



STATE OF ARKANSAS
ASA HUTCHINSON
GOVERNOR

March 31, 2015

Dear Mr. President and Members of the Senate:

Pursuant to Article 6, Section 15 of the Arkansas Constitution, I write to inform you that today I have vetoed Senate Bill 79, which I have returned to you with this letter. I have done so because in its current form it is overbroad, vague and will have the effect of restricting free speech.

SB79 grants a property right in the use of an individual's name, voice, signature, photograph or likeness and makes this right freely transferable, assignable, and descendible. SB79 provides that this right continues through the individual's lifetime and up to fifty (50) years after the individual's death. The intent of the bill is to "[p]rotect the names, voices, signatures, photographs, and likenesses of the citizens of the state from exploitation and unauthorized commercial use without the citizen's consent." However, the bill as drafted would extend protection beyond the stated intent of the bill, unnecessarily restrict free expression and may result in unnecessary litigation in Arkansas.

SB79 defines "commercial use" to include any use for advertising, fundraising or "obtaining money, goods or services." While the intent is to protect citizens of Arkansas from unauthorized commercial speech, the definition of "commercial use" to include any use for "obtaining money, goods or services" is too broad and vague. This language may include speech beyond traditional commercial speech, including expressive speech produced for a profit. This would result in Arkansas having one of the broadest Rights of Publicity statutes in the country and making Arkansas the forum of choice for many litigants.

Additionally, while SB79 provides clear and explicit exemptions for certain types of noncommercial speech including news, public affairs, sports broadcasts and advertising for a political campaign, SB79 fails to extend an exemption to other forms of noncommercial speech. Instead, SB79 provides that certain expressive works such as plays, books, magazines, newspapers, audiovisual work, and original works of art are only exempt to the extent they are protected by the First Amendment. I believe the absence of a clear exemption for these types of expressive works will result in unnecessary litigation in Arkansas courts and will suppress Arkansans who engage in artistic expression from photography to art work.

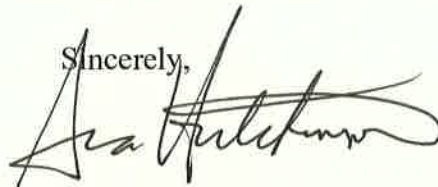
Moreover, the bill includes inconsistent language that makes it unclear whether a type of speech is completely exempt or is only exempt to the extent it is protected by the First Amendment. For example, SB79 explicitly exempts news and the promotion and advertising for a political campaign. However, a “work of a political or newsworthy value” is only exempt to the extent it is protected by the First Amendment. This ambiguity in SB79, and the lack of clear exemptions for certain types of expressive works, may have the effect of restricting and chilling constitutionally protected speech.

Finally, SB79 includes broad jurisdictional language to allow a party to file a civil action in any county where one or more defendants reside or a violation occurred. The broad jurisdictional language allowing a civil action to be brought in any county where a violation occurred in combination with the absence of clear exemptions for certain types of expressive works goes beyond the stated intent of the bill, invites unnecessary litigation in Arkansas courts and encourages forum shopping.

I have received scores of letters from professional and amateur photographers in Arkansas who raise legitimate concerns about the bill and they request the language be amended so that they are not subject to substantial financial burdens in the conduct of their small businesses around the state.

Although I must veto SB79 for the reasons mentioned above, I wish to express my appreciation to its principal sponsor, Senator Woods. While I respect Senator Wood’s intent to protect the names, voices, signatures, photographs and likeness of Arkansas citizens, such as the Broyles family, from exploitation and unauthorized commercial use, I cannot support SB79 in its current form.

Sincerely,

A handwritten signature in black ink, appearing to read "Asa Hutchinson", written in a cursive style.

Asa Hutchinson