

IN ST 32-36-1-1

Passed March 21, 2002

EFFECTIVE JULY 1, 2002

Sec. 1.

(a) This chapter applies to an act or event that occurs within Indiana, regardless of a personality's domicile, residence, or citizenship.

(b) This chapter does not affect rights and privileges recognized under any other law that apply to a news reporting or an entertainment medium.

(c) This chapter does not apply to the following:

(1) The use of a personality's name, voice, signature, photograph, image, likeness, distinctive appearance, gestures, or mannerisms in any of the following:

(A) Literary works, theatrical works, musical compositions, film, radio, or television programs.

(B) Material that has political or newsworthy value.

(C) Original works of fine art.

(D) Promotional material or an advertisement for a news reporting or an entertainment medium that:

(i) uses all or part of a past edition of the medium's own broadcast or publication; and

(ii) does not convey or reasonably suggest that a personality endorses the news reporting or entertainment medium.

(E) An advertisement or commercial announcement for a use described in this subdivision.

(2) The use of a personality's name to truthfully identify the personality as:

(A) the author of a written work; or

(B) a performer of a recorded performance;

under circumstances in which the written work or recorded performance is otherwise rightfully reproduced, exhibited, or broadcast.

(3) The use of a personality's:

(A) name;

(B) voice;

(C) signature;

(D) photograph;

(E) image;

(F) likeness;

(G) distinctive appearance

(H) gestures; or

(I) mannerisms

in connection with the broadcast or reporting of an event or a topic of general or public interest

IN ST 32-36-1-2

Sec. 2.

As used in this chapter, "commercial purpose" means the use of an aspect of a personality's right of publicity as follows

- (1) On or in connection with a product, merchandise, goods, services, or commercial activities
- (2) For advertising or soliciting purchases of products, merchandise, goods, services, or for promoting commercial activities
- (3) For the purpose of fundraising

IN ST 32-36-1-3

Sec. 3.

As used in this chapter, "name" means the actual or assumed name of a living or deceased natural person that is intended to identify the person

IN ST 32-36-1-4

Sec. 4.

As used in this chapter, "news reporting or an entertainment medium" means a medium that publishes, broadcasts, or disseminates advertising in the normal course of its business, including the following

- (1) Newspapers
- (2) Magazines
- (3) Radio and television networks and stations
- (4) Cable television systems

IN ST 32-36-1-5

Sec. 5.

As used in this chapter, "person" means a natural person, a partnership, a firm, a corporation, or an unincorporated association

IN ST 32-36-1-6

Sec. 6. As used in this chapter, "personality" means a living or deceased natural person whose

- (1) name
- (2) voice
- (3) signature
- (4) photograph
- (5) image
- (6) likeness
- (7) distinctive appearance
- (8) gesture; or
- (9) mannerisms

has commercial value, whether or not the person uses or authorizes the use of the person's rights of publicity for a commercial purpose during the person's lifetime

IN ST 32-36-1-7

Sec. 7. As used in this chapter, "right of publicity" means a personality's property interest in the personality's

- (1) name
- (2) voice
- (3) signature
- (4) photograph
- (5) image
- (6) likeness
- (7) distinctive appearance
- (8) gestures; or
- (9) mannerisms

#### IN ST 32-36-1-8

Sec. 8.

(a) A person may not use an aspect of a personality's right of publicity for a commercial purpose during the personality's lifetime or for one hundred (100) years after the date of the personality's death without having obtained previous written consent from a person specified in section 17 of this chapter

(b) A written consent solicited or negotiated by an athlete agent (as defined in IC 25-5.2-1-2) from a student athlete (as defined in IC 25-5.2-1-2) is void if the athlete agent obtained the consent as the result of an agency contract that

(1) was void under IC 25-5.2-2-2 or under the law of the state where the agency contract was entered into

(2) was voided by the student athlete under IC 25-5.2-2-8 or a similar law in the state where the agency contract was entered into; or

(3) was entered into without the notice required under IC 35-46-4-4 or a similar law in the state where the agency contract was entered into

(c) A written consent for an endorsement contract (as defined in IC 35-46-4-1.5) is void if notice is not given as required by IC 35-46-4-4 or a similar law in the state where the endorsement contract is entered into

#### IN ST 32-36-1-9

Sec. 9.

A person who

(1) engages in conduct within Indiana that is prohibited under section 8 of this chapter

(2) creates or causes to be created within Indiana goods, merchandise, or other materials prohibited under section 8 of this chapter

(3) transports or causes to be transported into Indiana goods, merchandise, or other materials created or used in violation of section 8 of this chapter; or

(4) knowingly causes advertising or promotional material created or used in violation of section 8 of this chapter to be published, distributed, exhibited, or disseminated within Indiana

submits to the jurisdiction of Indiana courts

## IN ST 32-36-1-10

Sec. 10.

A person who violates section 8 of this chapter may be liable for any of the following

(1) Damages in the amount of

(A) one thousand dollars (\$1,000); or

(B) actual damages, including profits derived from the unauthorized use

whichever is greater

(2) Treble or punitive damages, as the injured party may elect, if the violation under section 8 of this chapter is knowing, willful, or intentional

## IN ST 32-36-1-11

Sec. 11. In establishing the amount of the profits under section 10(1)(B) of this chapter

(1) the plaintiff is required to prove the gross revenue attributable to the unauthorized use; and

(2) the defendant is required to prove properly deductible expenses

## IN ST 32-36-1-12

Sec. 12. In addition to any damages awarded under section 10 of this chapter, the court

(1) shall award to the prevailing party reasonable attorney's fees, costs, and expenses relating to an action under this chapter; and

(2) may order temporary or permanent injunctive relief, except as provided by section 13 of this chapter

## IN ST 32-36-1-13

Sec. 13. Injunctive relief is not enforceable against a news reporting or an entertainment medium that has

(1) contracted with a person for the publication or broadcast of an advertisement; and

(2) incorporated the advertisement in tangible form into material that has been prepared for broadcast or publication

## IN ST 32-36-1-14

Sec. 14.

(a) This section does not apply to a news reporting or an entertainment medium

(b) During any period that an action under this chapter is pending, a court may order the impoundment of

(1) goods, merchandise, or other materials claimed to have been made or used in violation of section 8 of this chapter; and

(2) plates, molds, matrices, masters, tapes, negatives, or other items from which goods, merchandise, or other materials described in subdivision (1) may be manufactured or reproduced

(c) The court may order impoundment under subsection (b) upon terms that the court considers reasonable.

## IN ST 32-36-1-15

### Sec. 15.

- (a) This section does not apply to a news reporting or an entertainment medium
- (b) As part of a final judgment or decree, a court may order the destruction or other reasonable disposition of items described in section 14(b) of this chapter

## IN ST 32-36-1-16

### Sec. 16.

The rights recognized under this chapter are property rights, freely transferable and descendible, in whole or in part, by the following

- (1) Contract
- (2) License
- (3) Gift
- (4) Trust
- (5) Testamentary document
- (6) Operation of the laws of intestate succession applicable to the state administering the estate and property of an intestate deceased personality, regardless of whether the state recognizes the property rights set forth under this chapter

## IN ST 32-36-1-17

### Sec. 17.

(a) The written consent required by section 8 of this chapter and the rights and remedies set forth in this chapter may be exercised and enforced by

- (1) a personality; or
- (2) a person to whom the recognized rights of a personality have been transferred under section 16 of this chapter

b) If a transfer of a personality's recognized rights has not occurred under section 16 of this chapter, a person to whom the personality's recognized rights are transferred under section 18 of this chapter may exercise and enforce the rights under this chapter and seek the remedies provided in this chapter

## IN ST 32-36-1-18

### Sec. 18.

(a) Subject to sections 16 and 17 of this chapter, after the death of an intestate personality, the rights and remedies of this chapter may be exercised and enforced by a person who possesses a total of not less than one-half ( 1/2 ) interest of the personality's recognized rights

(b) A person described in subsection (a) shall account to any other person in whom the personality's recognized rights have vested to the extent that the other person's interest may appear

## IN ST 32-36-1-19

### Sec. 19. If

- (1) a deceased personality's recognized rights under this chapter were not transferred by

- (A) contract
- (B) license
- (C) gift
- (D) trust; or
- (E) testamentary document; and

(2) there are no surviving persons as described in section 17 of this chapter to whom the deceased personality's recognized rights pass by intestate succession

the deceased personality's rights set forth in this chapter terminate

## IN ST 32-36-1-20

Sec. 20. The rights and remedies provided for in this chapter are supplemental to any other rights and remedies provided by law

SECTION 22. IC 32-37 IS ADDED TO THE INDIANA CODE AS A NEWARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]:

### ARTICLE 37. COPYRIGHT

#### Chapter 1. Application

INDS02 AUW 444409v1