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Property; right of publicity

NEV. REV. STAT. § 598.— (new).
 SB 502 (Committee on Commerce and Labor);
 1989 STAT. Ch. 697

Chapter 697 creates a statutory right of publicity in every natural person;¹ this right continues for fifty years after the person's death.² The right of publicity prevents the commercial use³ of a person's identity without the written consent of the holder of the right.⁴

The right is transferable and inheritable; if the right has not been transferred, assigned, or inherited, it is extinguished upon the person's death.⁵ The licensees and successors in interest of a decedent must follow a specified procedure to safeguard their interest;⁶ failure to comply may either restrict the scope of the right,⁷ or constitute a waiver of the entire right.⁸ Prior to any commercial use, a user must make a good faith attempt to ascertain the identity of any successor in interest.⁹

HMA

1. 1989 Nev. Stat. ch. 697, sec. 3, at 1608 (enacting NEV. REV. STAT. § 598.—). The right of publicity exists in the name, voice, signature, photograph, or likeness of every natural person. *Id.* This appears to be a codification of the common law tort of misappropriation. *See generally* RESTATEMENT (SECOND) OF TORTS § 65C (1978).

2. *Id.* The right continues after death regardless of whether or not the right is commercially exploited during the person's lifetime. *Id.*

3. *See id.* sec. 2, at 1608 (definition of commercial use).

4. *Id.* sec. 3, at 1608. Written consent is not required when the use is in material commercially sponsored, so long as the use is not directly connected with the commercial sponsorship. *Id.* Written consent is also not required when the use is in connection with a news, public affairs, or sports broadcast or publication, or when the use is connected with a single edition of an original work of art. *Id.* The owners or employees of an advertising medium are not liable for unauthorized use unless they had actual knowledge that the use was unauthorized. *Id.* sec. 5, at 1609.

5. *Id.* sec. 4, at 1609. The right, either whole or in part, may be assigned, sold, conveyed, freely given, bequeathed, or placed in a testamentary trust. *Id.*

6. *Id.* The successor in interest or licensee must file an application with the Secretary of State. *Id.* The application must contain the legal and professional names of the deceased, the date of death, the name and address of the applicant, the right claimed, and the basis of the claim. *Id.*

7. *Id.* Successors in interest and licensees cannot assert a cause of action against a person who commercially uses a person's identity without authorization if that use began prior to the filing of an application to protect the successor's or licensee's claim. *Id.*

8. *Id.* Licensees or successors in interest of a deceased who knew or should have known of an unauthorized commercial use, and who fail to register their claim to the right of publicity with the Secretary of State within six months after becoming aware of the unauthorized use, waive the right of publicity. *Id.*

9. *Id.*

