

1 AN ACT relating to a sports personality's right of publicity.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 365 IS CREATED TO  
4 READ AS FOLLOWS:

5 *As used in sections 1 to 7 of this Act, unless the context requires otherwise:*

6 *(1) "Commercial purpose" means the use of an aspect of a sports personality's right*  
7 *of publicity:*

8 *(a) On or in connection with products, merchandise, goods, services, or*  
9 *commercial activities;*

10 *(b) For advertising or soliciting purchases of products, merchandise, goods,*  
11 *services, or for promoting commercial activities; or*

12 *(c) For the purpose of fundraising;*

13 *(2) "Right of publicity" means a sports personality's property interest in the*  
14 *personality's name, voice, signature, photograph, image, likeness, distinctive*  
15 *appearance, gestures, or mannerisms; and*

16 *(3) "Sports personality" means a living or deceased natural person whose name,*  
17 *voice, signature, photograph, image, likeness, distinctive appearance, gesture, or*  
18 *mannerisms have commercial value due to the person's career as a student-*  
19 *athlete, whether or not the person uses or authorizes the use of the person's*  
20 *rights of publicity for a commercial purpose during the person's lifetime.*

21 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 365 IS CREATED TO  
22 READ AS FOLLOWS:

23 *(1) Sections 1 to 7 of this Act apply to an act or event that occurs within Kentucky,*  
24 *regardless of a sports personality's domicile, residence, or citizenship.*

25 *(2) This chapter does not apply to:*

26 *(a) The use of a sports personality's name, voice, signature, photograph, image,*  
27 *likeness, distinctive appearance, gestures, or mannerisms in material that*

- 1           has political or newsworthy value;
- 2           **(b) Promotional material or an advertisement for news reporting that uses all**
- 3           **or part of a past edition of the medium's own broadcast or publication and**
- 4           **does not convey or reasonably suggest that a sports personality endorses the**
- 5           **news report;**
- 6           **(c) The use of a sports personality's name to truthfully identify the sports**
- 7           **personality as the author of a written work or performer of a recorded**
- 8           **performance under circumstances in which the written work or recorded**
- 9           **performance is otherwise rightfully reproduced, exhibited, or broadcast; or**
- 10          **(d) The use of a sports personality's name, voice, signature, photograph, image,**
- 11          **likeness, distinctive appearance, gestures, or mannerisms in connection**
- 12          **with the broadcast or reporting of an event or a topic of general or public**
- 13          **interest.**

14           ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 365 IS CREATED TO  
15 READ AS FOLLOWS:

- 16          **(1) A person may not use an aspect of a sports personality's right of publicity for a**
- 17          **commercial purpose, except as permitted in Section 7 of this Act, during the**
- 18          **sports personality's lifetime or for one hundred (100) years after the date of the**
- 19          **sports personality's death without having obtained previous written consent**
- 20          **pursuant to subsection (2) of Section 6 of this Act.**
- 21          **(2) A claim for a violation of a sports personality's right of publicity may not be**
- 22          **asserted under Sections 1 to 7 of this Act unless the alleged act or event of**
- 23          **violation occurs after the effective date of this Act.**

24           ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 365 IS CREATED TO  
25 READ AS FOLLOWS:

- 26          **(1) A person who violates Section 3 of this Act may be liable for:**
- 27          **(a) Damages in the amount of one thousand dollars (\$1,000), or actual**

1 damages, including profits derived from the unauthorized use, whichever is  
 2 greater;

3 (b) Treble or punitive damages, as the injured party may elect, if the violation is  
 4 knowing, willful, or intentional; and

5 (c) Reasonable attorney's fees, costs, and expenses.

6 (2) The court may order temporary or permanent injunctive relief.

7 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 365 IS CREATED TO  
 8 READ AS FOLLOWS:

9 (1) While an action filed under Section 1 to 7 of this Act is pending, a court may  
 10 order the impoundment of:

11 (a) Goods, merchandise, or other materials claimed to have been made or used  
 12 in violation of Section 3 of this Act; and

13 (b) Plates, molds, matrices, masters, tapes, negatives, or other items from which  
 14 goods, merchandise, or other materials may be manufactured or reproduced  
 15 in violation of Section 3 of this Act.

16 (2) As part of a final judgment or decree, a court may order the destruction or other  
 17 reasonable disposition of items described in subsection (1) of this section.

18 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 365 IS CREATED TO  
 19 READ AS FOLLOWS:

20 (1) The rights recognized under Sections 1 to 7 of this Act are property rights, freely  
 21 transferable and descendible, in whole or in part, by contract, license, gift, trust,  
 22 testamentary document, or by operation of the laws of intestate succession  
 23 applicable to the state administering the estate and property of an intestate  
 24 deceased sports personality, regardless of whether the state recognizes the  
 25 property rights set forth under Sections 1 to 7 of this Act.

26 (2) Written consent and the rights and remedies set forth in Sections 1 to 7 of this  
 27 Act may be exercised and enforced by a sports personality, or by a person to

1 whom the recognized rights of a sports personality have been transferred under  
2 subsection (1) of this section.

3 ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 365 IS CREATED TO  
4 READ AS FOLLOWS:

5 If a deceased sports personality's recognized rights under Sections 1 to 7 of this Act  
6 were not transferred by contract, license, gift, trust, or testamentary document, and  
7 there are no surviving persons to whom the deceased sports personality's recognized  
8 rights pass by intestate succession, the deceased sports personality's rights set forth in  
9 Sections 1 to 7 of this Act terminate.