

AN ACT

To enact sections 2741.01, 2741.02, 2741.03, 2741.04, 2741.05, 2741.06, 2741.07, 2741.08, and 2741.09 of the Revised Code to create a right of publicity in an individual's "persona," to declare that the right of publicity is a property right, to specify that the right of publicity is transferable and descendible, to create a cause of action for the unauthorized commercial use of an individual's persona, and to provide a four-year statute of limitations for bringing an action of that nature.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 2741.01, 2741.02, 2741.03, 2741.04, 2741.05, 2741.06, 2741.07, 2741.08, and 2741.09 of the Revised Code be enacted to read as follows:

Sec. 2741.01. As used in this chapter:

(A) "Persona" means an individual's name, voice, signature, photograph, image, likeness, or distinctive appearance, if any of these aspects have commercial value.

(B) "Commercial purpose" means the use of or reference to an aspect of an individual's persona in any of the following manners:

(1) On or in connection with a place, product, merchandise, goods, services, or other commercial activities not expressly exempted under this chapter;

(2) For advertising or soliciting the purchase of products, merchandise, goods, services, or other commercial activities not expressly exempted under this chapter;

(3) For the purpose of promoting travel to a place;

(4) For the purpose of fundraising.

(C) "Name" means the actual, assumed, or clearly identifiable name of or reference to a living or deceased individual that identifies the individual.

(D) "Right of publicity" means the property right in an individual's persona to use the individual's persona for a commercial purpose.

(E) "Trier of fact" means the jury or, in a nonjury action, the court.

(F) "Written consent" includes written, electronic, digital, or any other verifiable means of authorization.

(G) "Institution of higher education" means a state institution of higher education as defined in section 3345.011 of the Revised Code, a private nonprofit college or university located in this state that possesses a certificate of authorization issued by the Ohio board of regents pursuant to Chapter 1713. of the Revised Code, or a school located in this state that possesses a certificate of registration and one or more program authorizations issued by the state board of proprietary school registration under Chapter 3332. of the Revised Code.

Sec. 2741.02. (A) Except as otherwise provided in this section, a person shall not use any aspect of an individual's persona for a commercial purpose during the individual's lifetime or for a period of sixty years after the date of the individual's death.

(B) A person may use an individual's persona for a commercial purpose during the individual's lifetime if the person first obtains the written consent to use the individual's persona from a person specified in section 2741.05 of the Revised Code. If an individual whose persona is at issue has died, a person may use the individual's persona for a commercial purpose if either of the following applies:

(1) The person first obtains the written consent to use the individual's persona from a person specified in section 2741.05 of the Revised Code who owns the individual's right of publicity.

(2) The name of the individual whose persona is used was the name of a business entity or a trade name at the time of the individual's death.

(C) Subject to the terms of any agreement between a person specified in section 2741.05 of the Revised Code and a person to whom that person grants consent to use an individual's right of publicity, a consent obtained before the death of an individual whose persona is at issue remains valid after the individual's death.

(D) For purposes of this section:

(1) A use of an aspect of an individual's PERSONa in connection with any news, public affairs, sports broadcast, or account does not constitute a use for which consent is required under division (A) of this section.

(2) A use of an aspect of an individual's persona in connection with any political campaign and in compliance with Title XXXV of the Revised Code does not constitute a use for which consent is required under division (A) of this section.

(E) The owners or employees of any medium used for advertising,

cluding but not limited to, a newspaper, magazine, radio or television network or station, cable television system, billboard, transit ad, and global communications network, by whom any advertisement or solicitation in violation of this section is published or disseminated are not liable under this section or section 2741.07 of the Revised Code unless it is established that those owners or employees had knowledge of the unauthorized use of the persona as prohibited by this section.

Sec. 2741.03. Except as otherwise provided in section 2741.09 of the Revised Code, this chapter applies only to the following:

(A) The right of publicity in the persona of an individual whose domicile or residence is in this state on or after the effective date of this section:

(B) The right of publicity in the persona of an individual who died on or after January 1, 1998, and whose domicile or residence was in this state on the date of the individual's death.

Sec. 2741.04. The right of publicity in an individual's persona is freely transferable and descendible, in whole or in part, by any of the following means:

(A) Contract;

(B) License;

(C) Gift;

(D) Trust;

(E) will;

(E) Operation of the laws of intestate succession applicable to the state administering the majority of the real and personal property of an individual who died intestate, regardless of whether that state recognizes the right of publicity as a property right.

Sec. 2741.05. (A) Except as otherwise expressly provided in an agreement transferring an aspect of an individual's right of publicity, only the following persons may grant consent to use an individual's persona for a commercial purpose:

(1) A person or persons, including the individual whose right of publicity is at issue, who collectively own more than fifty per cent of the individual's right of publicity, subject to the terms of any other licenses regarding that right of publicity;

(2) A person, including a licensee of the individual's right of publicity, who is expressly authorized in writing to grant consent by a person or persons specified in division (A)(1) of this section.

(B) A person or persons specified in division (A) of this section may do one or both of the following:

(1) Grant a person or persons consent to use all or part of an individual's right of publicity for a commercial purpose;

(2) Limit, restrict, or place conditions on how a person or persons to whom consent is granted pursuant to this section may use an individual's right of publicity.

Sec. 2741.06. (A) The following persons may bring a civil action to enforce the rights set forth in this chapter:

(1) A person or persons, including an individual whose right of publicity is at issue, who collectively own all of an individual's right of publicity, subject to any licenses regarding that right of publicity;

(2) A person, including a licensee of an individual's right of publicity, who is expressly authorized in writing by the owner or owners of an individual's right of publicity to bring a civil action;

(3) Except as otherwise expressly provided in an agreement transferring an aspect of an individual's right of publicity and subject to division (C) of this section, a person to whom ownership or any portion of ownership of an individual's right of publicity has been transferred.

(B) Before bringing a civil action under this section, a person who owns less than all of an individual's right of publicity shall notify the individual whose right of publicity is the subject of the proposed action, if living, by regular mail addressed to the last known address of that individual. The person also shall notify any persons to whom the individual's right of publicity has been transferred of the proposed civil action by the following means:

(1) Regular mail addressed to the last known address of each transferee;

(2) If the address of the transferee is not known, publication in a newspaper of general circulation in the county in which the individual whose right of publicity is the subject of the proposed civil action resides, or, in the case of a deceased individual, in the county in which the individual's estate has been or would have been admitted to probate.

(C) The individual whose right of publicity is the subject of the proposed civil action brought under this section, and any person to whom ownership of that right of publicity has been transferred, may object to the proposed civil action within twenty days from the date of the mailing of the notice referred to in division (B) of this section or sixty days from the date of publication referred to in that division by giving written notice of the objection to the person proposing the civil action. If the individual or transferee does not object to the civil action within the time period specified in this division, the individual or transferee is forever barred from objecting to that action.

A person may not bring a civil action under this section if a person or persons, including the individual whose right of publicity is the subject of the proposed civil action, who collectively own more than fifty per cent of the individual's right of publicity object to the proposed civil action.

(D) A person, other than a licensee of an individual's right of publicity, who owns less than all of an individual's right of publicity and who brings a civil action under this chapter shall account to any other person owning an interest in that right of publicity to the extent of the other person's interest with respect to any net recovery in a civil action less the person's costs of collection and reasonable attorney's fees.

Sec. 2741.07. (A)(1) A person who violates section 2741.02 of the Revised Code is liable in a civil action to the person injured by the violation for the following:

(a) Actual damages, including any profits derived from and attributable to the unauthorized use of an individual's persona for a commercial purpose as determined under division (A)(2) of this section;

(b) At the election of the plaintiff and in lieu of actual damages, statutory damages in the amount of at least two thousand five hundred dollars and not more than ten thousand dollars, as determined in the discretion of the trier of fact, taking into account the willfulness of the violation, the harm to the persona in question, and the ability of the defendant to pay a civil damage award;

(c) If applicable pursuant to section 2315.21 of the Revised Code, punitive or exemplary damages.

(2) The trier of fact shall include any profits derived from and attributable to the unauthorized use of an individual's persona for a commercial purpose in calculating the award of actual damages under division (A)(1)(a) of this section.

(B) Each party has the right to a jury trial of an action under this section. To assert the right, a party shall demand a jury trial in the manner prescribed in the Rules of Civil Procedure. If a party demands a jury trial in that manner, the action shall be tried to a jury.

(C) An action under this section shall be brought within four years of a violation of section 2741.02 of the Revised Code.

(D) A court in which an action under this section is brought may do any of the following:

(1) Award the prevailing party reasonable attorney's fees, court costs, and reasonable expenses associated with the civil action;

(2) Award treble damages against a party identified in division (E) of section 2741.02 of the Revised Code who has knowledge of the

unauthorized use of the persona as prohibited by section 2741.02 of the Revised Code:

(3) Order temporary or permanent injunctive relief;

(4) Order the impoundment, on terms the court considers reasonable, of both of the following during the pendency of a civil action under this section:

(a) Products, merchandise, goods, or other materials alleged to have been made or used in violation of section 2741.02 of the Revised Code;

(b) Plates, molds, and matrices, or the specific violative portions of masters, tapes, negatives, digital recordings, electronic media, or other items, from which products, merchandise, goods, or other materials may be manufactured or reproduced.

(E) As part of a final judgment, a court may order the destruction or other reasonable disposition of items described in division (D)(4) of this section.

Sec. 2741.08. The remedies provided for in this chapter are in addition to any other remedies provided for by state or federal statute or common law.

Sec. 2741.09. (A) This chapter does not apply to any of the following:

(1)(a) A literary work, dramatic work, fictional work, historical work, audiovisual work, or musical work regardless of the media in which the work appears or is transmitted, other than an advertisement or commercial announcement not exempt under division (A)(1)(d) of this section;

(b) Material that has political or newsworthy value;

(c) Original works of fine art;

(d) An advertisement or commercial announcement for a use permitted by division (A)(1)(a), (b), or (c) of this section.

(2) The use of an individual's name to truthfully identify the individual as the author of or contributor to a written work or the performer of a recorded performance under circumstances in which the written work or the recorded performance is otherwise lawfully reproduced, exhibited, or broadcast;

(3) The use of an aspect of an individual's persona in connection with the broadcast or reporting of an event or topic of general or public interest;

(4) The use of the persona of an individual solely in the individual's role as a member of the public if the individual is not named or otherwise singled out as an individual;

(5) A use of an individual's persona by an institution of higher education if all of the following apply:

(a) The individual is or was a student at, or a member of the faculty or

staff of, the institution of higher education.

(b) The use of the individual's persona is for educational purposes or for the promotion of the institution of higher education and its educational or INSTITUTIONAL objectives.

(6) A use of the persona of an individual that is protected by the First Amendment to the United States Constitution as long as the use does not convey or reasonably suggest endorsement by the individual whose persona is at issue.

(B) This chapter does not affect rights or privileges recognized under the Ohio Constitution or United States Constitution.

SECTION 2. The enactment of Chapter 2741. of the Revised Code by this act does not abrogate the common law relating to privacy as recognized by the Ohio courts in

Zacchini v. Scripps-Howard Broadcasting Co

. (1978), 54 Ohio St.2d 286;

Zacchini v. Scripps-Howard Broadcasting Co.

(1976), 47 Ohio St.2d 129,

rev'd on other grounds

SECTION , (1977) 433 U.S. 562;

Vinci v. American Can Co.

(Cuyahoga Cty. 1990), 69 Ohio App.3d 727; and

Bajpayee v. Rothermich

Sub. S. B. No. 54

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SECTION (Franklin Cty. 1977), 53 Ohio App.2d 117.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Sub. S. B. No. 54

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The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ___ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____