

HOUSE BILL 557

N2

2lr0312

By: **Delegate Rosenberg**

Introduced and read first time: February 3, 2012

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Estates and Trusts – Deceased Personality – Property Rights**

3 FOR the purpose of establishing that a person who uses a certain deceased
4 personality's name, voice, signature, photograph, or likeness on or in products,
5 merchandise, or goods, or for purposes of advertising or selling, or soliciting
6 purchases of, products, merchandise, goods, or services is liable for certain
7 damages; establishing the amount of damages for an action brought under this
8 Act; establishing that the rights recognized under this Act are property rights
9 that are freely transferable or descendible by contract or by certain other means
10 by certain persons, shall be deemed to have existed at the time of death of a
11 deceased personality who died prior to a certain date, and shall vest in certain
12 persons under certain circumstances; establishing the effectiveness of a certain
13 provision in a testamentary instrument to transfer certain rights; providing
14 that after the death of an individual the rights under this Act shall belong to
15 certain persons; providing that, if a deceased personality does not transfer the
16 rights under this Act by contract or by means of a trust or testamentary
17 instrument, and is not survived by certain persons, then those rights shall
18 terminate; establishing that the rights recognized by this Act are retroactive,
19 including those of deceased personalities who died before a certain date;
20 providing for the construction and application of this Act; defining certain
21 terms; and generally relating to property rights and deceased personalities.

22 BY adding to

23 Article – Estates and Trusts

24 Section 1–501 through 1–514 to be under the new subtitle “Subtitle 5. Deceased
25 Personality”

26 Annotated Code of Maryland

27 (2011 Replacement Volume and 2011 Supplement)

28 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
29 MARYLAND, That the Laws of Maryland read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Estates and Trusts

2 SUBTITLE 5. DECEASED PERSONALITY.

3 1-501.

4 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
5 INDICATED.

6 (B) (1) “DECEASED PERSONALITY” MEANS AN INDIVIDUAL WHOSE
7 NAME, VOICE, SIGNATURE, PHOTOGRAPH, OR LIKENESS HAS COMMERCIAL
8 VALUE AT THE TIME OF THE INDIVIDUAL’S DEATH, WHETHER OR NOT DURING
9 THE LIFETIME OF THAT INDIVIDUAL THE INDIVIDUAL USED THE INDIVIDUAL’S
10 NAME, VOICE, SIGNATURE, PHOTOGRAPH, OR LIKENESS ON OR IN PRODUCTS,
11 MERCHANDISE OR GOODS, OR FOR PURPOSES OF ADVERTISING OR SELLING, OR
12 SOLICITATION OF PURCHASE OF, PRODUCTS, MERCHANDISE, GOODS, OR
13 SERVICES.

14 (2) “DECEASED PERSONALITY” INCLUDES AN INDIVIDUAL WHO
15 HAS DIED WITHIN 70 YEARS BEFORE OCTOBER 1, 2012.

16 (C) “PHOTOGRAPH” MEANS A DIGITAL IMAGE, PHOTOGRAPH, OR
17 PHOTOGRAPHIC REPRODUCTION, STILL OR MOVING, OR A VIDEO TAPE OR LIVE
18 TELEVISION TRANSMISSION OF AN INDIVIDUAL SUCH THAT THE DECEASED
19 PERSONALITY IS READILY IDENTIFIABLE.

20 (D) “READILY IDENTIFIABLE” MEANS THAT THE IDENTITY OF THE
21 DECEASED PERSONALITY DEPICTED IN THE PHOTOGRAPH CAN BE REASONABLY
22 DETERMINED WITH THE NAKED EYE.

23 1-502.

24 (A) A PERSON WHO USES A DECEASED PERSONALITY’S NAME, VOICE,
25 SIGNATURE, PHOTOGRAPH, OR LIKENESS, IN ANY MANNER, ON OR IN
26 PRODUCTS, MERCHANDISE, OR GOODS, OR FOR PURPOSES OF ADVERTISING OR
27 SELLING, OR SOLICITING PURCHASES OF, PRODUCTS, MERCHANDISE, GOODS,
28 OR SERVICES, WITHOUT PRIOR CONSENT FROM THE PERSON OR PERSONS
29 SPECIFIED IN § 1-505 OF THIS SUBTITLE SHALL BE LIABLE FOR ANY DAMAGES
30 SUSTAINED BY THE PERSON OR PERSONS INJURED AS A RESULT OF THE USE.

31 (B) IN AN ACTION BROUGHT UNDER THIS SUBTITLE, A PERSON WHO
32 VIOLATED THIS SUBTITLE SHALL BE LIABLE TO AN INJURED PARTY IN AN
33 AMOUNT EQUAL TO THE GREATER OF \$750 OR THE ACTUAL DAMAGES

1 SUFFERED BY THE INJURED PARTY AS A RESULT OF THE UNAUTHORIZED USE,
2 AND ANY PROFITS FROM THE UNAUTHORIZED USE THAT ARE ATTRIBUTABLE TO
3 THE USE AND ARE NOT TAKEN INTO ACCOUNT IN COMPUTING THE ACTUAL
4 DAMAGES.

5 (C) IN ESTABLISHING THE PROFITS DESCRIBED IN SUBSECTION (B) OF
6 THIS SECTION:

7 (1) AN INJURED PARTY SHALL BE REQUIRED TO PRESENT PROOF
8 ONLY OF THE GROSS REVENUE ATTRIBUTABLE TO THE USE; AND

9 (2) THE PERSON WHO VIOLATED THIS SUBTITLE IS REQUIRED TO
10 PROVE THE PERSON'S DEDUCTIBLE EXPENSES.

11 (D) PUNITIVE DAMAGES MAY BE AWARDED TO THE INJURED PARTY OR
12 PARTIES IN AN ACTION UNDER THIS SUBTITLE.

13 (E) A PREVAILING PARTY IN AN ACTION UNDER THIS SUBTITLE SHALL
14 BE ENTITLED TO REASONABLE ATTORNEY'S FEES AND COSTS.

15 **1-503.**

16 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, FOR
17 PURPOSES OF THIS SUBTITLE, A PLAY, BOOK, MAGAZINE, NEWSPAPER, MUSICAL
18 COMPOSITION, AUDIOVISUAL WORK, RADIO OR TELEVISION PROGRAM, SINGLE
19 AND ORIGINAL WORK OF ART, WORK OF POLITICAL OR NEWSWORTHY VALUE, OR
20 AN ADVERTISEMENT OR COMMERCIAL ANNOUNCEMENT FOR ANY OF THESE
21 WORKS, MAY NOT BE CONSIDERED A PRODUCT, ARTICLE OF MERCHANDISE,
22 GOOD, OR SERVICE IF IT IS FICTIONAL OR NONFICTIONAL ENTERTAINMENT OR A
23 DRAMATIC, LITERARY, OR MUSICAL WORK.

24 (B) IF A PLAY, BOOK, MAGAZINE, NEWSPAPER, MUSICAL COMPOSITION,
25 AUDIOVISUAL WORK, RADIO OR TELEVISION PROGRAM, SINGLE AND ORIGINAL
26 WORK OF ART, WORK OF POLITICAL OR NEWSWORTHY VALUE, OR AN
27 ADVERTISEMENT OR COMMERCIAL ANNOUNCEMENT FOR ANY OF THESE WORKS
28 INCLUDES A USE OF A DECEASED PERSONALITY'S NAME, VOICE, SIGNATURE,
29 PHOTOGRAPH, OR LIKENESS IN CONNECTION WITH A PRODUCT, ARTICLE OF
30 MERCHANDISE, GOOD, OR SERVICE AND THE PLAINTIFF PROVES THAT THE USE
31 IS SO DIRECTLY CONNECTED WITH THE PRODUCT, ARTICLE OF MERCHANDISE,
32 GOOD, OR SERVICE THAT IT CONSTITUTES AN ACT OF ADVERTISING, SELLING,
33 OR SOLICITING PURCHASES OF THE PRODUCT, ARTICLE OF MERCHANDISE,
34 GOOD, OR SERVICE, THE USE IS SUBJECT TO THE PROVISIONS OF THIS
35 SUBTITLE.

1 **1-504.**

2 (A) **THE RIGHTS RECOGNIZED UNDER THIS SUBTITLE:**

3 (1) **ARE PROPERTY RIGHTS, FREELY TRANSFERABLE OR**
4 **DESCENDIBLE, IN WHOLE OR IN PART, BY CONTRACT OR BY MEANS OF A TRUST**
5 **OR OTHER TESTAMENTARY INSTRUMENT, EXECUTED BEFORE, ON, OR AFTER**
6 **OCTOBER 1, 2012;**

7 (2) **SHALL BE DEEMED TO HAVE EXISTED AT THE TIME OF DEATH**
8 **OF A DECEASED PERSONALITY WHO DIED PRIOR TO OCTOBER 1, 2012; AND**

9 (3) **SHALL VEST IN THE PERSONS ENTITLED TO THESE PROPERTY**
10 **RIGHTS UNDER THE TESTAMENTARY INSTRUMENT OF THE DECEASED**
11 **PERSONALITY EFFECTIVE AS OF THE DATE OF THE DEATH OF THE DECEASED**
12 **PERSONALITY.**

13 (B) **IN THE ABSENCE OF AN EXPRESS TRANSFER IN A TESTAMENTARY**
14 **INSTRUMENT OF THE DECEASED PERSONALITY'S RIGHTS TO THE NAME, VOICE,**
15 **SIGNATURE, PHOTOGRAPH, OR LIKENESS OF THE DECEASED PERSONALITY, A**
16 **PROVISION IN THE TESTAMENTARY INSTRUMENT THAT PROVIDES FOR THE**
17 **DISPOSITION OF THE RESIDUE OF THE ASSETS OF THE DECEASED PERSONALITY**
18 **SHALL BE EFFECTIVE TO TRANSFER THE RIGHTS RECOGNIZED UNDER THIS**
19 **SUBTITLE IN ACCORDANCE WITH THE TERMS OF THAT PROVISION.**

20 (C) **THE RIGHTS ESTABLISHED UNDER THIS SUBTITLE SHALL BE**
21 **FREELY TRANSFERABLE OR DESCENDIBLE BY CONTRACT, TRUST, OR OTHER**
22 **TESTAMENTARY INSTRUMENT BY A SUBSEQUENT OWNER OF THE RIGHTS OF**
23 **THE DECEASED PERSONALITY AS RECOGNIZED BY THIS SUBTITLE.**

24 (D) **THIS SUBTITLE MAY NOT BE CONSTRUED TO RENDER INVALID OR**
25 **UNENFORCEABLE A CONTRACT ENTERED INTO BY A DECEASED PERSONALITY**
26 **DURING THE LIFETIME OF THE DECEASED PERSONALITY BY WHICH THE**
27 **DECEASED PERSONALITY ASSIGNED THE RIGHTS, IN WHOLE OR IN PART, TO USE**
28 **THE NAME, VOICE, SIGNATURE, PHOTOGRAPH, OR LIKENESS OF THE DECEASED**
29 **PERSONALITY, REGARDLESS OF WHETHER THE CONTRACT WAS ENTERED INTO**
30 **BEFORE, ON, OR AFTER OCTOBER 1, 2012.**

31 **1-505.**

32 **THE CONSENT REQUIRED BY THIS SUBTITLE SHALL BE EXERCISABLE BY**
33 **THE PERSON OR PERSONS TO WHOM THE RIGHT OF CONSENT, OR PORTION OF**

1 THE RIGHT OF CONSENT, HAS BEEN TRANSFERRED IN ACCORDANCE WITH §
2 1-504 OF THIS SUBTITLE, OR IF NO TRANSFER HAS OCCURRED, THEN BY THE
3 PERSON OR PERSONS TO WHOM THE RIGHT OF CONSENT, OR PORTION OF THE
4 RIGHT OF CONSENT, HAS PASSED IN ACCORDANCE WITH § 1-506 OF THIS
5 SUBTITLE.

6 1-506.

7 (A) SUBJECT TO §§ 1-504 AND 1-505 OF THIS SUBTITLE, AFTER THE
8 DEATH OF AN INDIVIDUAL, THE ENTIRE INTEREST IN THE RIGHTS UNDER THIS
9 SUBTITLE SHALL BELONG TO THE FOLLOWING PERSON OR PERSONS AND MAY
10 BE EXERCISED, ON BEHALF OF AND FOR THE BENEFIT OF ALL OF THOSE
11 PERSONS, BY THOSE PERSONS WHO, IN THE AGGREGATE, ARE ENTITLED TO
12 MORE THAN A ONE-HALF INTEREST IN THE RIGHTS:

13 (1) THE SURVIVING SPOUSE OF THE DECEASED PERSONALITY,
14 UNLESS THERE ARE ANY SURVIVING CHILDREN OR GRANDCHILDREN OF THE
15 DECEASED PERSONALITY, IN WHICH CASE ONE-HALF OF THE ENTIRE INTEREST
16 IN THOSE RIGHTS BELONG TO THE SURVIVING SPOUSE;

17 (2) THE SURVIVING CHILDREN OF THE DECEASED PERSONALITY
18 AND TO THE SURVIVING CHILDREN OF ANY DEAD CHILD OF THE DECEASED
19 PERSONALITY, UNLESS THE DECEASED PERSONALITY HAS A SURVIVING
20 SPOUSE, IN WHICH CASE THE OWNERSHIP OF A ONE-HALF INTEREST IN RIGHTS
21 IS DIVIDED AMONG THE SURVIVING CHILDREN AND GRANDCHILDREN; AND

22 (3) IF THE DECEASED PERSONALITY HAS NO SURVIVING SPOUSE,
23 NO SURVIVING CHILDREN, OR NO SURVIVING GRANDCHILDREN, THE SURVIVING
24 PARENT OR PARENTS OF THE DECEASED PERSONALITY.

25 (B) (1) THE RIGHTS OF A DECEASED PERSONALITY'S CHILDREN AND
26 GRANDCHILDREN SHALL BE DIVIDED AMONG THE DECEASED PERSONALITY'S
27 CHILDREN AND GRANDCHILDREN AND EXERCISABLE IN THE MANNER PROVIDED
28 IN § 1-210 OF THIS TITLE ACCORDING TO THE NUMBER OF THE DECEASED
29 PERSONALITY'S CHILDREN REPRESENTED.

30 (2) THE SHARE OF THE CHILDREN OF A DEAD CHILD OF A
31 DECEASED PERSONALITY CAN BE EXERCISED ONLY BY THE ACTION OF A
32 MAJORITY OF THOSE CHILDREN.

33 1-507.

1 IF A DECEASED PERSONALITY DOES NOT TRANSFER THE RIGHTS OF THE
2 DECEASED PERSONALITY UNDER THIS SUBTITLE BY CONTRACT OR BY MEANS OF
3 A TRUST OR TESTAMENTARY INSTRUMENT AND THERE ARE NO SURVIVING
4 PERSONS AS DESCRIBED IN § 1-506 OF THIS SUBTITLE, THE RIGHTS SET FORTH
5 IN § 1-502 OF THIS SUBTITLE SHALL TERMINATE.

6 1-508.

7 AN ACTION MAY NOT BE BROUGHT UNDER THIS SUBTITLE BECAUSE OF
8 THE USE OF A DECEASED PERSONALITY'S NAME, VOICE, SIGNATURE,
9 PHOTOGRAPH, OR LIKENESS OCCURRING AFTER THE EXPIRATION OF 70 YEARS
10 AFTER THE DEATH OF THE DECEASED PERSONALITY.

11 1-509.

12 FOR THE PURPOSES OF THIS SUBTITLE, THE USE OF A NAME, VOICE,
13 SIGNATURE, PHOTOGRAPH, OR LIKENESS IN CONNECTION WITH A NEWS, PUBLIC
14 AFFAIRS, OR SPORTS BROADCAST OR ACCOUNT OR A POLITICAL CAMPAIGN
15 DOES NOT CONSTITUTE A USE FOR WHICH CONSENT IS REQUIRED UNDER §
16 1-502 OF THIS SUBTITLE.

17 1-510.

18 (A) THE USE OF A NAME, VOICE, SIGNATURE, PHOTOGRAPH, OR
19 LIKENESS IN A COMMERCIAL MEDIUM MAY NOT CONSTITUTE A USE FOR WHICH
20 CONSENT IS REQUIRED UNDER § 1-502 OF THIS SUBTITLE SOLELY BECAUSE
21 THE MATERIAL CONTAINING THE USE IS COMMERCIALY SPONSORED OR
22 CONTAINS PAID ADVERTISING.

23 (B) IT SHALL BE A QUESTION OF FACT WHETHER THE USE OF THE
24 DECEASED PERSONALITY'S NAME, VOICE, SIGNATURE, PHOTOGRAPH, OR
25 LIKENESS WAS SO DIRECTLY CONNECTED WITH THE COMMERCIAL
26 SPONSORSHIP OR WITH THE PAID ADVERTISING THAT THE USE CONSTITUTES A
27 USE FOR WHICH CONSENT IS REQUIRED UNDER § 1-502 OF THIS SUBTITLE.

28 1-511.

29 THIS SUBTITLE DOES NOT APPLY TO THE OWNERS OR EMPLOYERS OF A
30 MEDIUM USED FOR ADVERTISING, INCLUDING WEB SITES, NEWSPAPERS,
31 MAGAZINES, RADIO AND TELEVISION NETWORKS AND STATIONS, CABLE
32 TELEVISION SYSTEMS, BILLBOARDS, AND TRANSIT ADVERTISEMENTS, BY WHOM
33 AN ADVERTISEMENT OR SOLICITATION IN VIOLATION OF THIS SUBTITLE IS
34 PUBLISHED OR DISSEMINATED, UNLESS IT IS ESTABLISHED THAT THE OWNERS

1 OR EMPLOYERS HAD KNOWLEDGE OF THE UNAUTHORIZED USE OF THE
2 DECEASED PERSONALITY'S NAME, VOICE, SIGNATURE, PHOTOGRAPH, OR
3 LIKENESS AS PROHIBITED BY THIS SUBTITLE.

4 **1-512.**

5 THE REMEDIES PROVIDED FOR IN THIS SUBTITLE ARE CUMULATIVE AND
6 SHALL BE IN ADDITION TO OTHERS PROVIDED FOR BY LAW.

7 **1-513.**

8 (A) THIS SUBTITLE SHALL APPLY TO THE ADJUDICATION OF LIABILITY
9 AND THE IMPOSITION OF DAMAGES OR OTHER REMEDIES IN CASES IN WHICH
10 THE LIABILITY, DAMAGES, AND OTHER REMEDIES ARISE FROM THE ACTS
11 OCCURRING IN THIS STATE.

12 (B) FOR PURPOSES OF THIS SUBTITLE, ACTS GIVING RISE TO LIABILITY
13 SHALL BE LIMITED TO THE USE, ON OR IN PRODUCTS, MERCHANDISE, GOODS,
14 OR SERVICES, OR THE ADVERTISING OR SELLING, OR SOLICITING PURCHASES
15 OF, PRODUCTS, MERCHANDISE, GOODS, OR SERVICES PROHIBITED BY THIS
16 SUBTITLE.

17 **1-514.**

18 THE RIGHTS RECOGNIZED BY THIS SUBTITLE ARE EXPRESSLY MADE
19 RETROACTIVE, INCLUDING TO THOSE DECEASED PERSONALITIES WHO DIED
20 BEFORE OCTOBER 1, 2012.

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
22 construed to apply only prospectively and may not be applied or interpreted to have
23 any effect on or application to any cause of action arising from the use of a name,
24 voice, signature, photograph, or likeness before the effective date of this Act.

25 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
26 October 1, 2012.