

State of South Dakota

NINETIETH SESSION
LEGISLATIVE ASSEMBLY, 2015

373W0295

HOUSE BILL NO. 1225

Introduced by: Representatives May and Campbell and Senator Bradford

1 FOR AN ACT ENTITLED, An Act to prohibit the unauthorized commercial use of a
2 personality's right of publicity and provide a civil remedy therefor.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act mean:

5 (1) "Commercial purpose," the use of an aspect of a personality's right of publicity in
6 connection with a product, merchandise, goods, service, or commercial activity; for
7 advertising or soliciting purchases of a product, merchandise, goods, service, or for
8 promoting a commercial activity; or for the purpose of fund-raising;

9 (2) "Personality," a living or deceased natural person whose name, voice, signature,
10 photograph, image, likeness, distinctive appearance, gesture, or mannerism has
11 commercial value, whether or not the person uses or authorizes the use of the
12 person's rights of publicity for a commercial purpose;

13 (3) "Right of publicity," a personality's property interest in the personality's name, voice,
14 signature, photograph, image, likeness, distinctive appearance, gesture, or
15 mannerism.



1 Section 2. No person may use any aspect of a personality's right of publicity for a
2 commercial purpose during the personality's lifetime or for one hundred years after the death
3 of the personality without the express written consent of the personality, or if the personality is
4 deceased without the express written consent of the personality's next of kin.

5 Section 3. The provisions of this Act apply to a personality who is deceased prior to July 1,
6 2015.

7 Section 4. A personality's right of publicity terminates if the personality is deceased and
8 there is no living next of kin of the personality.

9 Section 5. The personality, or if the personality is deceased, the personality's next of kin, has
10 a cause of action for a violation of a personality's right of publicity against the person for any
11 violation of section 2 of this Act. If the court finds a violation of section 2 of this Act, the court
12 may order:

- 13 (1) Temporary or permanent injunctive relief;
- 14 (2) Damages in the amount of one thousand dollars or the actual damages, including
15 profits derived from the unauthorized use, whichever amount is greater;
- 16 (3) Reasonable attorney fees, costs, and expenses relating to the action to the prevailing
17 party; and
- 18 (4) If the court finds that the violation of section 2 of this Act was knowing, willful, or
19 intentional, treble or punitive damages.

20 Section 6. The provisions of this Act do not apply to the use of a personality's name, voice,
21 signature, photograph, image, likeness, distinctive appearance, gestures, or mannerisms in any:

- 22 (1) Literary work, theatrical work, musical composition, film, radio, or television
23 program;
- 24 (2) Material that has political or newsworthy value;

1 (3) Original work of fine art;

2 (4) Promotional material or advertisement, for a news reporting or entertainment
3 medium, that uses all or part of a past edition of the medium's original broadcast and
4 does not convey or suggest that the personality endorses the news reporting or
5 entertainment medium; and

6 (5) An advertisement of commercial announcement for a use described in this section.

7 Section 7. The provisions of this Act do not apply to the use of a personality's name to
8 truthfully identify the personality as the author of a written work or a performer of a recorded
9 performance if the written work or recorded performance is otherwise rightfully reproduced,
10 exhibited, or broadcast.

11 Section 8. The provisions of this Act do not apply to the use of a personality's name, voice,
12 signature, photograph, image, likeness, distinctive appearance, gesture, or mannerism in
13 connection with a broadcast or reporting of an event or a topic of general or public interest.

14 Section 9. The provisions of this Act do not apply to a personality whose name, voice,
15 signature, photograph, image, likeness, distinctive appearance, gesture, or mannerism has
16 commercial value solely because the personality has been formally charged with or convicted
17 of a crime.