

#### § 47-25-1101. Short Title

This part shall be known and may be cited as the “~~Personal Rights Protection Act of 1984~~Ensuring Likeness, Voice, and Image Security Act of 2024.”

#### § 47-25-1102. Part Definitions

As used in this part, unless the context otherwise requires:

1. “Definable group” means an assemblage of individuals existing or brought together with or without interrelation, orderly form, or arrangement, including, but not limited to, a crowd at any sporting event, a crowd in any street or public building, the audience at any theatrical or stage production, a glee club, or a baseball team;

2. “Individual” means human being, living or dead;

3. “Likeness” means the use of an image of an individual for commercial purposes;

“Voice” means a sound in a medium that is readily identifiable and attributable to a particular individual, regardless of whether the sound contains the actual voice or a simulation of the voice of the individual;

4. “Person” means any individual, firm, association, partnership, corporation, joint stock company, syndicate, receiver, common law trust, conservator, statutory trust, or any other concern by whatever name known or however organized, formed, or created, and includes not-for-profit corporations, associations, educational and religious institutions, political parties, community, civic, or other organizations; and

5. “Photograph” means any photograph or photographic reproduction, still or moving, or any videotape or live television transmission, of any individual, so that the individual is readily identifiable.

[N.B. section may be renumbered due to addition of voice]

#### § 47-25-1103. Property Right in Use of Name, Photograph, Likeness

- a. Every individual has a property right in the use of that ~~person's~~individual's name, photograph, voice, or likeness in any medium in any manner.
- b. The individual rights provided for in subsection (a) constitute property rights and are freely assignable and licensable, and do not expire upon the death of the individual so protected, whether or not such rights were commercially exploited by the individual during the individual's lifetime, but shall be descendible to the executors, assigns, heirs, or devisees of the individual so protected by this part.

#### § 47-25-1104. Exclusivity and Duration of Right

a. The rights provided for in this part shall be deemed exclusive to the individual, subject to the assignment or licensing of such rights as provided in § 47-25-1103, during such individual's lifetime and to the executors, heirs, assigns, or devisees for a period of ten (10) years after the death of the individual.

b.

1. Commercial exploitation of the property right by any executor, assignee, heir, or devisee if the individual is deceased shall maintain the right as the exclusive property of the executor, assignee, heir, or devisee until such right is terminated as provided in this subsection (b).

2.

(A) The exclusive right to commercial exploitation of the property rights is terminated by proof of the non-use of the name, photograph, voice, or likeness, or image of any individual for commercial purposes by an executor, assignee, heir, or devisee to such the use for a period of two (2) years subsequent to the initial ten (10) year period following the individual's death.

(B) For purposes of subdivision (b)(2)(A), "use" includes the commercial availability of a sound recording or audiovisual work in which the individual's name, photograph, voice, or likeness is readily identifiable.

Formatted: Space Before: 0 pt, After: 0 pt

Formatted: Indent: First line: 0.5", Space Before: 0 pt, After: 0 pt

#### § 47-25-1105. Unauthorized Use Prohibited

a.

(1) Any person who knowingly uses or infringes upon the use of another an individual's name, photograph, voice, or likeness in any medium, in any manner directed to any person other than such individual, as an item of commerce for purposes of advertising products, merchandise, goods, or services, or for purposes of fund raising, solicitation of donations, purchases of products, merchandise, goods, or services, without such individual's prior consent, or, in the case of a minor, the prior consent of such minor's parent or legal guardian, or in the case of a deceased individual, the consent of the executor or administrator, heirs, or devisees of such deceased individual, shall be liable to a civil action.

(2) A person is liable to a civil action if the person publishes, performs, distributes, transmits, or otherwise makes available to the public an individual's voice or likeness, with knowledge that use of the voice or likeness was not authorized by the individual or, in the case of a minor, the minor's parent or legal guardian, or in the case of a deceased individual, the executor or administrator, heirs, or devisees of such deceased individual.

Formatted: Space Before: 0 pt, After: 0 pt

(3) A person is liable to a civil action if the person distributes, transmits, or otherwise makes available an algorithm, software, tool, or other technology, service, or device, the primary purpose or function of such algorithm, software, tool, or other technology, service, or device is the production of a particular, identifiable individual's photograph, voice, or likeness, with knowledge that distributing, transmitting, or otherwise making available the photograph, voice, or likeness was not authorized by the individual or, in the case of a minor, the minor's parent or legal guardian, or in the case of a deceased individual, the executor or administrator, heirs, or devisees of such deceased individual.

b. In addition to the civil action authorized by this section and the remedies set out in § 47-25-1106, any person who commits unauthorized use as defined in subsection (a) commits a Class A misdemeanor.

c. It is no defense to the unauthorized use defined in subsection (a) that the photograph includes more than one (1) individual so identifiable; provided, that the individual or individuals complaining of the use shall be represented as individuals per se rather than solely as members of a definable group represented in the photograph.

d. If an unauthorized use as defined in subsection (a) is by means of products, merchandise, goods or other tangible personal property, all such property, including all instrumentalities used in connection with the unauthorized use by the person violating this section, is declared contraband and subject to seizure by, and forfeiture to, the state in the same manner as is provided by law for the seizure and forfeiture of other contraband items.

#### **§ 47-25-1106. Remedies**

a. The chancery and circuit court having jurisdiction for any action arising pursuant to this part may grant injunctions on such terms as it may deem reasonable to prevent or restrain the unauthorized use of an individual's name, photograph, voice, or likeness. As part of such injunction, the court may authorize the confiscation of all unauthorized items and seize all instrumentalities used in connection with the violation of the individual's rights. All instrumentalities seized pursuant to enforcing an injunction under this subsection (a) shall be liquidated and used to satisfy statutory damages, if damages are recovered by the rights holder.

b. At any time while an action under this part is pending, the court may order the impounding, on such terms as it may deem reasonable, of all materials or any part thereof claimed to have been made or used in violation of the individual's rights, and such court may enjoin the use of all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such materials may be reproduced.

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

d.

1. An individual is entitled to recover the actual damages suffered as a result of the knowing use or infringement of such individual's rights and any profits that are attributable to such use or infringement which are not taken into account in computing the actual damages. Profit or lack thereof by the unauthorized use or infringement of an individual's rights shall not be a criteria of determining liability.

2. An individual is entitled to recover three (3) times the amount to which the individual is entitled under subdivision (d)(1), plus reasonable attorney fees, if a person knowingly uses or infringes the rights of a member of the armed forces in violation of this part. As used in this subdivision (d)(2), "member of the armed forces" means a member of the United States armed forces or a member of a reserve or Tennessee national guard unit who is in, or was called into, active service or active military service of the United States, as defined in § 58-1-102.

e. The remedies provided for in this section are cumulative and shall be in addition to any others provided for by law.

f. Where a person has entered into a contract for an individual's exclusive personal services as a recording artist or an exclusive license to distribute sound recordings that capture an individual's audio performances, an action to enforce the rights set forth in this part may be brought by the person or the individual.

Formatted: Space Before: 0 pt, After: 0 pt

#### § 47-25-1107. Exemptions

a. To the extent such use is protected by the First Amendment to the United States Constitution, it is deemed a fair use and not a violation of an individual's right, for purposes of this part, if the use of a name, photograph, voice, or likeness is:

Formatted: Space Before: 0 pt, After: 0 pt

(1) In connection with any news, public affairs, or sports broadcast or account;

Formatted: Space Before: 0 pt, After: 0 pt

(2) For purposes of comment, criticism, scholarship, satire, or parody;

Formatted: Indent: Left: 0.5", Space Before: 0 pt, After: 0 pt

(3) A representation of the individual as the individual's self in an audiovisual work, as defined under 17 U.S.C. § 101, unless the audiovisual work containing the use is intended to create, and does create, the false impression that the work is an authentic recording in which the individual participated;

Formatted: Space Before: 0 pt, After: 0 pt

Formatted: Indent: Left: 1", First line: 0", Space Before: 0 pt, After: 0 pt

(4) Fleeting or incidental; or

Formatted: Indent: Left: 0.5", Space Before: 0 pt, After: 0 pt

(5) In an advertisement or commercial announcement for a work described in this subsection (a).

Formatted: Space Before: 0 pt, After: 0 pt

Formatted: Indent: Left: 0.5", Space Before: 0 pt, After: 0 pt

Formatted: Indent: Left: 0.5", Space Before: 0 pt, After: 0 pt

Formatted: Space Before: 0 pt, After: 0 pt

~~It is deemed a fair use and no violation of an individual's rights shall be found, for purposes of this part, if the use of a name, photograph, or likeness is in connection with any news, public affairs, or sports broadcast or account.~~

b. The use of a name, photograph, voice, or likeness in a commercial medium does not constitute a use for purposes of advertising or solicitation solely because the material containing such use is commercially sponsored or contains paid advertising. Rather it shall be a question of fact whether or not the use of the complainant individual's name, photograph, voice, or likeness was so directly connected with the commercial sponsorship or with the paid advertising as to constitute a use for purposes of advertising or solicitation.

c. Nothing in this section applies to the owners or employees of any medium used for advertising, including, but not limited to, newspapers, magazines, radio and television stations, billboards, and transit ads, who have published or disseminated any advertisement or solicitation in violation of this part, unless it is established that such owners or employees had knowledge ~~of~~ or reasonably should have known of the unauthorized use of the individual's name, photograph, voice, or likeness as prohibited by this section.

**§ 47-25-1108. Application to Individuals Protected by “Model Trademark act.”**

This part applies to any individual otherwise entitled to the protection afforded under part 5 of this chapter.

[Takes effect July 1, 2024]

Formatted: Indent: First line: 0.5"