

WEST'S SMITH-HURD ILLINOIS COMPILED STATUTES ANNOTATED
CHAPTER 765. PROPERTY
MISCELLANEOUS PROPERTY
ACT 1075. RIGHT OF PUBLICITY ACT

1075/1. Short title

s 1. Short title. This Act may be cited as the Right of Publicity Act.
CREDIT(S)
2000 Electronic Pocket Part Update
P.A. 90-747, s 1, eff. Jan. 1, 1999.

HISTORICAL AND STATUTORY NOTES

Title of Act:

An Act concerning the right of publicity. P.A. 90-747, approved Aug. 14, 1998, eff. Jan. 1, 1999.

765 I.L.C.S. 1075/1
IL ST CH 765 s 1075/1

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Current through P.A. 91-686, apv. 1/26/2000

1075/5. Definitions

s 5. Definitions. As used in this Act:

"Commercial purpose" means the public use or holding out of an individual's identity (i) on or in connection with the offering for sale or sale of a product, merchandise, goods, or services; (ii) for purposes of advertising or promoting products, merchandise, goods, or services; or (iii) for the purpose of fundraising.

"Identity" means any attribute of an individual that serves to identify that individual to an ordinary, reasonable viewer or listener, including but not limited to (i) name, (ii) signature, (iii) photograph, (iv) image, (v) likeness, or (vi) voice.

"Individual" means a living or deceased natural person, regardless of whether the identity of that individual has been used for a commercial purpose during the individual's lifetime.

"Juristic person" means a partnership, trust, estate, corporation, unincorporated association, or other organization capable of suing and being sued in a court of law.

"Name" means the actual name or other name by which an individual is known that is intended to identify that individual.

"Person" means a natural or juristic person.

"Work of Fine Art" means (i) a visual rendition including, but not limited to, a painting, drawing, sculpture, mosaic, videotape, or photograph; (ii) a work of calligraphy; (iii) a work of graphic art including, but not limited to, an etching, lithograph, serigraph, or offset print; (iv) a craft work in materials including, but not limited to, clay, textile, fiber, wood, metal, plastic, or glass; or (v) a work in mixed media including, but not limited to, a collage, assemblage, or work consisting of any combination of items (i) through (iv).

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1075/10. Recognition of right of publicity

s 10. Recognition of right of publicity. The right to control and to choose whether and how to use an individual's identity for commercial purposes is recognized as each individual's right of publicity.

CREDIT(S)

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1075/15. Transferability, descendability, and divisibility

s 15. Transferability, descendability, and divisibility. The rights under this Act are property rights that are freely transferable in whole or in part to any person either by written transfer, including but not limited to wills and trusts, or by intestate succession only to an individual's spouse, parents, children, and grandchildren, except that the rights under this Act are not subject to levy or attachment and may not be the subject of a security interest. Nothing in this Section limits the ability of any party to levy, attach, or obtain a security interest in the proceeds of the rights under this Act or the proceeds of the exercise of those rights.

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P.A. 90-747, s 15, eff. Jan. 1, 1999.

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1075/20. Enforcement of rights and remedies

s 20. Enforcement of rights and remedies.

(a) The rights and remedies set forth in this Act may be exercised and enforced by:

(1) an individual or his or her authorized representative;

(2) a person to whom the recognized rights have been transferred by written transfer under Section 15 of this Act; or

(3) after the death of an individual who has not transferred the recognized rights by written transfer under this Act, any person or persons who possesses an interest in those rights.

(b) Each person described in paragraph (3) of subsection (a) shall make a proportional accounting to, and shall act at all times in good faith with respect to, any other person in whom the rights being enforced have vested.

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P.A. 90-747, s 20, eff. Jan. 1, 1999.

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IL ST CH 765 s 1075/20

1075/25. Termination of rights of deceased individual

- s 25. Termination of rights of deceased individual. The rights set forth in this Act terminate if:
- (a) a deceased individual has not transferred his or her rights in writing under Section 15 of this Act; and
 - (b) the individual has no living spouse, parents, children, or grandchildren.

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1075/30. Limitations regarding use of an individual's identity

- s 30. Limitations regarding use of an individual's identity.
- (a) A person may not use an individual's identity for commercial purposes during the individual's lifetime without having obtained previous written consent from the appropriate person or persons specified in Section 20 of this Act or their authorized representative.
 - (b) If an individual's death occurs after the effective date of this Act, a person may not use that individual's identity for commercial purposes for 50 years after the date of the individual's death without having obtained previous written consent from the appropriate person or persons specified in Section 20 of this Act.

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1075/35. Applicability

- s 35. Applicability.
- (a) This Act applies to acts or events that take place after the effective date of this Act.
 - (b) This Act does not apply to the following:
 - (1) use of an individual's identity in an attempt to portray, describe, or impersonate that individual in a live performance, a single and original work of fine art, play, book, article, musical work, film, radio, television, or other audio, visual, or audio-visual work, provided that the performance, work, play, book, article, or film does not constitute in and of itself a commercial advertisement for a product, merchandise, goods, or services;
 - (2) use of an individual's identity for non-commercial purposes, including any news, public affairs, or sports broadcast or account, or any political campaign;
 - (3) use of an individual's name in truthfully identifying the person as the author of a particular work or program or the performer in a particular performance;

(4) promotional materials, advertisements, or commercial announcements for a use described under paragraph (1), (2), or (3) of this subsection; or

(5) use of photographs, videotapes, and images by a person, firm, or corporation practicing the profession of photography ("professional photographer") to exhibit in or about the professional photographer's place of business or portfolio, specimens of the professional photographer's work, unless the exhibition is continued by the professional photographer after written notice objecting to the exhibition has been given by the individual portrayed.

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1075/40. Violations; monetary relief

s 40. Violations; monetary relief.

(a) A person who violates Section 30 of this Act may be liable for either of the following, whichever is greater:

(1) actual damages, profits derived from the unauthorized use, or both; or

(2) \$1,000.

(b) Punitive damages may be awarded against a person found to have willfully violated Section 30 of this Act.

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1075/45. Establishment of profits

s 45. Establishment of profits. In establishing profits under paragraph (1) of subsection (a) of Section 40 of this Act:

(a) the plaintiff is required to prove the damages or gross revenue attributable to the unauthorized use; and

(b) the defendant is required to prove properly deductible expenses.

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1075/50. Injunctive relief

s 50. Injunctive relief. Upon a showing of cause as required by Article XI of the Code of Civil Procedure [FN1] for the issuance of injunctive relief, the court may issue such temporary restraining orders, preliminary injunctions, and permanent injunctions as may be appropriate under this Act.

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[FN1] 735 ILCS 5/11-101 et seq.

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1075/55. Attorney's fees; costs

s 55. Attorney's fees; costs. The court may award to the prevailing party reasonable attorney's fees, costs, and expenses relating to an action under this Act.

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1075/60. Rights and remedies

s 60. Rights and remedies. The rights and remedies provided for in this Act are meant to supplant those available under the common law as of the effective date of this Act, but do not affect an individual's common law rights as they existed before the effective date of this Act. Except for the common law right of publicity, the rights and remedies provided under this Act are supplemental to any other rights and remedies provided by law including, but not limited to, the common law right of privacy.

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