

**SENATE . . . . . No. 1630****The Commonwealth of Massachusetts**

PRESENTED BY:

***Stanley C. Rosenberg****To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act protecting the commercial value of artists, entertainers, and other notable personalities.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Stanley C. Rosenberg</i>	<i>Hampshire, Franklin and Worcester</i>
<i>Benjamin B. Downing</i>	<i>Berkshire, Hampshire, Franklin and Hampden</i>
<i>Gale D. Candaras</i>	<i>First Hampden and Hampshire</i>
<i>Garrett J. Bradley</i>	<i>3rd Plymouth</i>
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>
<i>William Smitty Pignatelli</i>	<i>4th Berkshire</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>
<i>Paul W. Mark</i>	<i>2nd Berkshire</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>
<i>Stephen Kulik</i>	<i>1st Franklin</i>
<i>Ellen Story</i>	<i>3rd Hampshire</i>
<i>Aaron Vega</i>	<i>5th Hampden</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>

# SENATE . . . . . No. 1630

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By Mr. Rosenberg, a petition (accompanied by bill, Senate, No. 1630) of Stanley C. Rosenberg, Benjamin B. Downing, Gale D. Candaras, Garrett J. Bradley and other members of the General Court for legislation relative to the protection of the commercial value of artists, entertainers, and other notable personalities. Tourism, Arts and Cultural Development.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. 2382 OF 2011-2012.]

## The Commonwealth of Massachusetts

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In the Year Two Thousand Thirteen  
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An Act protecting the commercial value of artists, entertainers, and other notable personalities.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           SECTION 1. Chapter 214 of the General Laws is hereby amended by striking out section  
2   3A, as appearing in the 2010 Official Edition, and inserting in place thereof the following  
3   section:-

4           Section 3A. (a) As used in this section, the following words shall, unless the context  
5   clearly requires otherwise, have the following meanings:-

6           “Aspect”, 1 part of a personality’s identity, such as a name or image, for which the right  
7   of publicity may be transferred separately from the right of publicity for other parts of a  
8   personality’s identity under paragraph (1) of subsection (d).

9           "Commercial use", the use of a personality’s identity (A) on or in goods, products or  
10   services, (B) for the purpose of advertising goods, products or services or (C) for fundraising;  
11   provided, that commercial use shall not include: (i) use of a personality’s identity as part of a  
12   news report or commentary or as part of an artistic or expressive work, such as a live  
13   performance, work of art, literary work, theatrical work, musical work, audiovisual work,  
14   motion picture, television program, radio program or the like, (ii) use of a personality’s identity  
15   in an advertisement, promotion or commercial announcement for any such news report,

commentary or work containing the personality's identity, (iii) use of a personality's identity in the personality's role as a member of the public where the personality is not named or similarly identified, (iv) use of a personality's identity or a group of personalities' identities in a manner that is incidental or de minimis or (v) use of a personality's identity in a manner that is otherwise permitted by law.

"Identity", a personality's name, likeness, voice or signature that uniquely identifies that particular personality.

"Name", the actual or assumed name or nickname of a personality that identifies that particular personality.

"Person", any individual, firm, association, partnership, corporation, joint stock company, limited liability company, syndicate, receiver, common law trust, conservator, statutory trust or any other concern or entity, however named, organized, formed or created; provided, that this shall include not-for-profit corporations, associations, educational and religious institutions, political parties, campaign committees and community, civic and other organizations.

"Personality", an individual whose identity has commercial value.

"Right of Publicity", the property interest established in subsection (b).

(b) A personality shall have a property interest in such personality's identity and shall have the exclusive right to control the commercial use of the personality's identity during the personality's lifetime and for 70 years after the date of the personality's death, unless terminated earlier under paragraph (5) of subsection (d).

(c) (1) Except as otherwise provided in this section, a person who knowingly makes a commercial use of a personality's identity in the commonwealth during the personality's lifetime or for 70 years after the date of the personality's death, without written consent of the personality or of the person or persons who collectively own more than 50 per cent of the aspect of the personality's right of publicity that was commercially used, shall have infringed the personality's right of publicity.

(2) Paragraph (1) shall not apply to an owner of any medium used for advertising through which an infringing use is published, broadcast or disseminated, unless it is established that the owner had actual knowledge that the use of the personality's identity was an infringement of the personality's right of publicity.

(3) A person who owns, or persons who collectively own, more than 50 per cent of the commercially used aspect of a personality's right of publicity, and only such person or persons, may enforce the personality's right of publicity by bringing a civil action against a person who has infringed or is infringing the right of publicity to prevent and restrain the

infringement, including restraint on a preliminary basis, and to recover damages as described in paragraph (5).

(4) This section shall apply only in the following circumstances: (i) the personality's domicile is in the commonwealth, (ii) in the case of a deceased personality, the deceased personality's domicile was in the commonwealth on the date of the personality's death or (iii) the infringing use is directed only to persons in the commonwealth and, if the personality is deceased, on the date of the personality's death the personality was a domiciliary of a state that recognized a descendible right of publicity for the personality and the persons owning the infringed aspect of such right of publicity has registered such interest under any applicable laws of such state.

(5) Damages for infringement of the right of publicity shall be awarded in an amount equal to the greater of (i) \$1,000 or (ii) the actual damages suffered as a result of the infringement, including any profit of the infringer attributable to the infringement that is not taken into account in computing the actual damages. In establishing such profit, the person alleging the infringement shall prove the gross revenue attributable to the infringement and the alleged infringer shall prove any deductible expenses.

(6) The court may award the prevailing party in an action under this section reasonable attorney's fees, expenses and court costs incurred in recovering any remedy or defending any claim under this section.

(7) A defendant's reliance upon the written consent of a personality or a person or persons who collectively own more than 50 per cent of the commercially used aspect of the personality's right of publicity and who have registered the transfer of such interest: (i) under paragraph (3) of subsection (d); (ii) in another state that is the domicile of a living personality; or (iii) if the personality is deceased, in another state that is the personality's last domicile, shall be a complete defense in any action under this section.

(d) (1) A personality's right of publicity is freely transferable, in whole or in part, by any form of inter vivos or testamentary transfer, including, but not limited to, by written contract, assignment, license, gift, trust, testamentary document or intestate succession; provided, that no interest in the right of publicity shall escheat to any state, commonwealth or other jurisdiction. Notwithstanding section 3-101 of chapter 190B of the General Laws, insofar as a personality does not transfer the right of publicity, in whole or in part, during life, a deceased personality's personal representative or voluntary personal representative shall be the transferee from the personality's death until the deceased personality's right of publicity is transferred by such personal representative.

(2) A person or persons meeting the requirements of paragraph (3) of subsection (c) to whom an interest in a personality's right of publicity has been transferred shall not bring a

civil action under this section unless the transferee has or all such transferees have registered the transfer or transfers with the state secretary under this subsection.

(3) A transferee shall register the transfer with the state secretary on a form prescribed by the secretary. The form shall include the name of the personality, the date of the transfer, the date of death and the personality's domicile at the time of death if the personality is deceased, the name and address of the transferee, the name and address of any persons authorized to act on behalf of the transferee, the method of transfer and the nature and percentage of the interest in the right transferred. The information provided on the form and related documents shall be submitted by the transferee under the pains and penalties of perjury. The state secretary may collect a fee for the registration that does not exceed the incremental costs of recording the documents and maintaining the registry. Upon receipt of the form and related documents for filing, the state secretary shall post the form and documents in a registry of interests in transferred rights of publicity on the state secretary's website. A reproduction of a record under this section that is certified by the state secretary shall be admissible in a court of law. The state secretary shall not be required to retain a record or reproduction concerning a registration under this section for more than 80 years after the date of the personality's death. A form or other document filed under this section shall be considered a public record under clause Twenty-sixth of section 7 of chapter 4 or chapter 66.

(4) A person or persons meeting the requirements of paragraph (3) of subsection (c) to whom an interest in a personality's right of publicity has been transferred shall not recover damages or other relief for an infringement that occurred before the date that the transferee has or all such transferees have registered the transfer or transfers under paragraph (3); provided, that a transferee or transferees may recover for infringements that occurred during the period alleged in a civil action properly commenced by the personality or transferor prior to the transfer.

(5) A deceased personality's right of publicity shall terminate (i) if at any time there is no transferee or (ii) upon proof that no transferee has registered a transfer during the personality's life or within 5 years after the personality's death.

(6) No action shall be brought under this section for any commercial use of a personality's identity occurring more than 70 years after the date of the personality's death.

SECTION 2. Section 3A of chapter 214 of the General Laws shall provide the exclusive rights and remedies for infringement of the right of publicity occurring after the effective date of this act and shall supersede any common law or statutory rights and remedies.