

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2009

Legislative Fiscal Note

BILL NUMBER: House Bill 327 (First Edition)

SHORT TITLE: Right to Publicity.

SPONSOR(S): Representatives Howard, Owens, Barnhart, and Goodwin

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>
REVENUES	\$15	\$15	\$15	\$15	\$15
EXPENDITURES	\$45,050				
POSITIONS (cumulative):	-	-	-	-	-
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Secretary of State					
EFFECTIVE DATE: January 1, 2010					

BILL SUMMARY:

HB 327 prohibits the unauthorized use of another individual’s personality for commercial purposes and defines the terms “commercial purpose,” “individual,” “personality,” and “photograph.” The bill defines the right to publicity as the property right to control and to choose whether and how to use an individual’s personality for commercial purposes. Rights granted by this act are freely transferable and descendible by contract, license, gift, trust, testamentary document, intestate succession, and subsequent owner. This bill also prohibits an action under this statute after an individual has been deceased for 70 years; failure to use a deceased individual’s right to publicity during that 70-year period does not limit enforcement of an action based on a registered claim of right under the proposed bill.

This bill requires that successors-in-interest register the right of publicity of deceased individuals with the Secretary of State (Secretary) with payment of a \$5 fee. The Secretary is required to post on its website the registration documents within an entire registry of individuals claiming to be successors-in-interest to personality rights of a deceased individual or a registered licensee. The Secretary may microfilm or reproduce the filings or documents and destroy the originals, and also

may destroy microfilm or reproduction of the registration document 70 years after the death of the individual. Registration documents shall be removed from the website if, by court order, a successor-in-interest is shown to have no property rights in the deceased individual's right to publicity.

This bill further creates liability for sustained damages for any person who knowingly uses another individual's personality for commercial purposes without prior consent. Consent is required when applicable to be exercised by the individual, a parent or legal guardian in the case of a minor, a licensee or successor-in-interest if the right to publicity has been transferred, or an authorized agent of any of these individuals. This bill also covers the right of publicity for individuals in multiple-subject photographs.

Violation of this statute will incur a penalty of \$1,000 or the amount of actual damages, whichever is greater, and includes any profits attributable to the use of the right to publicity in actual damages. In such cases a court may grant injunctive relief, award punitive damages, and award attorneys' fees to the prevailing party. This bill also establishes a three-year statute of limitations and will apply to actions or events occurring on or after January 1, 2010.

Source: Bill Digest H.B. 327 (02/26/0200).

ASSUMPTIONS AND METHODOLOGY:

Revenues

Although at least nineteen states currently recognize the right to publicity to some degree in their laws, only Oklahoma, Texas, and Nevada currently charge a fee for successor-in-interest or right to publicity registration. According to other states, the average number of registrations processed by their offices is three per year. At a similar rate of registration, the Secretary of State would generate \$15 per year in revenue.

Expenditures

The Secretary of State will need to develop a new profile in order to create a registration and filing process for right to publicity claims. This system will need to include not only the profile information, but the programming to include receipting functions for this filing.

The profile will be indexed by the personality right being claimed and must have the following features:

- a. Information contained in G.S. 41B-6;
- b. Attachment capabilities for the sworn affidavit;
- c. Fee amount (\$5);
- d. Each claimant as an event within that profile;
- e. Ability to be searchable by both the personality being claimed and the claimant;
- f. Ability to be viewable online;
- g. Knowledge Base (KB) system will need to be programmed for examination purposes along with all examination/rejection parameters and correspondence associated; and

- h. Receipting functions to include payment, paying party, document type, scan of both check and document, et cetera for cash management purposes.

The Secretary of State estimates that text development of the registration document will take approximately two weeks and will cost \$50.00. Programming of the system will take approximately three months and will cost \$45,000. Due to the small number of registrations anticipated to be received annually, the costs to microfilm, reproduce, or electronically scan the registrations will be negligible. The total expenditures for implementation of this bill will be \$45,050.

SOURCES OF DATA: Secretary of State; National Council of State Legislatures

TECHNICAL CONSIDERATIONS:

- 1) The period after the word “individual” should be removed from Line 25, Page 1.
- 2) References to microfilm and other techniques of reproduction should be altered to include electronic scanning of documents.

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Signed Copy Located in the NCGA Principal Clerk's Offices