

February 26, 2009

H 327. RIGHT TO PUBLICITY. Filed 2/26/09. *TO PROHIBIT THE UNAUTHORIZED USE OF AN INDIVIDUAL'S RIGHT TO PUBLICITY FOR COMMERCIAL PURPOSES AND TO PROVIDE AN ENFORCEMENT MECHANISM OF THAT RIGHT.*

Enacts new GS 41B entitled "Right to Publicity Act," which prohibits the unauthorized use of another individual's personality for commercial purposes. Creates definitions for *commercial purpose*, *individual*, *personality*, and *photograph*. Also defines the *right to publicity* as the property right to control and to choose whether and how to use an individual's personality for commercial purposes. Provides that the rights granted by this act are freely transferable and descendible, in whole or in part, by (1) contract, (2) license, (3) gift, (4) trust, (5) testamentary document, (6) intestate succession, and (7) subsequent owner. Prohibits an action under this statute after an individual has been deceased for 70 years. Provides that failure to use a deceased individual's right to publicity during that 70-year period does not limit enforcement of an action based on a registered claim of right under proposed new GS 41B-6.

Requires registration by a successor in interest to the right of publicity of a deceased individual with the Secretary of State (Secretary) upon payment of a \$5 fee. Specifies information to be included on the registration form. Requires that the Secretary post on a website the registration documents within an entire registry of individuals claiming to be successors in interests to personality rights of a deceased individual or a registered licensee. Allows the Secretary to microfilm or reproduce the filings or documents and destroy the originals and to destroy microfilm or reproduction of the registration document 70 years after the death of the individual. Requires removal of a registration document from the website if, by court order, a successor in interest is shown to have no property rights in the deceased individual's right to publicity.

Creates liability for sustained damages for any person who knowingly uses another individual's personality for commercial purposes without prior consent. Requires consent, when applicable to be exercised by any of the following: (1) the individual, (2) a parent or legal guardian in the case of a minor, (3) a licensee or successor in interest if the right to publicity has been transferred, or (4) an authorized agent of any of these individuals. Provides for circumstances related to the right of publicity for individuals in multiple subject photographs. Provides for applicability and limited immunity. Assigns a penalty of \$1,000 or the amount of actual damages, whichever is greater, for a violation of the statute. Includes any profits attributable to the use of the right to publicity in actual damages. Provides for a court to grant injunctive relief, award punitive damages upon a showing of willful or wanton conduct, and award attorneys' fees to the prevailing party. Establishes a three-year statute of limitations.

Applies to actions or events occurring on or after January 1, 2010. Expressly makes the rights recognized in the act retroactive and deems that those rights existed at the time of death of any deceased individual who died prior to January 1, 2010.

Intro. by Goodwin, Owens, Barnhart, Howard. GS 41B