THE
10 PROPERTY RIGHTS OF AN INDIVIDUAL TO THE USE OF THE
11 INDIVIDUAL'S NAME, VOICE, SIGNATURE, AND LIKENESS;
12 AND FOR OTHER PURPOSES.
13
14

Subtitle

15 THE FRANK BROYLES PUBLICITY RIGHTS
16 PROTECTION ACT OF 2016.
17
18
19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

22 SECTION 1. Arkansas Code Title 4, Chapter 75, is amended to add an
23 additional subchapter to read as follows:
24

Subchapter 11 – Frank Broyles Publicity Rights Protection Act of 2016

4-75-1101. Title.

25 This subchapter shall be known and may be cited as the "Frank Broyles
26 Publicity Rights Protection Act of 2016".
27
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29

4-75-1102. Findings and legislative intent.

30 (a) The General Assembly finds that citizens of this state:

31 (1) Are renowned for their hard work and accomplishments in many
32 areas that contribute to the public health, welfare, and pursuit of
33 happiness;
34

35 (2) Often spend most of their lives developing and maintaining
36



1 reputations of honesty and integrity;

2 (3) Have a vested interest in maintaining the memory of personal
3 traits that characterize them and their accomplishments; and

4 (4) Should have the use of their names, voices, signatures,
5 photographs, and likenesses protected for their benefit and the benefit of
6 their families.

7 (b) It is the intent of the General Assembly by the enactment of this
8 subchapter to:

9 (1) Protect the names, voices, signatures, photographs, and
10 likenesses of the citizens of this state from exploitation and unauthorized
11 commercial use without the consent of the citizen;

12 (2) Provide a method for the fair administration of the right to
13 use the name, voice, signature, photograph, or likeness of a citizen; and

14 (3) Provide appropriate remedies for the exploitation and
15 unauthorized commercial use of the name, voice, signature, photograph, or
16 likeness of a citizen.

17
18 4-75-1103. Definitions.

19 As used in this subchapter:

20 (1)(A) "Commercial use" means the use of an individual's readily
21 identifiable name, voice, signature, photograph, or likeness:

22 (i) For advertising, selling, or soliciting
23 purchases of products, merchandise, goods, or services; or

24 (ii) On or in connection with products, merchandise,
25 goods, or other commercial activity that is not exempt under this subchapter.

26 (B) "Commercial use" does not mean the use of an
27 individual's name, voice, signature, photograph, or likeness to identify the
28 individual for the purpose of:

29 (i) Data collection or data reporting and supplying
30 the data collected or reported; or

31 (ii) Data processing, data matching, data
32 distribution, or data licensing;

33 (2) "Individual" means a natural person, alive or dead;

34 (3) "Likeness" means a reproduction of the image of an
35 individual by any means other than a photograph;

36 (4)(A) "Person" means an individual or entity.

1 (B) "Person" includes:
2 (i) A partnership, a corporation, a company, an
3 association, or any other business entity;
4 (ii) A not-for-profit corporation or association;
5 (iii) An educational or religious institution;
6 (iv) A political party; and
7 (v) A community, civic, or other organization;
8 (5) "Photograph" means a reproduction of the image of an
9 individual that readily identifies the individual, whether made by
10 photography, videotape, live transmission, or other means; and
11 (6) "Successor in interest" means an owner or the beneficial
12 owner of a property right provided by this subchapter under:
13 (A) A transfer, assignment, or license of the property
14 right; or
15 (B) Section 4-75-1104(b)(3).
16
17 4-75-1104. Property right in use of name, voice, signature,
18 photograph, or likeness – Prior consent.
19 (a) An individual has a property right in the commercial use by any
20 medium in any manner without the individual's prior consent of:
21 (1) The individual's name, voice, signature, photograph, or
22 likeness; and
23 (2) Any combination of the individual's name, voice, signature,
24 photograph, or likeness.
25 (b) The property right provided under subsection (a) of this section:
26 (1) Is freely transferable, assignable, licensable, and
27 descendible, in whole or in part, by contract or by a trust, testamentary
28 disposition, or other instrument executed before or after the effective date
29 of this subchapter;
30 (2) Does not expire upon the death of an individual, whether or
31 not the rights were commercially used by the individual during the
32 individual's lifetime; and
33 (3)(A) Upon the death of an individual, vests in the
34 individual's executors, administrators, heirs, devisees, and assignees
35 according to:
36 (i) The terms of a trust, testamentary, or other

1 instrument under subdivision (b)(1) of this section; or

2 (ii) Except as provided in subdivision (b)(3)(B) of
3 this section, if a testamentary instrument does not expressly provide for the
4 transfer of a property right provided by subsection (a) of this section, the
5 laws of this state governing intestate succession to personalty controls.

6 (B) In the absence of an express transfer in a
7 testamentary instrument of the rights of an individual in his or her name,
8 voice, signature, photograph, or likeness, a provision in the testamentary
9 instrument that provides for the disposition of the residue of the
10 individual's assets is effective to transfer the rights recognized under this
11 section in accordance with the terms of the provision.

12 (c) Subject to the terms of a transfer, assignment, or license of a
13 property right provided by this section, the consent required by subsection
14 (a) of this section shall be exercised by:

15 (1) The individual during the lifetime of the individual;

16 (2) A person or persons to whom all or part of the right of
17 consent has been transferred, assigned, or licensed; or

18 (3) After the death of an individual, as provided by § 4-75-
19 1105.

20
21 4-75-1105. Exercise of rights after death.

22 (a) Subject to the terms of a transfer, assignment, or license of
23 property rights under § 4-75-1104, after the death of an individual, consent
24 to the use of the individual's name, voice, signature, photograph, or
25 likeness shall be granted by no less than fifty and one-thousandths percent
26 (50.001%) of the owners of the right to use the name, voice, signature,
27 photograph, or likeness of the individual under § 4-75-1104(b)(3).

28 (b) Compensation or other remuneration received under subsection (a)
29 of this section for the use of the name, voice, signature, photograph, or
30 likeness of the individual shall be shared by all owners of the right to use
31 the name, voice, signature, photograph, or likeness of the individual
32 according to each owner's respective ownership interest.

33
34 4-75-1106. Registration.

35 (a) A successor in interest shall register a claim of property rights
36 under this subchapter in the manner provided by this section.

1 (b) Unless a claim of property rights under this subchapter is
2 registered under this section, a successor in interest shall not recover
3 damages from a person or obtain any other legal or equitable remedy on the
4 claim for a commercial use prohibited by this subchapter unless the person
5 knew of the claim of the successor in interest before the person undertook
6 efforts or expense to make the commercial use.

7 (c)(1) A successor in interest shall register the claim with the
8 Secretary of State:

9 (A) On a form prescribed by the Secretary of State; and

10 (B) By paying a filing fee prescribed by the Secretary of
11 State not to exceed twenty-five dollars (\$25.00).

12 (2) The form shall:

13 (A) Be verified under oath;

14 (B) Include the name and, if applicable, date of death of
15 the individual; and

16 (C) Include the name and address of the claimant, the
17 basis of the claim, and the property rights claimed.

18 (d)(1) Upon receipt of the claim, the Secretary of State shall file
19 and post the form along with the entire registry of persons claiming to be a
20 successor in interest of a decedent on the website of the Secretary of State.

21 (2) The Secretary of State shall microfilm or otherwise
22 reproduce the filing or form and destroy the original filing or form.

23 (3) Under this section, the microfilm or other reproduction of
24 the filing or form is:

25 (A) Admissible in any court of law; and

26 (B) A matter of public record.

27
28 4-75-1107. Exclusive rights – Expiration.

29 Subject to a transfer, an assignment, or a licensing agreement, the
30 property rights provided by this subchapter are exclusive to:

31 (1) An individual during the individual’s lifetime; and

32 (2) The executors, administrators, heirs, devisees, and
33 assignees of the individual for fifty (50) years after the individual’s
34 death.

35
36 4-75-1108. Unauthorized commercial use.

1 (a) Except as provided in § 4-75-1110, a person who commercially uses
2 the name, voice, signature, photograph, or likeness of an individual is
3 liable to the holder of the property right provided by this subchapter for
4 damages and disgorgement of profits, funds, goods, or services if the
5 commercial use was not authorized under § 4-75-1104(c).

6 (b) If a minor is the holder of the property right, the parent or
7 legal guardian may consent on the minor’s behalf.

8
9 4-75-1109. Civil actions – Damages.

10 (a) An aggrieved party may file a civil action in the county where:

- 11 (1) One (1) or more defendants reside; or
- 12 (2) A violation of this subchapter occurred.

13 (b) Upon finding a violation of this subchapter, the court may issue
14 an injunction to prevent or restrain the unauthorized commercial use of the
15 name, voice, signature, photograph, or likeness of the individual.

16 (c)(1) The holder of the property right under this subchapter is
17 entitled to recover for the unauthorized commercial use of the property right
18 by seeking both:

19 (A) The actual damages the holder of the property right
20 has suffered as a result of a commercial use of the property right; and

21 (B) Any profits that are attributable to the commercial
22 use.

23 (2) Profits that are attributable to the commercial use shall
24 not be considered in computing the actual damages.

25 (3) The existence or nonexistence of profits from the
26 unauthorized commercial use shall not be a criterion for determining
27 liability.

28
29 4-75-1110. Exempt use – Commercial use.

30 (a)(1) It is not a violation of this subchapter if the name, voice,
31 signature, photograph, or likeness of an individual is used:

32 (A) In connection with a news, public affairs, or sports
33 broadcast, including the promotion of and advertising for a sports broadcast,
34 an account of public interest, or a political campaign;

35 (B) In:

36 (i) A play, book, magazine, newspaper, musical

1 composition, visual work, work of art, audiovisual work, radio or television
2 program if it is fictional or nonfictional entertainment, or a dramatic,
3 literary, or musical work;

4 (ii) A work of political, public interest, or
5 newsworthy value including a comment, criticism, parody, satire, or a
6 transformative creation of a work of authorship; or

7 (iii) An advertisement or commercial announcement
8 for any of the works described in subdivision (a)(1)(A) of this section or
9 this subdivision (a)(1)(B);

10 (C) In a photograph or likeness where the individual
11 appears as a member of the public, an attendee of a photographed event, or in
12 a public place, and the individual is not named;

13 (D) By an institution of higher education or by a
14 nonprofit organization, club, or supporting foundation that is authorized by
15 the institution of higher education and established solely to advance the
16 purposes of the institution of higher education if:

17 (i) The use is for educational purposes or to
18 promote the institution of higher education and its educational, athletic, or
19 other institutional objectives; and

20 (ii) The individual is or was affiliated with the
21 institution, including without limitation as a:

22 (a) Student or member of the faculty or staff;

23 (b) Donor or campus visitor; or

24 (c) Contractor, subcontractor, or employee;

25 (E) By any person practicing the profession of photography
26 or his or her representative:

27 (i) To exhibit and display photographs in a personal
28 portfolio through physical media or digital media unless the exhibit and
29 display are continued by the person practicing the profession of photography
30 after written notice objecting to the exhibit and display has been given by
31 the individual or by his or her representative;

32 (ii) To distribute photographs for license and sale
33 or other transfer to third parties or to promote or advertise such
34 activities; and

35 (iii) To provide yearbooks to an educational
36 institution or photographs for school publications; or

1 (F) By a service provider of a system or network, if the
2 service provider:

3 (i) Does not have actual knowledge that a photograph
4 or likeness on the system or network is in violation of this subchapter; or

5 (ii) In the absence of such actual knowledge, is not
6 aware of facts or circumstances from which a violation of this subchapter is
7 apparent.

8 (2) The use of the name, voice, signature, photograph, or
9 likeness of the individual within a work that is protected under subdivision
10 (a)(1)(B) of this section is not an exempt use protected by subdivision
11 (a)(1) of this section if the claimant proves that the use is so directly
12 connected with a product, article of merchandise, good, or service other than
13 the work itself as to constitute an act of advertising, selling, or
14 soliciting purchases of the product, article of merchandise, good, or service
15 by the individual without the prior consent required by this subchapter.

16 (b)(1) The commercial use of the name, voice, signature, photograph,
17 or likeness of the individual in a commercial medium does not constitute a
18 commercial use for purposes of advertising or solicitation if the material
19 containing the commercial use is authorized by the individual for commercial
20 sponsorship or paid advertising.

21 (2) It is a question of fact as to whether or not the commercial
22 use of the name, voice, signature, photograph, or likeness of an individual
23 is so directly connected with the commercial sponsorship or paid advertising
24 as to constitute an authorized use for purposes of advertising or
25 solicitation.

26
27 4-75-1111. Exclusive remedies.

28 (a) Remedies granted by this subchapter shall constitute the exclusive
29 basis for asserting a claim for the unauthorized commercial use of the name,
30 voice, signature, photograph, or likeness of an individual.

31 (b) Except as provided in this subchapter, a right of publicity in the
32 use of the name, voice, signature, photograph, or likeness of an individual
33 does not exist.

34
35 4-75-1112. Construction.

36 (a) This subchapter:

1 (1) Shall be liberally construed to accomplish its intent and
2 purposes; and

3 (2) Does not render invalid or unenforceable a contract or
4 license entered into before or after the effective date of this subchapter by
5 an individual during his or her lifetime by which the individual transferred,
6 assigned, or licensed all or part of the right to use his or her name, voice,
7 signature, photograph, or likeness.

8 (b) The property rights granted by this subchapter are not considered
9 intellectual property for purposes of 47 U.S.C. § 230.

10
11 4-75-1113. Applicability.

12 (a) The property rights granted by this subchapter vest with respect
13 to an individual on the effective date of this subchapter.

14 (b) This subchapter applies only to individuals maintaining a domicile
15 or residence in the State of Arkansas on or after the effective date of this
16 subchapter.

17
18 SECTION 2. SEVERABILITY CLAUSE. If any provision of this act or its
19 application to any person or circumstance is held invalid, the invaliding
20 does not affect other provisions or applications of this act which can be
21 given effect without the invalid provision or application, and to this end
22 the provisions of this act are severable.