

By: Representative Watson

To: Judiciary A

HOUSE BILL NO. 1633

1 AN ACT ENTITLED THE MISSISSIPPI IDENTITY AND HERITAGE
2 PROTECTION ACT OF 2004; TO SET FORTH PROVISIONS THAT PROTECT AN
3 INDIVIDUAL'S RIGHT TO CONTROL, EXPLOIT AND LICENSE THE COMMERCIAL
4 USE OF HIS OR HER IDENTITY; TO CREATE A PROPERTY RIGHT IN AN
5 INDIVIDUAL'S IDENTITY; TO DEFINE IDENTITY AS ANY INCIDENT OF AN
6 INDIVIDUAL'S PERSONA, INCLUDING AN INDIVIDUAL'S NAME, VOICE,
7 SIGNATURE, PHOTOGRAPH OR LIKENESS; TO CREATE A CIVIL ACTION
8 AGAINST ANY PERSON WHO USES AN INDIVIDUAL'S IDENTITY WITHOUT THE
9 INDIVIDUAL'S CONSENT; TO MAKE AN EXCEPTION FOR THE FAIR USE OF AN
10 IDENTITY THAT INCLUDES ITS USE IN NEWS, PUBLIC AFFAIRS AND
11 EDUCATION; TO PROVIDE REMEDIES FOR THE UNLAWFUL USE OF AN
12 IDENTITY; TO PROVIDE THAT WHEN THE PROPERTY RIGHT IS ABANDONED OR
13 TERMINATED, IT FALLS INTO THE PUBLIC DOMAIN; AND FOR RELATED
14 PURPOSES.

15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

16 **SECTION 1.** For purposes of this act, the following words and
17 phrases shall have the meanings ascribed to them in this section:

18 (a) "Individual" means a human being, whether living or
19 deceased.

20 (b) "Identity" means one or more incidents of an
21 individual's persona or combination thereof, including his or her
22 name, voice, signature, photograph or likeness, by which the
23 uniqueness of that particular individual could be discerned and
24 distinguished from others, so that the biography, fame,
25 accomplishments, talents, reputation or other tangible and
26 intangible elements of his or her persona could be used for
27 commercial purposes by other persons.

28 (c) "Person" means any living human being, firm,
29 association, partnership, corporation, limited liability company,
30 limited liability partnership, joint-stock company, syndicate,
31 receiver, common-law trust, conservator, statutory trust, or any
32 other concern by whatever name known or however organized, formed,
33 or created, and includes not-for-profit corporations,

34 associations, educational and religious institutions, political
35 parties, community, civic or other organization.

36 (d) "Definable group" means an assemblage of
37 individuals existing or brought together with or without
38 interrelation, orderly form, or arrangement, including, but not
39 limited to, a crowd at any sporting event, parade, or festival;
40 crowd in the street or at a public building; the audience at any
41 theatrical or stage production; a glee club; or sports team.

42 (e) "Photograph" means any photograph or photographic
43 reproduction, still or moving, or any videotape, digital video
44 file or live television transmission of any individual so that the
45 individual is readily identifiable.

46 (f) "Fair use" means the use of an individual's
47 identity for purposes of criticism, comment, news reporting,
48 public affairs, sports broadcasts, teaching, scholarship and
49 research by another person.

50 **SECTION 2.** (1) On the effective date of this act, every
51 individual shall have a property right in his or her identity and
52 its use in any medium and in any manner whatsoever.

53 (2) The individual's right set forth in subsection (1) of
54 this section is freely assignable in whole or in part. Such right
55 does not expire upon the death of the individual so protected,
56 whether or not the right was commercially exploited by the
57 individual during his or her lifetime, but is descendible to the
58 executors, heirs, assigns or legatees of the deceased individual,
59 subject only to the abandonment and termination provisions of this
60 act.

61 **SECTION 3.** Any person who uses the identity of any
62 individual, in any manner which does not constitute a fair use, or
63 in any medium as an item of commerce on or for purposes of
64 advertising products, merchandise, goods or services, for purposes
65 of fund raising, solicitation of donations, or for purposes of the
66 purchase of products, merchandise, goods or services, shall be

67 liable in a civil action, unless the person has obtained (a) the
68 prior consent of the individual, (b) the prior consent of the
69 minor's parent or legal guardian if the individual is a minor, or
70 (c) the prior consent of the executor or administrator, heirs,
71 legatees or assigns of the individual, if the individual is
72 deceased. The fair use of an individual's identity by a person
73 does not infringe on the individual's property right in his
74 identity and does not create liability under this section.

75 **SECTION 4.** (1) The chancery court shall have original
76 jurisdiction for any action arising under the provisions of this
77 act. In the exercise of its sound discretion and upon proper
78 proof, the court may grant all appropriate equitable relief,
79 including any injunctive relief deemed necessary to prevent or
80 restrain the unauthorized use or infringement of the property
81 right set forth in this act.

82 (2) An individual, or in the case of a deceased individual,
83 his or her executor administrator, heir or legatees, shall be
84 entitled to recover the actual damages suffered as a result of the
85 infringement of the individual's property right in his identity,
86 together with any profits attributable to the use or infringement
87 that are not taken into account in computing actual damages. The
88 profit, or lack thereof, attributable to any unauthorized use or
89 infringement of an individual's right shall not be criteria for
90 finding liability.

91 (3) In addition to all other equitable and legal remedies
92 that are provided in this act or under any other state law, at any
93 time while an action under this act is pending, the court may
94 order the impoundment, on such terms as it may deem reasonable, of
95 all materials or any part thereof claimed to have been made or
96 used in violation of the individual's property right in his
97 identity, and of all plates, molds, matrices, masters, tapes, film
98 negatives, digital computer files or other articles by means of
99 which the materials may be reproduced.

100 (4) As part of a final judgment or decree, the court may
101 order the destruction or other reasonable disposition of all
102 materials found to have been made or used in violation of the
103 individual's property right in his identity, and of all plates,
104 molds, matrices, masters, tapes, film negatives, digital computer
105 files or other articles by means of which the materials may be
106 reproduced.

107 (5) In any civil action under this act, the court may allow,
108 in its discretion, the recovery of punitive damages in
109 circumstances involving intentional or reckless disregard of an
110 individual's right conferred under this act. Further, the court,
111 in its discretion, may grant to the prevailing party or parties in
112 any action under this act reasonable attorney's fees and costs
113 associated with the action.

114 (6) All remedies provided for in the act are cumulative and
115 shall be in addition to any others provided by law or equity.

116 **SECTION 5.** (1) With regard only to deceased individuals,
117 the property right in identity granted under this act shall deemed
118 to be permanently abandoned when the executors, assigns, heirs, or
119 devisees of the deceased individual discontinue good faith efforts
120 to commercially exploit the individual's right in the ordinary
121 course of trade and with intent not to resume those efforts.
122 Failure to commercially exploit these rights for three (3)
123 consecutive years after the effective date of this act shall be
124 prima facie evidence that the property right has been abandoned.
125 Upon a finding by a court of competent jurisdiction that the
126 property right has been abandoned, the right shall fall into the
127 public domain.

128 (2) In the event that there is no personal representative,
129 heir, legatee or assign of a deceased individual, the individual
130 and property right in his identity set forth herein shall
131 terminate, and it shall fall into the public domain.

132 **SECTION 6.** This act shall take effect and be in force from
133 and after July 1, 2004.