

By: Senator(s) Posey

To: Judiciary, Division B

SENATE BILL NO. 3006

1 AN ACT TO CREATE THE MISSISSIPPI IDENTITY AND HERITAGE  
 2 PROTECTION ACT OF 2004; TO VEST IN EVERY PERSON, LIVING OR DEAD,  
 3 THE EXCLUSIVE RIGHT TO CONTROL, EXPLOIT AND LICENSE THE COMMERCIAL  
 4 USE OF HIS OR HER IDENTITY, INCLUDING NAME, VOICE, SIGNATURE,  
 5 PHOTOGRAPH AND LIKENESS, IN ANY MANNER, OR PRODUCTS, MERCHANDISE,  
 6 GOODS OR SERVICES; TO ENACT DEFINITIONS; TO PRESCRIBE THE  
 7 EXISTENCE OF PROPERTY RIGHTS IN PERSONA; TO CREATE A CIVIL CAUSE  
 8 OF ACTION; TO PRESCRIBE REMEDIES; TO SPECIFY THE INSTANCES IN  
 9 WHICH ABANDONMENT OCCURS RESULTING IN A TERMINATION OF RIGHTS; AND  
 10 FOR RELATED PURPOSES.

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

12 **SECTION 1. Definitions.** The following words and phrases  
 13 shall have the meanings ascribed unless the context clearly  
 14 requires otherwise:

15 (a) "Individual" means human being, living or dead.

16 (b) "Identity" means any incident of an individual's  
 17 persona or combination thereof by which the uniqueness of that  
 18 particular individual could be discerned and distinguished from  
 19 others so that the biography, fame, accomplishments, talents,  
 20 reputation or other tangible and intangible elements of his or her  
 21 persona could be used for commercial purposes by other persons.

22 (c) "Person" means any living human being, firm,  
 23 association, partnership, corporation, limited liability company,  
 24 limited liability partnership, joint stock company, syndicate,  
 25 receiver, common law trust, conservator, statutory trust, or any  
 26 other concern by whatever name known or however organized, formed,  
 27 or created, and includes not-for-profit corporations,  
 28 associations, educational and religious institutions, political  
 29 parties, community, civic or other organizations.

30 (d) "Definable Group" means an assemblage of  
 31 individuals existing or brought together with or without

32 interrelation, orderly form, or arrangement, including, but not  
33 limited to, a crowd at any sporting event, parade, or festival, a  
34 crowd in the street or at a public building, the audience at any  
35 theatrical or stage production, a glee club or a sports team.

36 (e) "Photograph" means any photograph or photographic  
37 reproduction, still or moving, or any videotape, digital video  
38 file or live television transmission of any individual so that the  
39 individual is readily identifiable.

40 (f) "Fair Use" means a use of an individual's identity  
41 including, but not necessarily limited to, use of his or her name,  
42 voice, signature, photograph, or likeness for purposes of  
43 criticism, comment, news reporting, public affairs, sports  
44 broadcasts, teaching, scholarship and research by another person  
45 that is not an infringement of the rights conferred in this act.

46 **SECTION 2. Property rights conferred in the identity of**  
47 **living and deceased individuals.** (1) Every individual, both  
48 living and deceased, shall have a property right in the use of his  
49 or her identity including, but not necessarily limited to, his or  
50 her name, voice, signature, photograph, or likeness in any medium  
51 and in any manner whatsoever. Fair use is not an infringement of  
52 the rights conferred herein.

53 (2) The individual's rights provided for in subsection (1)  
54 of this section are freely assignable in whole or in part, and do  
55 not expire upon the death of the individual so protected, without  
56 regard to whether such rights were commercially exploited by the  
57 individual during his or her lifetime, but shall be descendible to  
58 the executors, heirs, assigns or legatees of the deceased  
59 individual, subject only to the abandonment and termination  
60 provisions hereinafter provided.

61 **SECTION 3. Civil action created.** Any person who uses the  
62 identity of any living or deceased individual, including, but not  
63 necessarily limited to, his or her name, voice, signature,  
64 photograph, or likeness in any manner or in any medium as an item

65 of commerce on or for purposes of advertising products,  
66 merchandise, goods or services, or for purposes of fund raising,  
67 solicitation of donations, purchases of products, merchandise,  
68 goods, or services, without the prior consent of the individual,  
69 or in the case of a minor, the prior consent of the minor's parent  
70 or legal guardian, or in the case of a deceased individual, the  
71 consent of the executor or administrator, heirs, legatees or  
72 assigns of such deceased individual, shall be liable in a civil  
73 action.

74 **SECTION 4. Remedies, attorney's fees and costs.** (1) The  
75 chancery court shall have original jurisdiction over any action  
76 arising under this act. The court, in the exercise of its sound  
77 discretion and upon proper proof, may grant all appropriate  
78 equitable relief, including, but not limited to, injunctive relief  
79 deemed necessary to prevent or restrain the unauthorized use or  
80 infringement of the rights granted hereunder.

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

89 (3) In addition to all other traditional equitable and legal  
90 remedies that are provided in this section, at any time during the  
91 pendency of an action under this section, the court may order the  
92 impoundment, on such terms as it may deem reasonable, of all  
93 materials or any part thereof claimed to have been made or used in  
94 violation of the individual's rights, all plates, molds, matrices,  
95 masters, tapes, film negatives, digital computer files or other  
96 articles by means of which such materials may be reproduced.

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

103 (5) In any civil action under this act, the court in its  
104 discretion may allow the recovery of punitive damages in proper  
105 circumstances involving intentional or reckless disregard of the  
106 rights conferred by this section. The court in its discretion may  
107 also grant to the prevailing party or parties in any action under  
108 this section reasonable attorney's fees and costs associated with  
109 the action.

110 (6) All remedies provided for in this section are cumulative  
111 and shall be in addition to any others provided by law or equity.

112 **SECTION 5. Abandonment and termination of rights.** (1) With  
113 regard only to deceased individuals, the rights herein granted  
114 shall deemed to be permanently "abandoned," after the effective  
115 date of this statute, when the executors, assigns, heirs, or  
116 devisees of the deceased individual shall discontinue good faith  
117 efforts to commercially exploit the rights herein granted in the  
118 ordinary course of trade with intent not to resume. Failure to  
119 commercially exploit these rights for three (3) consecutive years  
120 after July 1, 2004, shall be prima facie evidence of abandonment.  
121 Upon a finding of abandonment by a court of competent  
122 jurisdiction, all rights granted hereunder shall fall into the  
123 public domain.

124 (2) In the event there are no personal representative,  
125 heirs, legatees or assigns of a deceased individual, the rights  
126 set forth herein shall terminate, and all rights granted hereunder  
127 shall fall into the public domain.

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