



DELBERT HOSEMANN
Secretary of State

**2010 Business Reform Study Groups
Minutes of the Technology and Intellectual
Property Laws Study Group, Meeting #2
July 20, 2010**

The second meeting of the Technology and Intellectual Property Laws Study Group (hereinafter the “Study Group”) was called to order on Tuesday, July 20, 2010, at 11:10 A.M. at the Office of the Secretary of State, 401 Mississippi Street, Jackson, Mississippi. A list of attendees is attached as Exhibit A.

Welcome and Introduction

Cheryn Baker, Assistant Secretary of State for the Secretary of State’s Division of Policy and Research, welcomed everyone to the meeting and thanked Bomgar Corporation for sponsoring lunch for the Study Group.

A copy of the minutes from the first meeting was provided to the attendees. The attendees approved the minutes to the first meeting.

Baker introduced Doug Jennings, Senior Attorney for the Division of Policy and Research. Jennings announced that three subgroups were to be created from the Study Group: (1) trade secrets and rights of publicity; (2) trade incentives; and (3) software issues. Jennings asked the attendees to sign up for at least one of the three subgroups.

Introduction of proposed changes to Mississippi Uniform Trade Secrets Act

Jennings introduced the proposed changes to the Mississippi Uniform Trade Secrets Act (the “UTSA”). Jennings directed the Study Group’s attention to a document entitled “Proposed Revised Mississippi Uniform Trade Secrets Act (UTSA)” which is attached and referenced hereinafter as Exhibit B. This document was created by adding certain non-uniform provisions

from other states' enactments of UTSA to Mississippi's existing version of the act. Jennings briefly discussed the sections that he proposed the group amend and stated that Subgroup 1 would take a more in-depth look at the proposals.

Jennings first discussed § 75-26-3 of the Mississippi Code, which is the definitions section of Mississippi's USTA. Jennings remarked that this section may be the most important section to amend. The proposed amendments to the definitions are provided in Exhibit B. Two of the terms to amend included "improper means" and "trade secret."

Jennings next discussed amending Miss. Code Ann. § 75-26-5, which addresses injunctions and protective orders. The proposed amendments are provided in Exhibit B. Jennings noted that the proposed amendment is a provision that gives courts a guideline for how long an injunction can run. Jennings commented that if a court determines that it would be unreasonable to prohibit future use by the party acting wrongfully, amending § 75-26-5(2) would allow the court to condition their use upon a royalty to be paid to the party that claimed ownership to the trade secret.

Jennings then discussed Miss. Code Ann. § 75-26-5(3), which also gives courts guidance about the kinds of orders they can make pursuant to the statute. The proposal provides that a court could compel affirmative acts which includes issuing an injunction order that a trade secret has been misappropriated and posted on the internet be removed immediately. Jennings remarked that although courts could probably do this now, this proposal makes it very explicit that a court could compel affirmative acts.

Jennings next discussed the damages section provided in Miss. Code Ann. § 75-26-7. Jennings stated that there will not be any changes to the damages section. Jennings further stated that many states have omitted punitive damages altogether while some states have limited punitive damages to somewhere between two and five times the original damages. The current Mississippi statute does not limit the amount of punitive damages.

Jennings then discussed Miss. Code Ann. § 75-26-9 which provides attorney's fees for the prevailing party. The proposed language is provided in Exhibit B. Jennings remarked that most of the proposed language will give courts guidance as to what kind of awards judges can make. Jennings requested assistance from the Study Group in interpreting the proposed language. Group members made several comments suggesting that this language would need to be amended only slightly.

Jennings next discussed Miss. Code Ann. § 75-26-11, which addresses the preservation of secrecy during litigation. The proposed language can be found in Exhibit B. Jennings commented that Nevada and South Carolina both have statutes addressing this issue.

Jennings next discussed other provisions that states have made that are not in the (UTSA). These proposals can be found in Exhibit B. Jennings noted that Iowa has a statute that gives persons accused of sharing trade secrets a better shield when confronted with allegations of disclosing a trade secret without authorization. Jennings also noted that Nevada has a statute that addresses a trade secret owner's efforts to maintain secrecy as well as a statute that addresses misappropriation and posting or dissemination of trade secrets on the internet.

Jennings concluded by stating that the subgroups will meet separately to discuss their issues and then report back to the Study Group with their recommendations.

Introduction of Proposed Mississippi Right of Publicity Act

Jennings introduced the next major topic which was the proposed Mississippi Right of Publicity Act (the "RPA"). Jennings defined the right of publicity as the right of every individual to control commercial exploitation of their name, likeness, signature and voice.

Jennings directed the Study Group to the "Key Provisions of the Proposed Mississippi Right of Publicity Act" which is attached and referenced hereinafter as Exhibit C. Jennings stated that Subgroup 1, right of publicity and trade secrets, will review this topic. Jennings discussed the details of the summary which included the meaning of "commercial use"; whether the right to publicity is freely transferable to others; the length of time the right to publicity should be extended; exceptions for written consent; and injunctive relief and damages. These issues are also addressed in more depth in a document which is attached as Exhibit D.

There was a concern by Study Group members as to whether or not it is good policy for the right to publicity to be freely transferable to others. Jennings stated that out of the 20 or so state statutes he reviewed, only three or four states included a provision to freely transfer the right of publicity. Jennings remarked that there is opportunity for abuse of this policy.

With regard to the length of time the right to publicity should be extended, a point was raised that if the right expires at death and the person has no successors, the right may need to be extended for a certain period of time after death to make absolutely sure that no heir exists.

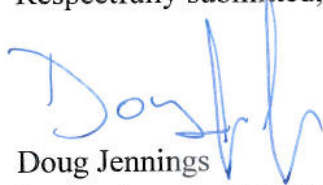
Jennings commented that one of the important sections of the act deals with exceptions. The general rule of the right of publicity is that any commercial use of the person's name, voice, signature, photograph, or likeness without written consent is actionable. The suggested exceptions included: a person using your name in a news or sports report; impersonation of a person in a live performance; use of a photo of the person solely as a member of the public without using that person's name such as a crowd shot in an advertisement; and use by a

professional photographer of the person's image on display at his or her studio unless the person objects to it.

Conclusion

Ms. Baker stated that the next step for the Study Group would be holding separate subgroup meetings and reporting back to the full study group. There being no further business, the meeting was adjourned at 12:15 P.M.

Respectfully submitted,



Doug Jennings
Senior Attorney, Division of Policy & Research
Mississippi Secretary of State

EXHIBIT A

**Minutes of the Technology and
Intellectual Property Laws Study Group,, Meeting # 2**

July 20, 2010

Members and Guests in Attendance:

1. Thomas Alexander.
2. Bill Brabec
3. Stephen Clay
4. Danny Drake
5. Greg Hinkebein
6. Stacey Gaines for Tony Jeff
7. Dr. Henry Jones
8. Ravi Raju
9. Whit Rayner
10. Anne Turner
11. Rep. Shaun Walley
12. Martin Willoughby
13. Caryn Quilter (guest)

Members Attending by Telephone:

1. Shawnassey Britt
2. Meaghin Burke
3. Angela Grayson
4. Johnny Healy
5. Otis Tims
6. William Wilkins

Secretary of State's Staff:

1. Cory Wilson, Chief of Staff
2. Cheryn Baker, Assistant Secretary of State, Division of Policy & Research
3. Tom Riley, Assistant Secretary of State, Business Services
4. Doug Jennings, Senior Attorney, Division of Policy & Research
5. Justin Fitch, Staff Attorney, Elections

Exhibit B

Proposed Revised Mississippi Uniform Trade Secrets Act (UTSA)

Proposed Revised Mississippi Uniform Trade Secrets Act (UTSA)

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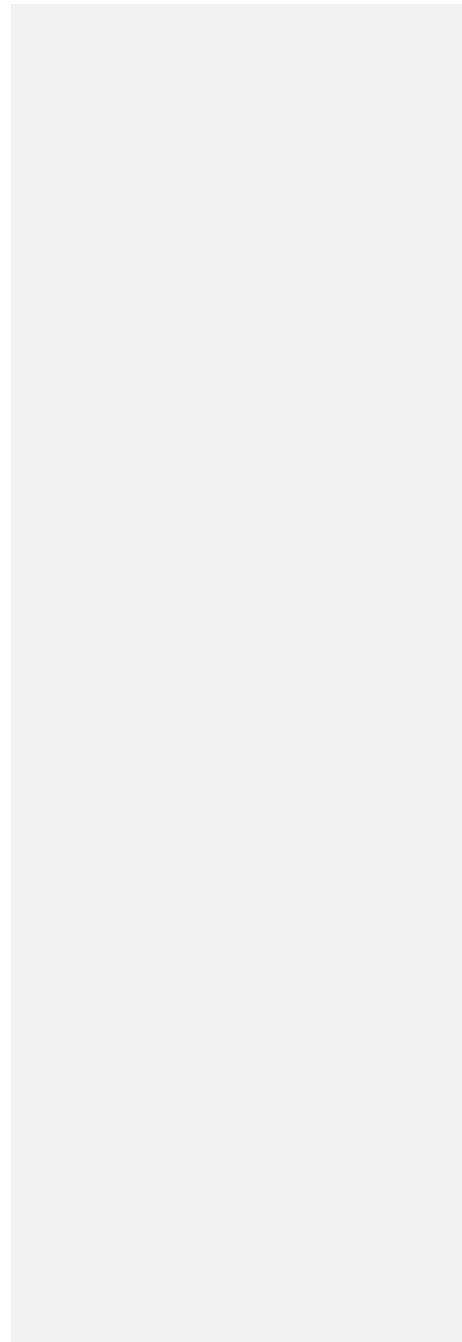
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Proposed Revised Mississippi Uniform Trade Secrets Act (UTSA)

I. Proposed amendments to UTSA:

Miss. Code Ann. § 75-26-3. Definitions.

As used in this chapter, unless the context requires otherwise:

(a) “Improper means” includes theft, bribery, misrepresentation, breach or inducement of a breach of a confidential relationship or other duty to maintain secrecy or limit use, ~~or~~ espionage through electronic or other means, or willful breach or willful inducement of a breach of a duty imposed by common law, statute, contract, license, protective order, or other court or administrative order. Reverse engineering of a trade secret not acquired by misappropriation or independent development shall not be considered improper means.

Comment [DAJ1]: Taken from Georgia

Comment [DAJ2]: Taken from Nevada

Comment [DAJ3]: A number of states have adopted this language.

(b) “Misappropriation” means:

(i) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(ii) Disclosure or use of a trade secret of another without express or implied consent by a person who:

1. Used improper means to acquire knowledge of the trade secret; or
2. At the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was:
 - a. Derived from or through a person who had utilized improper means to acquire it;
 - b. Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or
 - c. Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limits its use; or

3. Before a material change of his or her position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

(c) “Person” means a natural person, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision or agency or any other legal or commercial entity.

(d) “Trade secret” means information, without regard to form, including, but not limited to, technical or nontechnical data including a formula, pattern, compilation, program, computer software, computer programming instruction or code, prototype, device, method, technique, design, improvement, procedure, drawing, ~~or~~ process, financial data, financial plan, product plan, or list of actual or potential customers or suppliers that:

Comment [DAJ4]: Taken from Georgia

Comment [DAJ5]: Taken from Montana

Comment [DAJ6]: Taken from Nevada

Comment [DAJ7]: Taken from Colorado

Comment [DAJ8]: Taken from Georgia

(i) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and

(ii) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The existence of a trade secret is not negated merely because an employee or other person has acquired the trade secret without express or specific notice that it is a trade secret if, under all the circumstances, the employee or other person knows or has reason to know that the owner intends or expects the secrecy of the type of information comprising the trade secret to be maintained.

Comment [DAJ9]: This paragraph taken from Minnesota.

Miss. Code Ann. § 75-26-5. Injunctions; protective orders.

- (1) Actual or threatened misappropriation may be enjoined. Upon application to the court, an injunction shall be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in appropriate circumstances for reasons including, but not limited to, an elimination of commercial advantage that otherwise would be derived from the misappropriation or where the trade secret ceases to exist due to the fault of the enjoined party or others by improper means. ~~in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.~~
- (2) In exceptional circumstances, if the court determines that it would be unreasonable to prohibit future use, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time for which use could have been prohibited. Exceptional circumstances include, but are not limited to, a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation that renders a prohibitive injunction inequitable. The alleged wrongful user shall bear the burden of proof of exceptional circumstances.
- (3) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order. As used in this subsection, “affirmative acts” includes, without limitation, issuing an injunction or order requiring that a trade secret which has been misappropriated and posted, displayed, or otherwise disseminated on the Internet be removed from the Internet immediately.

Comment [DAJ10]: Taken from Georgia

Comment [DAJ11]: Taken from Georgia

Comment [DAJ12]: Taken from Hawaii

Comment [DAJ13]: Taken from Nevada

Note: A number of states have retained the pre-1985 version of subsection (2), which reads:

If the court determines that it would be unreasonable to prohibit future use of a trade secret, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time the use could have been prohibited.

It is unclear whether these states merely neglected to update their acts after the amendments to UTSA were adopted, or whether this was a voluntary decision.

Miss. Code Ann. § 75-26-7. Damages.

- (1) Except to the extent that a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation renders a monetary recovery inequitable, a complainant is entitled to recover damages for misappropriation. Damages can include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. In lieu of damages measured by any other methods, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret.
- (2) If willful and malicious misappropriation exists, the court may award exemplary damages ~~in an amount not exceeding twice any award made under subsection (a).~~

Note: There are a number of states that have modified subsection (2) to limit the amount of punitive damages that may be awarded. These states range from allowing punitive damages of no more than the amount awarded under subsection (1), to allowing up to three times the amount awarded under subsection (1).

Miss. Code Ann. § 75-26-9. Attorney's fees for prevailing party.

If (a) a claim of misappropriation is made in bad faith, (b) a motion to terminate an injunction is made or resisted in bad faith or (c) willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party. Recoverable costs hereunder shall include a reasonable sum to cover the services of expert witnesses, who are not regular employees of any party, actually incurred and reasonably necessary in either, or both, preparation for trial or arbitration, or during trial or arbitration, of the case by the prevailing party.

Comment [DAJ14]: Taken from California

Note: At least four states have omitted this section altogether.

Miss. Code Ann. § 75-26-11. Preservation of secrecy during litigation.

In an action under this chapter, a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in-camera hearings, sealing the records of the action and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval. The disclosure or publication of a trade secret in a court proceeding or as a result thereof shall not constitute an abandonment of the secret.

Comment [DAJ15]: Taken from Nebraska

Note: Consider the following state statutes, which deal with this topic in considerably more depth.

Nevada

Replaces section with:

In any civil or criminal action, the court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include, without limitation:

- (1) Granting protective orders in connection with discovery proceedings;
- (2) Holding hearings in camera;
- (3) Sealing the records of the action;
- (4) Determining the need for any information related to the trade secret before allowing discovery;
- (5) Allowing the owner of the trade secret to obtain a signed agreement of confidentiality from any party who obtains knowledge of the trade secret;
- (6) Ordering a person who obtains knowledge of the trade secret to return to the owner of the trade secret any writing which reflects or contains the trade secret; and
- (7) Ordering any person involved in the litigation not to disclose an alleged trade secret without previous court approval.

South Carolina

Overhauls this section to read:

- (A) In an action under this chapter, a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding hearings in-camera, sealing the records of the action, and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.
- (B) In any civil action where discovery is sought of information designated by its holder as a trade secret, before ordering discovery a court shall first determine whether there is a substantial need by the party seeking discovery for the information. ‘Substantial need’ as used in this section means:
 - a. the allegations in the initial pleading setting forth the factual predicate for or against liability have been plead with particularity;
 - b. the information sought is directly relevant to the allegations plead with particularity in the initial pleading;
 - c. the information is such that the proponent of the discovery will be substantially prejudiced if not permitted access to the information; and
 - d. a good faith basis exists for the belief that testimony based on or evidence deriving from the trade secret information will be admissible at trial.
- (C) Direct access to computer databases containing trade secret information, so-called ‘real time’ discovery, shall not be ordered by the court unless the court finds that the proponent of the discovery cannot obtain this information by any other means and provided that the information sought is not subject to any privilege.
- (D) Upon motion of the holder of the trade secret information, a court may condition the production of trade secret information on the posting of an appropriate bond.
- (E) Information produced pursuant to this section must be governed by an appropriate written protective order of the court.

- (F) Information produced pursuant to this section may only be disclosed to persons identified in the written protective order of the court and may be used or disclosed only in the action in which it is produced. Litigation sharing orders pertaining to trade secret information must not be entered by the court.
- (G) A person receiving trade secret information pursuant to this section is subject to the jurisdiction of the courts of this State.
- (H) When information produced pursuant to this section is discussed or otherwise disclosed at a trial or hearing, the owner of the produced trade secret information is allowed to obtain individually signed confidentiality agreements from all parties that are present in the courtroom or are party to any procedures where trade secret information is discussed, presented, or otherwise made known to any party not already under a confidentiality agreement with the trade secret owner.
- (I) All trade secret information and any copies, duplicates, or other writings which reflect or contain the trade secret information, or excerpts therefrom, must be returned to the holder of the trade secrets at the conclusion of the litigation.
- (J) This section applies to any civil action brought within or without this State where discovery is sought of trade secret information present in this State.

Miss. Code Ann. § 75-26-13. Limitations period.

An action for misappropriation must be brought within three (3) years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered. For the purposes of this section, a continuing misappropriation constitutes a single claim.

Note: The states adopting UTSA have chosen differing limitations periods, generally ranging from two to five years in length.

Miss. Code Ann. § 75-26-15. Applicability of chapter.

- (1) Except as provided in subsection (2), this chapter displaces conflicting tort, restitutionary and other law of this state providing civil remedies for misappropriation of a trade secret.
- (2) This chapter does not affect:
 - (a) Contractual remedies, whether or not based upon misappropriation of a trade secret;
 - (b) Other civil remedies that are not based upon misappropriation of a trade secret; ~~or~~
 - (c) Criminal remedies, whether or not based upon misappropriation of a trade secret; ~~or~~
 - (d) The duty of any person or state or municipal agency to disclose information pursuant to other state statutes or wherever expressly provided by law.

Comment [DAJ16]: Taken from Connecticut

Miss. Code Ann. § 75-26-19. Severability.

If any provision of this chapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

Note: No state variations available.

II. Proposed additions to the act (not based on any part of UTSA):

Iowa

§ 550.5. Defense – consent of disclosure

In an action for injunctive relief or damages against a person under this chapter, it shall be a complete defense that the person disclosing a trade secret made the disclosure with the implied or express consent of the owner of the trade secret.

Nevada

§ 600A.032. Presumption of reasonable effort by owner to maintain secrecy; rebuttal of presumption

The owner of a trade secret is presumed to make a reasonable effort to maintain its secrecy if the word ‘Confidential’ or ‘Private’ or another indication of secrecy is placed in a reasonably noticeable manner on any medium or container that describes or includes any portion of the trade secret. This presumption may be rebutted only by clear and convincing evidence that the owner did not take reasonable efforts to maintain the secrecy of the trade secret.

§ 600A.055. Misappropriation and posting or dissemination on Internet: Effect

A trade secret that is misappropriated and posted, displayed or otherwise disseminated on the Internet shall be deemed to remain a trade secret ... and not to have ‘ceased to exist’ for the purposes of [UTSA] if:

1. The owner, within a reasonable time after discovering that the trade secret has been misappropriated and posted, displayed or otherwise disseminated on the Internet, obtains an injunction or order issued by a court requiring that the trade secret be removed from the Internet; and
2. The trade secret is removed from the Internet within a reasonable time after the injunction or order requiring removal of the trade secret is issued by the court.

EXHIBIT C

Key provisions of the proposed Mississippi Right of Publicity Act

- Gives every individual a right to control commercial use of their **name, voice, signature, photograph, or likeness** during their lifetime (§4(1));
- Defines “commercial use” as “the use of the name, voice, signature, photograph, or likeness of a person on or in any product, merchandise or goods or for the purposes of advertising, selling, or soliciting the purchase of any product, merchandise, goods, or service” (§2(1))
- The right is **freely transferable** by contract, license, or will (§5(1));
- Unless the right has otherwise been transferred, upon the person’s death the right passes on to the person’s heirs and continues up to **50 years** after the person’s death (§4(1)). If no heirs exist, the **right expires** (§5(2)).
- Any commercial use of the person’s name, voice, signature, photograph, or likeness requires **written consent** by the person except in certain circumstances (§4(2)). Among these exceptions are:
 - Use in a news or sports report;
 - Impersonation of a person in a live performance;
 - Use of a photo of the person solely as a member of the public (i.e., in a shot of a crowd) where the person is not named;
 - Use by a professional photographer of the person’s image on display at his or her studio, unless the person objects in writing; and
 - Use in connection with efforts to promote tourism within the state.
- “Written consent” is definite to include written, electronic, digital, or any other verifiable means of authorization (§2(4)).
- The owner of a right of publicity may seek **injunctive relief** as well as **actual damages, punitive damages** (if the use was made with knowledge that the person had not consented), as well as attorney’s fees and court costs (§6).
- After the person’s death, any successor in interest is **required to record their claim with the Secretary of State’s Office** (§5(3)). This makes it easy for people seeking to exploit the deceased person’s likeness to determine with whom to negotiate and thus avoid potential litigation.

Exhibit D

Proposed Mississippi Right of Publicity Act

§1

This act shall be known and may be cited as the “Mississippi Right of Publicity Act.”

§ 2

As used in this Act:

1. “Commercial use” includes the use of the name, voice, signature, photograph, or likeness of a person on or in any product, merchandise or goods or for the purposes of advertising, selling, or soliciting the purchase of any product, merchandise, goods, or service.
2. “Person” means a natural person.
3. “Trier of fact” means the jury or, in a nonjury action, the court.
4. “Written consent” includes written, electronic, digital, or any other verifiable means of authorization.

§ 3

This Act applies to any commercial use within this State of a living or deceased person’s name, voice, signature, photograph, or likeness regardless of the person’s domicile.

§ 4

1. There is a right of publicity in the name, voice, signature, photograph, or likeness of every person. The right endures for a term consisting of the life of the person and fifty (50) years after his death, regardless of whether the person commercially exploits the right during his lifetime.
2. Any commercial use by another of the name, voice, signature, photograph, or likeness of a person requires the written consent of that person or successor in interest unless:
 - (a) The use is contained in material which is commercially sponsored but the use is not directly connected with the commercial sponsorship;
 - (b) The use is an attempt to portray, imitate, simulate, or impersonate a person in a live performance;
 - (c) The use is in connection with a news, public affairs, or sports broadcast or publication;
 - (d) The use is an attempt to portray, imitate, simulate, or impersonate a person in a play, book, magazine article, newspaper article, musical composition, film, or a radio, television, or other audio or visual program, except where the use is directly connected with commercial sponsorship;

(e) The use is made in connection with the resale, distribution, or promotion of literary, musical, or artistic productions or other articles of merchandise or property where such person has consented to the use of her or his name, portrait, photograph, or likeness on or in connection with the initial sale or distribution thereof;

(f) The use is in connection with an original work of art except that multiple editions of such a work of art require consent;

(g) The use is by a person, firm, or business 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;

(h) The use consists of a photograph or other image of a person solely as a member of the public, where such person is not named or otherwise identified in or in connection with the use of such image; or

(i) The use is in connection with the efforts of state or local government to promote travel and tourism in this State, portray historical events, or commemorate persons or physical sites that are significant in the history of this State.

For the purposes of this subsection, the use of a name, voice, signature, photograph, or likeness in a commercial medium shall not constitute a use for which consent is required solely because the material containing the use is commercially sponsored or contains paid advertising. Rather, it shall be determined by the trier of fact whether or not the use of the person’s name, voice, signature, photograph, or likeness was so directly connected with the commercial sponsorship or with the paid advertising as to constitute a use for which consent is required.

3. Nothing in this section shall apply to the owners, employees, or agents of any medium used for advertising, including, but not limited to, newspapers, magazines, the Internet, radio and television networks and stations, cable television systems, billboards, and transit ads, by whom any advertisement or solicitation in violation of this section is published or disseminated, unless it is established that such owners or employees had knowledge of the unauthorized use of the person’s name, voice, signature, photograph, or likeness.

§ 5

1. The right of publicity established by this Act is freely transferable, in whole or in part, by contract, license, gift, conveyance, assignment, devise, or testamentary trust by a person or his successor in interest.

2. If a deceased person has not transferred his rights as provided by subsection 1, and he has no surviving beneficiary or successor in interest upon his death, the commercial use of his name, voice, signature, photograph, or likeness does not require consent.

3. A successor in interest or a licensee of a deceased person may file in the office of the Secretary of State, on a form prescribed by the Secretary of State and upon the payment of a filing fee to be set by rule, a verified application for registration of his claim. The application must include:

- (a) The legal and professional name of the deceased person;
- (b) The date of death of the deceased person;
- (c) The name and address of the claimant;
- (d) The basis of the claim; and
- (e) A description of the rights claimed.

4. A successor in interest or a licensee of a deceased person may not assert any right against any unauthorized commercial use of the deceased person's name, voice, signature, photograph, or likeness that begins before the filing of an application to register his claim.

5. A person, firm, or business seeking to use the name, voice, signature, photograph, or likeness of a deceased person for commercial purposes must first make a reasonable effort, in good faith, to discover the identity of any person who qualifies as a successor in interest to the deceased person. A person claiming to be a successor in interest to a deceased person must, within six (6) months after the date he becomes aware or should reasonably have become aware of an unauthorized commercial use of the deceased person's name, voice, signature, photograph, or likeness, register a claim with the Secretary of State pursuant to subsection 3. Failure to register shall be deemed a waiver of any right of publicity.

6. Upon receipt and after filing of any document under this section, the Secretary of State shall post the document along with the entire registry of persons claiming to be a successor in interest to the rights of a deceased personality or a registered licensee under this section upon the Secretary of State's website. The Secretary of State may reproduce by any means any of the filings or documents and destroy the original filing or document. The reproduction of any document under the provisions of this section shall be admissible in any court of law. The reproduction of any document may be destroyed by the Secretary of State fifty (50) years after the death of the personality named therein.

7. A claim registered pursuant to this section is a public record.

§ 6

Any commercial use of the name, voice, signature, photograph, or likeness of another by a person, firm, or business without first having obtained written consent for the use is subject to:

- (a) Injunctive relief to prevent or restrain the unauthorized use; and

(b) An action at law for any injuries sustained by reason of the unauthorized use. In such a suit, the plaintiff may recover:

- (1) Actual damages, including any profits derived from and attributable to the unauthorized use;
- (2) Punitive damages, if the trier of fact finds that the defendant knowingly made the unauthorized use without first having obtained written consent; and
- (3) Reasonable attorneys' fees, court costs, and reasonable expenses associated with the civil action.

No action shall be brought under this section by reason of any publication, printing, display, or other public use of the name, voice, signature, photograph, or likeness of a person occurring after the expiration of 50 years from and after the death of such person.

§ 7

The rights and remedies provided for in this Act are meant to supplant those available under the common law as of July 1, 2011, but do not affect a person's common law rights as they existed before that date. 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.