



Reprinted  
February 2, 2010

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## HOUSE BILL No. 1335

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DIGEST OF HB 1335 (Updated February 1, 2010 4:57 pm - DI 69)

**Citations Affected:** IC 32-36; noncode.

**Synopsis:** Rights of publicity. Provides that, for purposes of the law concerning rights of publicity: (1) to codify the common law in existence before July 1, 1994, the law applies to a cause of action commenced after June 30, 1994, regardless of when the cause of action arose; (2) if a personality died testate before July 1, 1994, the rights recognized under the law are deemed to be in the possession of the current holder of the interests of the beneficiary of the residuary clause of the testamentary instrument as if the rights had been distributed according to the testamentary instrument and transferred according to the rights of publicity and, if a personality died intestate before July 1, 1994, the rights recognized under the law are deemed to be in the possession of the current holder of the interests as if the estate had been distributed according to the law where the estate was probated and transferred according to the rights of publicity; and (3) if a testamentary instrument does not contain an express transfer of the deceased personality's rights of publicity, a provision in the testamentary instrument that provides for the disposition of the residue of the deceased personality's assets is effective to transfer the rights recognized under the law in accordance with the terms of the provision. Makes other changes concerning the transferability and descendibility of rights of publicity. Establishes the interim study committee on rights of publicity to study issues related to the law concerning rights of publicity, including issues related to a personality's domicile and residence.

**Effective:** July 1, 2010.

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### Bardon, Pearson

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January 13, 2010, read first time and referred to Committee on Courts and Criminal Code.  
January 28, 2010, amended, reported — Do Pass.  
February 1, 2010, read second time, amended, ordered engrossed.

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HB 1335—LS 6970/DI 69+



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Second Regular Session 116th General Assembly (2010)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2009 Regular and Special Sessions of the General Assembly.

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## HOUSE BILL No. 1335

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A BILL FOR AN ACT to amend the Indiana Code concerning property.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 32-36-1-1 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 1. (a) **This chapter**  
3 **applies as follows:**  
4 (1) **To codify the common law in existence before July 1, 1994,**  
5 **this chapter applies to a cause of action commenced after**  
6 **June 30, 1994, regardless of when the cause of action arose.**  
7 **To this extent, this chapter applies retroactively, but in all**  
8 **other respects this chapter applies prospectively.**  
9 (2) This chapter applies to an act or event that occurs within  
10 Indiana, regardless of a personality's domicile, residence, or  
11 citizenship.  
12 (b) This chapter does not affect rights and privileges recognized  
13 under any other law that apply to a news reporting or an entertainment  
14 medium.  
15 (c) This chapter does not apply to the following:  
16 (1) The use of a personality's name, voice, signature, photograph,  
17 image, likeness, distinctive appearance, gestures, or mannerisms

HB 1335—LS 6970/DI 69+



1 in any of the following:

2 (A) Literary works, theatrical works, musical compositions,

3 film, radio, or television programs.

4 (B) Material that has political or newsworthy value.

5 (C) Original works of fine art.

6 (D) Promotional material or an advertisement for a news

7 reporting or an entertainment medium that:

8 (i) uses all or part of a past edition of the medium's own

9 broadcast or publication; and

10 (ii) does not convey or reasonably suggest that a personality

11 endorses the news reporting or entertainment medium.

12 (E) An advertisement or commercial announcement for a use

13 described in this subdivision.

14 (2) The use of a personality's name to truthfully identify the

15 personality as:

16 (A) the author of a written work; or

17 (B) a performer of a recorded performance;

18 under circumstances in which the written work or recorded

19 performance is otherwise rightfully reproduced, exhibited, or

20 broadcast.

21 (3) The use of a personality's:

22 (A) name;

23 (B) voice;

24 (C) signature;

25 (D) photograph;

26 (E) image;

27 (F) likeness;

28 (G) distinctive appearance;

29 (H) gestures; or

30 (I) mannerisms;

31 in connection with the broadcast or reporting of an event or a

32 topic of general or public interest.

33 SECTION 2. IC 32-36-1-16 IS AMENDED TO READ AS

34 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 16. (a) The rights

35 recognized under this chapter are property rights, freely transferable

36 and descendible, in whole or in part, by the following:

37 (1) Contract.

38 (2) License.

39 (3) Gift.

40 (4) Trust.

41 (5) Testamentary document.

42 (6) Operation of the laws of intestate succession applicable to the

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1 state administering the estate and property of an intestate  
2 deceased personality, regardless of whether the **deceased**  
3 **personality's domiciliary** state recognizes the property rights set  
4 forth under this chapter.

5 **(b) If a personality died:**

6 **(1) testate before July 1, 1994, the rights recognized under this**  
7 **chapter are deemed to be in the possession of the current**  
8 **holder of the interests of the beneficiary of the residuary**  
9 **clause of the testamentary instrument as if the rights had**  
10 **been:**

11 **(A) distributed according to the testamentary instrument;**  
12 **and**

13 **(B) transferred according to this section; and**

14 **(2) intestate before July 1, 1994, the rights recognized under**  
15 **this chapter are deemed to be in the possession of the current**  
16 **holder of the interests as if the estate had been:**

17 **(A) distributed according to the law where the estate was**  
18 **probated; and**

19 **(B) transferred according to this section.**

20 **(c) If a testamentary instrument does not contain an express**  
21 **transfer of a deceased personality's rights of publicity, a provision**  
22 **in the testamentary instrument that provides for the disposition of**  
23 **the residue of the deceased personality's assets is effective to**  
24 **transfer the rights recognized under this chapter in accordance**  
25 **with the terms of the provision.**

26 **(d) The rights recognized by this section are expressly made**  
27 **retroactive, including to those deceased personalities who died**  
28 **before July 2, 1994, regardless of whether the transfer was made**  
29 **by:**

30 **(1) intestate succession before July 2, 1994; or**

31 **(2) contract, license, gift, trust, or other testamentary**  
32 **instrument executed before July 2, 1994.**

33 **(e) The rights established by this section are freely transferable**  
34 **or descendible by contract, license, gift, trust, or any other**  
35 **testamentary instrument by any subsequent owner of the deceased**  
36 **personality's rights as recognized by this section. Nothing in this**  
37 **section may be construed to make a contract:**

38 **(1) entered into by a deceased personality during the**  
39 **personality's lifetime; and**

40 **(2) by which the deceased personality assigned the rights, in**  
41 **whole or in part, to use the personality's name, voice,**  
42 **signature, photograph, or likeness;**

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1       **invalid or unenforceable, regardless of whether the contract was**  
 2       **entered into before, on, or after July 1, 1994.**  
 3       SECTION 3. [EFFECTIVE JULY 1, 2010] (a) **As used in this**  
 4       **section, "committee" refers to the interim study committee on**  
 5       **rights of publicity established by this SECTION.**  
 6       (b) **There is established the interim study committee on rights**  
 7       **of publicity. The committee shall study issues related to the law**  
 8       **concerning rights of publicity (IC 32-36-1), including issues related**  
 9       **to:**  
 10        (1) **a personality's:**  
 11        (A) **domicile; or**  
 12        (B) **domicile at the time of the personality's death; and**  
 13        (2) **whether at any time, including at the time of a**  
 14        **personality's death, the law of the:**  
 15        (A) **personality's domicile;**  
 16        (B) **personality's residence; or**  
 17        (C) **state where the personality is a citizen;**  
 18        **recognizes property rights that are similar or identical to the**  
 19        **property rights recognized under IC 32-36-1.**  
 20       (c) **The committee shall operate under the policies governing**  
 21       **study committees adopted by the legislative council.**  
 22       (d) **The affirmative votes of a majority of the voting members**  
 23       **appointed to the committee are required for the committee to take**  
 24       **action on any measure, including final reports.**  
 25       (e) **This SECTION expires December 31, 2010.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1335, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

- Page 1, delete lines 9 through 17.
- Page 2, delete lines 1 through 2.
- Page 2, line 3, delete "(3)" and insert "(2)".

and when so amended that said bill do pass.

(Reference is to HB 1335 as introduced.)

PIERCE, Chair

Committee Vote: yeas 7, nays 5.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1335 be amended to read as follows:

- Page 1, line 4, delete "1993," and insert "1994,".
- Page 1, line 6, delete "1993," and insert "1994,".
- Page 3, line 6, delete "1993," and insert "1994,".
- Page 3, line 14, delete "1993," and insert "1994,".
- Page 3, line 28, delete "1993," and insert "1994,".
- Page 3, line 30, delete "1993;" and insert "1994;".
- Page 3, line 32, delete "1993." and insert "1994.".
- Page 4, line 2, delete "1993." and insert "1994.".
- Page 4, after line 2, begin a new paragraph and insert:

"SECTION 3. [EFFECTIVE JULY 1, 2010] (a) As used in this section, "committee" refers to the interim study committee on rights of publicity established by this SECTION.

(b) There is established the interim study committee on rights of publicity. The committee shall study issues related to the law concerning rights of publicity (IC 32-36-1), including issues related to:

- (1) a personality's:
  - (A) domicile; or
  - (B) domicile at the time of the personality's death; and
- (2) whether at any time, including at the time of a personality's death, the law of the:



- (A) personality's domicile;
  - (B) personality's residence; or
  - (C) state where the personality is a citizen;
- recognizes property rights that are similar or identical to the property rights recognized under IC 32-36-1.
- (c) The committee shall operate under the policies governing study committees adopted by the legislative council.
  - (d) The affirmative votes of a majority of the voting members appointed to the committee are required for the committee to take action on any measure, including final reports.
  - (e) This SECTION expires December 31, 2010."
- Renumber all SECTIONS consecutively.
- (Reference is to HB 1335 as printed January 29, 2010.)

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