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Senate Bill 983 (Substitute S-1 as reported)  
Sponsor: Senator Hansen Clarke  
Committee: Commerce and Tourism

### **CONTENT**

The bill would create the "Right of Publicity Act" to establish right to control the use of a personality's attributes for a commercial purpose. The bill would all of the following:

- Provide that a person would be liable for violating a right of publicity if the person knowingly used a personality's attribute for a commercial purpose during the personality's lifetime or within 50 years after his or her death without the consent of the personality or a person to whom his or her right of publicity had been transferred.
- Allow the use of a personality's attribute without consent in a play, book, article, musical composition, motion picture, TV program, video game, radio program, work of art, and any other editorial, artistic, or expressive work, including any promotion for the work.
- Allow a personality, or the holder of a greater than 50% interest in the right of publicity that was registered under the bill, to bring a civil action for damages and/or equitable relief for a violation of a right of publicity.
- Provide that a person who violated a right of publicity would be liable for actual damages or \$1,000, whichever was greater, and allow the court to award treble damages in an exceptional case if the defendant acted maliciously or fraudulently.
- Allow a transferee of a right of publicity to register the transfer with the Secretary of State, and prohibit a transferee from bringing an action unless the transferee had registered the transfer.
- Require the Secretary of State to post transfer documents in a registry of interests in transferred rights of publicity on a website accessible to the public.
- Make it a misdemeanor punishable by up to 90 days' imprisonment and/or a maximum fine of \$500 for a person to register a transfer without a reasonable belief that he or she was a transferee of the right of publicity.

"Attribute" would mean an individual's name, voice, signature, image, or likeness. "Personality" would mean a living or deceased individual, one or more of whose attributes has commercial value. "Commercial purpose" would mean the use of a personality's attribute on or in connection with a product, service, commercial activity, or goods for the purpose of fund-raising, advertising, or soliciting purchases.

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

The bill would have a minimal fiscal impact on the judiciary. It is likely that the number of civil actions filed under the bill would be small, and any costs could be absorbed by the courts. Any costs to the Department of State should be absorbable within the Department's current appropriations.

Date Completed: 12-11-08

Fiscal Analyst: Joe Carrasco

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Analysis available @ <http://www.michiganlegislature.org>

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