

1.1 Senator ..... moves to amend S.F. No. 3609 as follows:

1.2 Delete everything after the enacting clause and insert:

1.3 "Section 1. **[604.25] RIGHT OF PUBLICITY; CAUSE OF ACTION.**

1.4 Subdivision 1. **Definitions.** (a) The definitions in this subdivision apply to this  
1.5 section.

1.6 (b) "Governing instrument" means a will, trust, or other dispositive or nominative  
1.7 document recognized under law.

1.8 (c) "Individual" mean a human being, living or dead, whose domicile is in Minnesota  
1.9 or who was domiciled in Minnesota at the time of the individual's death.

1.10 (c) "Photograph" means a film, digital photograph, or photographic reproduction,  
1.11 still or moving, or a videotape or digital video recording, in which an individual is readily  
1.12 identifiable. An individual is readily identifiable if a reasonable person could determine  
1.13 who the individual in the photograph is without using technology to enhance the image.

1.14 Subd. 2. **Cause of action for right of publicity.** (a) A person is liable in a civil  
1.15 action for violating an individual's right of publicity if, without prior consent from the  
1.16 person whose consent to the use is required under paragraph (b), that person uses the  
1.17 readily identifiable name, voice, signature, photograph, or likeness of the individual,  
1.18 in any manner:

1.19 (1) on or in products, merchandise, goods, or services;

1.20 (2) for purposes of advertising or selling; or

1.21 (3) for soliciting purchases of products, merchandise, goods, or services or donations.

1.22 (b) Except as otherwise provided in this paragraph, a person must have the prior  
1.23 consent of the individual or, if the individual has assigned or licensed the individual's  
1.24 right of publicity, the prior consent of the assignee or licensee or a successor assignee or  
1.25 licensee. If an individual is a minor at the time a person seeks to use the individual's right  
1.26 of publicity, the person must have the prior consent of the minor's parent or conservator or,  
1.27 if there is not a parent or a conservator, a legal guardian. A consent on behalf of a minor  
1.28 expires when the individual reaches the age of majority. If an individual is an incapacitated  
1.29 person at the time the person seeks to use the individual's right of publicity, the person  
1.30 must have the prior consent of the conservator of the individual's estate, the individual's  
1.31 attorney-in-fact or, if the individual does not have a conservator or attorney-in-fact, the  
1.32 individual's guardian. If an individual is deceased and there is not a license or assignment  
1.33 of the right that continues after the individual's death, a person must have the prior consent  
1.34 of the person in whom the rights vest under subdivision 5.

1.35 Subd. 3. **Damages.** (a) A person who violates subdivision 2 is liable for:

1.36 (1) actual damages;

2.1 (2) an amount equal to the profits earned through the unauthorized use of the right of  
2.2 publicity that are not taken into account in computing actual damages; and

2.3 (3) punitive damages as provided under section 549.20.

2.4 (b) In determining the amount of profit earned under paragraph (a), clause (2), the  
2.5 injured party must be required to present proof only of the gross revenue attributable to  
2.6 the use of the right of publicity and the burden to prove deductible expenses from that  
2.7 amount is on the party defending the action.

2.8 Subd. 4. **Injunctive relief.** In an action brought under this section, the court may  
2.9 grant injunctive relief to prevent or restrain the use of an individual's name, voice, signature,  
2.10 photograph, or likeness in violation of subdivision 2, including enjoining a defendant from  
2.11 further creation or distribution of materials that violate an individual's right of publicity.

2.12 Subd. 5. **Duration of right of publicity.** (a) The right of publicity under subdivision  
2.13 2 is exclusive to the individual during the individual's lifetime, subject to the assignment  
2.14 or licensing of the right.

2.15 (b) The right of publicity under subdivision 2 is transferable and descendible, in  
2.16 whole or in part, by contract, by means of a governing instrument, or by intestacy under  
2.17 chapter 524. The right survives the death of an individual and exclusively vests in the  
2.18 persons entitled to the right under a contract, governing instrument, or by intestacy.

2.19 (c) The right of publicity under subdivision 2 survives for a period of 50 years  
2.20 after the death of the individual.

2.21 Subd. 6. **Exceptions.** (a) A person is not liable under this section if the individual's  
2.22 name, voice, signature, photograph, or likeness is used:

2.23 (1) in connection with news, reporting of news, public affairs, political activity,  
2.24 political speech, sports broadcasting, commentary, criticism, parody, education, or  
2.25 research;

2.26 (2) in any of the following works, regardless of length or format, appearing in any  
2.27 medium now known or devised in the future, fictional or nonfictional, provided that the use  
2.28 does not constitute an advertisement, endorsement, or solicitation for the sale or purchase  
2.29 of another product, merchandise, good, or service: a play, book, graphic novel, or other  
2.30 literary work; a theatrical work or performance; a musical composition, musical sound  
2.31 recording, or similar musical work; a radio program, Internet streaming audio, or digital  
2.32 podcast; a documentary, film, motion picture, Internet streaming video, television program,  
2.33 or other audiovisual work; or not more than five copies of a single work of original art;

2.34 (3) in the collection, reporting, supplying, processing, matching, distribution, or  
2.35 licensing of data, provided this activity is not conducted to exploit the commercial value of  
2.36 the personality associated with a specific name, voice, signature, photograph, or likeness; or

3.1 (4) in an advertisement or solicitation for a use permitted by this subdivision.

3.2 (b) A person is not liable under this section for licensing a photograph for a use  
3.3 permitted under paragraph (a).

3.4 Subd. 7. **Immunity.** Providers of a medium used for advertising, including  
3.5 online services, newspapers, magazines, Web sites, mobile software applications, radio,  
3.6 television, or Internet broadcasts, billboards, and advertising displays are not liable under  
3.7 subdivision 2 unless the advertisement or solicitation is for promoting the products,  
3.8 merchandise, goods, or services of the advertising medium.

3.9 Subd. 8. **Relation to other law.** (a) This section applies to an individual otherwise  
3.10 entitled to the protections under chapter 333.

3.11 (b) The remedies provided for in this section are cumulative and are in addition to  
3.12 other remedies under law.

3.13 **EFFECTIVE DATE.** This section is effective the day following final enactment  
3.14 and applies to actions that accrue on or after that date. This section applies to the rights of  
3.15 a deceased individual who died before the effective date to the extent the right continues  
3.16 to exist under this section."

3.17 Amend the title accordingly