

By: Representative Hood

To: Judiciary A

HOUSE BILL NO. 1654

1 AN ACT TO PROVIDE THAT ANY PERSON WHO KNOWINGLY USES  
 2 ANOTHER'S NAME, VOICE, SIGNATURE, PHOTOGRAPH, PUBLICITY,  
 3 REPUTATION, FAME, PERSONAL FOLLOWING OR LIKENESS TO ADVERTISE OR  
 4 SELL ANY PRODUCT WITH THE PERSON'S CONSENT SHALL COMPENSATE THE  
 5 PERSON; TO REQUIRE THE PERSON TO BE READILY IDENTIFIABLE TO  
 6 RECEIVE ANY COMPENSATION UNDER THIS ACT; TO PROVIDE THAT ANY  
 7 PERSON WHO KNOWINGLY USES THE NAME, VOICE, SIGNATURE, PHOTOGRAPH,  
 8 PUBLICITY, REPUTATION, FAME, PERSONAL FOLLOWING OR LIKENESS OF A  
 9 DECEASED PERSON TO ADVERTISE OR SELL ANY PRODUCT WITHOUT THE  
 10 CONSENT OF HIS OR HER CHILDREN SHALL PAY THE PERSON'S CHILDREN;  
 11 AND FOR RELATED PURPOSES.

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

13 **SECTION 1.** (1) (a) Any person who knowingly uses another's  
 14 name, voice, signature, photograph, publicity, reputation, fame,  
 15 personal following or likeness, in any manner, on or in products,  
 16 merchandise, or goods, or for purposes of advertising or selling,  
 17 or soliciting purchases of, products, merchandise, goods or  
 18 services, without such person's prior consent, or, in the case of  
 19 a minor, the prior consent of his parent or legal guardian, shall  
 20 be liable for any damages sustained by the person or persons  
 21 injured as a result thereof.



22 (b) In addition, in any action brought under this  
23 section, the person who violated this section shall be liable to  
24 the injured party or parties in an amount equal to the greater of  
25 Seven Hundred Fifty Dollars (\$750.00) or the actual damages  
26 suffered by him or her as a result of the unauthorized use, and  
27 any profits from the unauthorized use that are attributable to the  
28 use and are not taken into account in computing the actual  
29 damages.

30 (c) In establishing such profits, the injured party or  
31 parties are required to present proof only of the gross revenue  
32 attributable to such use, and the person who violated this section  
33 is required to prove his or her deductible expenses. Punitive  
34 damages may also be awarded to the injured party or parties. The  
35 prevailing party in any action under this section shall also be  
36 entitled to attorney's fees and costs.

37 (2) For purposes of this section, "photograph" means any  
38 photograph or photographic reproduction, still or moving, or any  
39 videotape or live television transmission, of any person, such  
40 that the person is readily identifiable.

41 (a) A person shall be deemed to be readily identifiable  
42 from a photograph when one who views the photograph with the naked  
43 eye can reasonably determine that the person depicted in the  
44 photograph is the same person who is complaining of its  
45 unauthorized use.



46           (b) If the photograph includes more than one (1) person  
47 so identifiable, then the person or persons complaining of the use  
48 shall be represented as individuals rather than solely as members  
49 of a definable group represented in the photograph. A definable  
50 group includes, but is not limited to, the following examples: a  
51 crowd at any sporting event, a crowd in any street or public  
52 building, the audience at any theatrical or stage production, a  
53 glee club, or a baseball team.

54           (c) A person or persons shall be considered to be  
55 represented as members of a definable group if they are  
56 represented in the photograph solely as a result of being present  
57 at the time the photograph was taken and have not been singled out  
58 as individuals in any manner.

59           (3) Where a photograph or likeness of an employee of the  
60 person using the photograph or likeness appearing in the  
61 advertisement or other publication prepared by or on behalf of the  
62 user is only incidental, and not essential, to the purpose of the  
63 publication in which it appears, there shall arise a rebuttable  
64 presumption affecting the burden of producing evidence that the  
65 failure to obtain the consent of the employee was not a knowing  
66 use of the employee's photograph or likeness.

67           (4) For purposes of this section, a use of a name, voice,  
68 signature, photograph, or likeness in connection with any news,  
69 public affairs, or sports broadcast or account, or any political



70 campaign, shall not constitute a use for which consent is required  
71 under subsection (1).

72 (5) The use of a name, voice, signature, photograph, or  
73 likeness in a commercial medium shall not constitute a use for  
74 which consent is required under subsection (1) solely because the  
75 material containing such use is commercially sponsored or contains  
76 paid advertising. Rather it shall be a question of fact whether  
77 or not the use of the person's name, voice, signature, photograph,  
78 or likeness was so directly connected with the commercial  
79 sponsorship or with the paid advertising as to constitute a use  
80 for which consent is required under subsection (1).

81 (6) Nothing in this section shall apply to the owners or  
82 employees of any medium used for advertising, including, but not  
83 limited to, newspapers, magazines, radio and television networks  
84 and stations, cable television systems, billboards, and transit  
85 ads, by whom any advertisement or solicitation in violation of  
86 this section is published or disseminated, unless it is  
87 established that such owners or employees had knowledge of the  
88 unauthorized use of the person's name, voice, signature,  
89 photograph, or likeness as prohibited by this section.

90 (7) The remedies provided for in this section are cumulative  
91 and shall be in addition to any others provided for by law.

92 **SECTION 2.** (1) (a) Any person who uses a deceased  
93 personality's name, voice, signature, photograph, or likeness, in  
94 any manner, on or in products, merchandise, or goods, or for



95 purposes of advertising or selling, or soliciting purchases of,  
96 products, merchandise, goods, or services, without prior consent  
97 from the person or persons specified in subsection (3), shall be  
98 liable for any damages sustained by the person or persons injured  
99 as a result thereof. In addition, in any action brought under  
100 this section, the person who violated this section shall be liable  
101 to the injured party or parties in an amount equal to the greater  
102 of Seven Hundred Fifty Dollars (\$750.00) or the actual damages  
103 suffered by the injured party or parties, as a result of the  
104 unauthorized use, and any profits from the unauthorized use that  
105 are attributable to the use and are not taken into account in  
106 computing the actual damages. In establishing these profits, the  
107 injured party or parties shall be required to present proof only  
108 of the gross revenue attributable to the use, and the person who  
109 violated the section is required to prove his or her deductible  
110 expenses. Punitive damages may also be awarded to the injured  
111 party or parties. The prevailing party or parties in any action  
112 under this section shall also be entitled to attorney's fees and  
113 costs.

114 (b) For purposes of this section, a play, book,  
115 magazine, newspaper, musical composition, audiovisual work, radio  
116 or television program, single and original work of art, work of  
117 political or newsworthy value, or an advertisement or commercial  
118 announcement for any of these works, shall not be considered a  
119 product, article of merchandise, good, or service if it is



120 fictional or nonfictional entertainment, or a dramatic, literary,  
121 or musical work.

122 (c) If a work that is excluded under paragraph (b) of  
123 this subsection includes within it a use in connection with a  
124 product, article of merchandise, good, or service, this use shall  
125 not be exempt under this paragraph (b), regardless of the  
126 inclusion in a work that is otherwise exempt under this paragraph,  
127 if the claimant proves that this use is so directly connected with  
128 a product, article of merchandise, good, or service as to  
129 constitute an act of advertising, selling, or soliciting purchases  
130 of that product, article of merchandise, good, or service by the  
131 deceased personality without prior consent from the person or  
132 persons specified in subsection (4).

133 (2) The rights recognized under this section are property  
134 rights, freely transferable or descendible, in whole or in part,  
135 by contract or by means of any trust or any other testamentary  
136 instrument, executed before or after the effective date of this  
137 act. The rights recognized under this section shall be deemed to  
138 have existed at the time of death of any deceased personality who  
139 died before the effective date of this act, and, except as  
140 otherwise provided in this section, shall vest in the persons  
141 entitled to these property rights under the testamentary  
142 instrument of the deceased personality effective as of the date of  
143 his or her death. In the absence of an express transfer in a  
144 testamentary instrument of the deceased personality's rights in



145 his or her name, voice, signature, photograph, or likeness, a  
146 provision in the testamentary instrument that provides for the  
147 disposition of the residue of the deceased personality's assets  
148 shall be effective to transfer the rights recognized under this  
149 section in accordance with the terms of that provision. The  
150 rights established by this section shall also be freely  
151 transferable or descendible by contract, trust, or any other  
152 testamentary instrument by any subsequent owner of the deceased  
153 personality's rights as recognized by this section. Nothing in  
154 this section shall be construed to render invalid or unenforceable  
155 any contract entered into by a deceased personality during his or  
156 her lifetime by which the deceased personality assigned the  
157 rights, in whole or in part, to use his or her name, voice,  
158 signature, photograph, or likeness, regardless of whether the  
159 contract was entered into before or after the effective date of  
160 this act.

161 (3) The consent required by this section shall be  
162 exercisable by the person or persons to whom the right of consent,  
163 or portion thereof, has been transferred in accordance with  
164 subsection (2), or if no transfer has occurred, then by the person  
165 or persons to whom the right of consent, or portion thereof, has  
166 passed in accordance with subsection (4).

167 (4) After the death of any person, the rights under this act  
168 shall belong to the following person or persons and may be  
169 exercised, on behalf of and for the benefit of all of those



170 persons, by those persons who, in the aggregate, are entitled to  
171 more than a one-half (1/2) interest in the rights:

172 (a) The entire interest in those rights belongs to the  
173 surviving spouse of the deceased personality unless there are any  
174 surviving children or grandchildren of the deceased personality,  
175 in which case one-half (1/2) of the entire interest in those  
176 rights belongs to the surviving spouse.

177 (b) The entire interest in those rights belongs to the  
178 surviving children of the deceased personality and to the  
179 surviving children of any dead child of the deceased personality  
180 unless the deceased personality has a surviving spouse, in which  
181 case the ownership of a one-half (1/2) interest in rights is  
182 divided among the surviving children and grandchildren.

183 (c) If there is no surviving spouse, and no surviving  
184 children or grandchildren, then the entire interest in those  
185 rights belongs to the surviving parent or parents of the deceased  
186 personality.

187 (d) The rights of the deceased personality's children  
188 and grandchildren are in all cases divided among them and  
189 exercisable in the manner provided in according to the number of  
190 the deceased personality's children represented. The share of the  
191 children of a dead child of a deceased personality can be  
192 exercised only by the action of a majority of them.

193 (5) If any deceased personality does not transfer his or her  
194 rights under this section by contract, or by means of a trust or





195 testamentary instrument, and there are no surviving persons, then  
196 the rights set forth in this act shall terminate.

197 (6) (a) A successor in interest to the rights of a deceased  
198 personality under this section or a licensee thereof shall not  
199 recover damages for a use prohibited by this section that occurs  
200 before the successor in interest or licensee registers a claim of  
201 the rights under this act.

202 (b) Any person claiming to be a successor in interest  
203 to the rights of a deceased personality under this act or a  
204 licensee thereof may register that claim with the Secretary of  
205 State on a form prescribed by the Secretary of State and upon  
206 payment of a fee. The form shall be verified and shall include  
207 the name and date of death of the deceased personality, the name  
208 and address of the claimant, the basis of the claim, and the  
209 rights claimed.

210 (c) Upon receipt and after filing of any document under  
211 this section, the Secretary of State shall post the document along  
212 with the entire registry of persons claiming to be a successor in  
213 interest to the rights of a deceased personality or a registered  
214 licensee under this section upon the Secretary of State's Internet  
215 website. The Secretary of State may microfilm or reproduce by  
216 other techniques any of the filings or documents and destroy the  
217 original filing or document. The microfilm or other reproduction  
218 of any document under this section shall be admissible in any  
219 court of law. The microfilm or other reproduction of any document



220 may be destroyed by the Secretary of State seventy (70) years  
221 after the death of the personality named therein.

222 (d) Claims registered under this subdivision shall be  
223 public records.

224 (7) An action shall not be brought under this section by  
225 reason of any use of a deceased personality's name, voice,  
226 signature, photograph, or likeness occurring after the expiration  
227 of seventy (70) years after the death of the deceased personality.

228 (8) As used in this section, "deceased personality" means  
229 any natural person whose name, voice, signature, photograph, or  
230 likeness has commercial value at the time of his or her death, or  
231 because of his or her death, whether or not during the lifetime of  
232 that natural person the person used his or her name, voice,  
233 signature, photograph, or likeness on or in products, merchandise,  
234 or goods, or for purposes of advertising or selling, or  
235 solicitation of purchase of, products, merchandise, goods, or  
236 services. A "deceased personality" shall include, without  
237 limitation, any such natural person who has died within seventy  
238 (70) or more years before the effective date of this act.

239 (9) As used in this section, "photograph" means any  
240 photograph or photographic reproduction, still or moving, or any  
241 videotape or live television transmission, of any person, such  
242 that the deceased personality is readily identifiable. A deceased  
243 personality shall be deemed to be readily identifiable from a



244 photograph if one who views the photograph with the naked eye can  
245 reasonably determine who the person depicted in the photograph is.

246 (10) For purposes of this section, the use of a name, voice,  
247 signature, photograph, or likeness in connection with any news,  
248 public affairs, or sports broadcast or account, or any political  
249 campaign, shall not constitute a use for which consent is required  
250 under this act.

251 (11) The use of a name, voice, signature, photograph, or  
252 likeness in a commercial medium shall not constitute a use for  
253 which consent is required under this act solely because the  
254 material containing the use is commercially sponsored or contains  
255 paid advertising. Rather, it shall be a question of fact whether  
256 or not the use of the deceased personality's name, voice,  
257 signature, photograph, or likeness was so directly connected with  
258 the commercial sponsorship or with the paid advertising as to  
259 constitute a use for which consent is required under this act.

260 (12) Nothing in this section shall apply to the owners or  
261 employees of any medium used for advertising, including, but not  
262 limited to, newspapers, magazines, radio and television networks  
263 and stations, cable television systems, billboards, and transit  
264 advertisements, by whom any advertisement or solicitation in  
265 violation of this section is published or disseminated, unless it  
266 is established that the owners or employees had knowledge of the  
267 unauthorized use of the deceased personality's name, voice,  
268 signature, photograph, or likeness as prohibited by this section.



269 (13) The remedies provided for in this section are  
270 cumulative and shall be in addition to any others provided for by  
271 law.

272 (14) This section shall apply to the adjudication of  
273 liability and the imposition of any damages or other remedies in  
274 cases in which the liability, damages, and other remedies arise  
275 from acts occurring directly in this state. For purposes of this  
276 section, acts giving rise to liability shall be limited to the  
277 use, on or in products, merchandise, goods, or services, or the  
278 advertising or selling, or soliciting purchases of, products,  
279 merchandise, goods, or services prohibited by this subsection.

280 (15) The rights recognized by this act are expressly made  
281 retroactive, including to those deceased personalities who died  
282 before the effective date of this act.

283 **SECTION 3.** This act shall take effect and be in force from  
284 and after July 1, 2024.

