

# HOUSE RESEARCH

## Bill Summary

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**Subject:** Statutory Right of Publicity; cause of action created

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### Overview

This law provides a cause of action for the right of publicity which the bill defines as the right to use an individual's name, voice, signature, photograph, or likeness related to products, services, or to sell or advertise goods or services without the individual's consent. The law provides definitions, damages, injunctive relief for plaintiffs, exceptions to liability, and immunity provisions. The bill also provides that the right of publicity exists during a person's lifetime and also after a person has died for up to 50 years after their death, or in certain circumstances until 100 years after their death.

Some states have a statute granting a right of publicity to individuals who are alive, some states extend that right to individuals who are deceased, some states recognize the right of publicity in common law (including Washington D.C.), and some states have not recognized a right of publicity either in statute or in common law.

### Section

**1 Right of Publicity; cause of action.** Provides a right to publicity for living individuals and deceased individuals; damages; injunctive relief; and exceptions to liability.

**Subd. 1. Definitions.** Provides a definition for the term "photograph" which means a digital or film image, still or moving, that is either live or a reproduction.

**Subd. 2. Cause of action for right of publicity.** Creates a right of civil action for a violation of person's right of publicity. A person becomes liable for the violation of a right of publicity when the person uses the name, voice, signature, photograph, or

## Section

likeness of an individual, who is either dead or alive, without their consent on commercial products, to sell or advertise, or to solicit purchases. This subdivision provides how an individual or decedent can give prior consent for the use of their likeness. This subdivision provides that an individual must be domiciled in Minnesota to exercise this right or have been domiciled in Minnesota at the time of their death.

**Subd. 3. Damages.** Provides that an individual who's right of publicity has been appropriated can sue for damages including actual damages, the profits that were earned by the unauthorized use, punitive damages, and reasonable attorney's fees and costs.

**Subd. 4. Injunctive relief.** Allows the court to grant injunctive relief to prevent or restrain a person from using or continuing to use likeness of another without consent.

**Subd. 5. Right of publicity of decedent.** Allows the right of publicity to be left to the heirs or designees of the individual. This section allows a contract or assignment of right of publicity to continue after an individual's death if provided for or for the right to descend to heirs either through a testamentary designation or through Minnesota intestate laws as provided for in the Uniform Probate Code. This section also provides that the rights that are assigned or inherited continue for 50 years after the death of the decedent, and if not abandon after the 50 years, then for up to 100 years after the death of the decedent.

**Subd. 6. Fair use; exceptions.** Provides immunity for the use of an individual or deceased individual's name, voice, signature, photograph, or likeness:

- in connection with media reporting of news, public affairs, sports broadcasting, or commentary and criticism; and
- in a play, book, literary work, theatrical work, musical composition, sound recording, film, TV program, or single work of original art that is not an advertisement or solicitation of a product or service.

**Subd. 7. Commercial sponsorship.** Prevents a medium, such as a newspaper or magazine, from being liable under this law for including information or articles on an individual while also providing commercial sponsorship or advertising in the medium, and makes the issue of connection between a person's likeness and the advertisement or sponsorship an issue of fact for the court to determine.

**Subd. 8. Immunity; publications.** Grants immunity to the publisher of advertisements, including entities that carry an advertisement such as a bus or train, immunity from liability under this law unless the publisher knew that the advertisement used a person's likeness without consent.

**Subd. 9. Application; chapter 333.** Provides that individuals protected under the insignia, trademark, and assumed names chapter can also use this section of law to protect the right of publicity.

**Subd. 10. Cumulative.** Provides that other remedies at law or in equity may also be available in addition to this statutory right.

**Section**

**Effective date.** This section is effective August 1, 2016, and applies to cases brought in court based on this cause of action on that date or after that date for both living individuals and deceased individuals who died within the 50 years preceding the effective date.