
STATE HOUSE NEWS SERVICE

LAWMAKERS SEEK TO PROTECT IMAGES OF BAY STATE CELEBS AFTER DEATH

By Andy Metzger
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STATE HOUSE, BOSTON, AUG. 1, 2012.....The Bay State's famous residents won't need to worry about their visages or unique mannerisms being improperly used in advertisements once they are no longer around to protect their reputations if legislation filed by Sen. Stanley Rosenberg (D-Amherst) becomes law.

The bill would allow personalities to transfer their "right of publicity" in a will, so their heirs would have some control over the use of their image for several decades after their deaths.

"We want celebrities who live in Massachusetts to maintain their residence in Massachusetts and continue to be our citizens and our neighbors," Rosenberg told the News Service shortly after his bill - S 2382 - passed the Senate on a voice vote Thursday. "And a number of other states have now updated their laws to help protect people's rights after they pass away with regard to the ownership of their likeness, their voice, their character, etcetera. We just wanted to be sure that we're state of the art."

The bill has been sent to the House Committee on Ways and Means. With informal sessions scheduled for the rest of the year, the legislation could pass as long as all lawmakers attending such sessions are okay with advancing it.

Currently, anyone who wants to use the portrait or picture of a person for use in advertising or "purposes of trade" must have written consent from the person whose likeness is being used, according to state law. If not, the person whose image was used can sue. Through case law the protected uses have expanded to include a voice or even a gesture that is widely associated with a particular character, according to an aide in Rosenberg's office. However, state law has no provision for maintaining control over a person's image after that person dies.

"During your lifetime if you're a celebrity of any sort, your persona, your name, your face, your voice, the characters you create, the characters that you play are all protected and you own them," Rosenberg said in the Senate on Thursday. "Upon your death however, they are no longer protected. So your heirs have nothing to say in many instances."

Rosenberg's bill specifically defines the people covered under the legislation as "personalities" whose "identity has commercial value"; an aide in the senator's office said current statute and case law are already limited to people whose images have value – otherwise they would not be used in advertising. The legislation specifically exempts news reports, art or the promotion of those news reports or art, from being subject to the law. Rosenberg said the bill would apply to artists, athletes and others.

If the law passes, Massachusetts would become the 16th state to extend the right of publicity beyond death by statute and others have done so through common law. According to an aide to Rosenberg, Tennessee was the first state to extend the rights beyond death, soon after Elvis Presley died and at the urging of his estate.

California, which is one of the states with a law on its books, has a form that heirs can fill out to claim their rights as well as an online database of dead people and the heirs who hold their rights of publicity.

The bill working its way through the State House would extend those rights 70 years after a personality's death.

To illustrate the necessity of the law, Rosenberg used the example of Massachusetts resident and renowned comedian

Bill Cosby, whose family might lose the rights to the Cosby's characters, such as Fat Albert after Cosby dies. "They become fair game, essentially for anybody to pick up and use," Rosenberg said.

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[08/01/2012]

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