

2 ESHB 1074 - S AMD - 998
3 By Senator S. Johnson

4 ADOPTED 3/6/98

5 Strike everything after the enacting clause and insert the
6 following:

7 NEW SECTION. **Sec. 1.** Every individual or personality, as the
8 case may be, has a property right in the use of his or her name, voice,
9 signature, photograph, or likeness, and such right shall be freely
10 transferable, assignable, and licensable, in whole or in part, by any
11 otherwise permissible form of inter vivos or testamentary transfer,
12 including without limitation a will, trust, contract, community
13 property agreement, or cotenancy with survivorship provisions or
14 payable-on-death provisions, or, if none is applicable, under the laws
15 of intestate succession applicable to interests in intangible personal
16 property. The property right does not expire upon the death of the
17 individual or personality, as the case may be. The right exists
18 whether or not it was commercially exploited by the individual or the
19 personality during the individual's or the personality's lifetime.

20 NEW SECTION. **Sec. 2.** Unless the context clearly requires
21 otherwise, the definitions in this section apply throughout this
22 chapter.

23 (1) "Deceased personality" means any individual whose name, voice,
24 signature, photograph, or likeness had commercial value at the time of
25 his or her death, whether or not during the lifetime of that individual
26 he or she used his or her name, voice, signature, photograph, or
27 likeness on or in products, merchandise or goods, or for purposes of
28 advertising or selling, or soliciting the purchase or sale of,
29 products, merchandise, goods, or services. A "deceased personality"
30 includes, without limitation, any such individual who has died within
31 fifty years before January 1, 1998.

32 (2) "Definable group" means an assemblage of individuals existing
33 or brought together with or without interrelation, orderly form, or
34 arrangement, including but not limited to: A crowd at any sporting
35 event; a crowd in any street or public building; the audience at any

1 theatrical, musical, or stage production; or a performing group or
2 sports team.

3 (3) "Fund raising" means an organized activity to solicit donations
4 of money or other goods or services from persons or entities by an
5 organization, company, or public entity. A fund-raising activity does
6 not include a live, public performance by an individual or group of
7 individuals for which money is received in solicited or unsolicited
8 gratuities.

9 (4) "Individual" means a natural person, living or dead.

10 (5) "Likeness" means an image, painting, sketching, model, diagram,
11 or other clear representation, other than a photograph, of an
12 individual's face, body, or parts thereof, or the distinctive
13 appearance, gestures, or mannerisms of an individual.

14 (6) "Name" means the actual or assumed name, or nickname, of a
15 living or deceased individual that is intended to identify that
16 individual.

17 (7) "Person" means any natural person, firm, association,
18 partnership, corporation, joint stock company, syndicate, receiver,
19 common law trust, conservator, statutory trust, or any other concern by
20 whatever name known or however organized, formed, or created, and
21 includes not-for-profit corporations, associations, educational and
22 religious institutions, political parties, and community, civic, or
23 other organizations.

24 (8) "Personality" means any individual whose name, voice,
25 signature, photograph, or likeness has commercial value, whether or not
26 that individual uses his or her name, voice, signature, photograph, or
27 likeness on or in products, merchandise, or goods, or for purposes of
28 advertising or selling, or solicitation of purchase of, products,
29 merchandise, goods, or services.

30 (9) "Photograph" means any photograph or photographic reproduction,
31 still or moving, or any videotape, online or live television
32 transmission, of any individual, so that the individual is readily
33 identifiable.

34 (10) "Signature" means the one handwritten or otherwise legally
35 binding form of an individual's name, written or authorized by that
36 individual, that distinguishes the individual from all others.

37 NEW SECTION. **Sec. 3.** (1) Every individual or personality, as the
38 case may be, has a property right in the use of his or her name, voice,

1 signature, photograph, or likeness, and such right shall be freely
2 transferable, assignable, and licensable, in whole or in part, by
3 contract or inter vivos transfer, and shall not expire upon the death
4 of the individual or personality, as the case may be, so protected but
5 shall pass:

6 (a) Under the deceased individual's or personality's, as the case
7 may be, last will and testament or, if none, then under the laws of
8 intestate succession applicable to interests in intangible personal
9 property of the individual's or personality's, as the case may be,
10 domicile; or

11 (b) If the individual or personality, as the case may be,
12 transferred or assigned any interest in the personality rights during
13 his or her life, then the transferred or assigned interest shall pass
14 as follows:

15 (i) If the transferred or assigned interest was held in trust, in
16 accordance with the terms of the trust;

17 (ii) If the interest is subject to a cotenancy with any
18 survivorship provisions or payable-on-death provisions, in accordance
19 with those provisions;

20 (iii) If the interest is subject to any contract, including without
21 limitation a community property agreement, in accordance with the terms
22 of the applicable contract or contracts;

23 (iv) If the interest has been transferred or assigned to a third
24 person in a form that is not addressed earlier in this section, then
25 the interest may be transferred, assigned, or licensed by such third
26 person, in whole or in part, by any otherwise permissible form of inter
27 vivos or testamentary transfer or, if none is applicable, under the
28 laws of intestate succession applicable to interests in intangible
29 personal property of the third person's domicile.

30 (2) A property right exists whether or not such rights were
31 commercially exploited by the individual or the personality during the
32 individual's or the personality's, as the case may be, lifetime.

33 NEW SECTION. **Sec. 4.** (1) For individuals, except to the extent
34 that the individual may have assigned or licensed such rights, the
35 rights protected in this chapter are exclusive to the individual,
36 subject to the assignment or licensing of such rights, during such
37 individual's lifetime and are exclusive to the persons entitled to such
38 rights under section 3 of this act for a period of ten years after the

1 death of the individual except to the extent that the persons entitled
2 to such rights under section 3 of this act may have assigned or
3 licensed such rights to others.

4 (2) For personalities, except to the extent that the personality
5 may have assigned or licensed such rights, the rights protected in this
6 chapter are exclusive to the personality, subject to the assignment or
7 licensing of such rights, during such personality's lifetime and to the
8 persons entitled to such rights under section 3 of this act for a
9 period of seventy-five years after the death of the personality except
10 to the extent that the persons entitled to such rights under section 3
11 of this act may have assigned or licensed such rights to others.

12 (3) The rights granted in this chapter may be exercised by a
13 personal representative, attorney in fact, or guardian, or as
14 authorized by a court of competent jurisdiction. The terms "personal
15 representative", "attorney in fact", and "guardian" shall have the same
16 meanings in this chapter as they have in Title 11 RCW.

17 NEW SECTION. **Sec. 5.** Any person who uses or authorizes the use of
18 a living or deceased individual's or personality's name, voice,
19 signature, photograph, or likeness, on or in goods, merchandise, or
20 products entered into commerce in this state, or for purposes of
21 advertising products, merchandise, goods, or services, or for purposes
22 of fund raising or solicitation of donations, or if any person
23 disseminates or publishes such advertisements in this state, without
24 written or oral, express or implied consent of the owner of the right,
25 has infringed such right. An infringement may occur under this section
26 without regard to whether the use or activity is for profit or not for
27 profit.

28 NEW SECTION. **Sec. 6.** (1) The superior courts of this state may
29 grant injunctions on reasonable terms to prevent or restrain the
30 unauthorized use of the rights in a living or deceased individual's or
31 personality's name, voice, signature, photograph, or likeness.

32 (2) Any person who infringes the rights under this chapter shall be
33 liable for the greater of one thousand five hundred dollars or the
34 actual damages sustained as a result of the infringement, and any
35 profits that are attributable to the infringement and not taken into
36 account when calculating actual damages. To prove profits under this
37 section, the injured party or parties must submit proof of gross

1 revenues attributable to the infringement, and the infringing party is
2 required to prove his or her deductible expenses. For the purposes of
3 computing statutory damages, use of a name, voice, signature,
4 photograph, and/or likeness in or related to one work constitutes a
5 single act of infringement regardless of the number of copies made or
6 the number of times the name, voice, signature, photograph, or likeness
7 is displayed.

8 (3) At any time while an action under this chapter is pending, the
9 court may order the impounding, on reasonable terms, of all materials
10 or any part thereof claimed to have been made or used in violation of
11 the injured party's rights, and the court may enjoin the use of all
12 plates, molds, matrices, masters, tapes, film negatives, or other
13 articles by means of which such materials may be reproduced.

14 (4) As part of a final judgment or decree, the court may order the
15 destruction or other reasonable disposition of all materials found to
16 have been made or used in violation of the injured party's rights, and
17 of all plates, molds, matrices, masters, tapes, film negatives, or
18 other articles by means of which such materials may be reproduced.

19 (5) The prevailing party may recover reasonable attorneys' fees,
20 expenses, and court costs incurred in recovering any remedy or
21 defending any claim brought under this section.

22 (6) The remedies provided for in this section are cumulative and
23 are in addition to any others provided for by law.

24 NEW SECTION. **Sec. 7.** (1) For purposes of section 5 of this act,
25 the use of a name, voice, signature, photograph, or likeness in
26 connection with matters of cultural, historical, political, religious,
27 educational, newsworthy, or public interest, including, without
28 limitation, comment, criticism, satire, and parody relating thereto,
29 shall not constitute a use for which consent is required under this
30 chapter. A matter exempt from consent under this subsection does not
31 lose such exempt status because it appears in the form of a paid
32 advertisement if it is clear that the principal purpose of the
33 advertisement is to comment on such matter.

34 (2) This chapter does not apply to the use or authorization of use
35 of an individual's or personality's name, voice, signature, photograph,
36 or likeness, in any of the following:

1 (a) Single and original works of fine art, including but not
2 limited to photographic, graphic, and sculptural works of art that are
3 not published in more than five copies;

4 (b) A literary work, theatrical work, musical composition, film,
5 radio, online or television program, magazine article, news story,
6 public affairs report, or sports broadcast or account, or with any
7 political campaign when the use does not inaccurately claim or state an
8 endorsement by the individual or personality;

9 (c) An advertisement or commercial announcement for a use permitted
10 by subsection (1) of this section and (a) or (b) of this subsection;

11 (d) An advertisement, commercial announcement, or packaging for the
12 authorized sale, distribution, performance, broadcast, or display of a
13 literary, musical, cinematographic, or other artistic work using the
14 name, voice, signature, photograph, or likeness of the writer, author,
15 composer, director, actor, or artist who created the work, where such
16 individual or personality consented to the use of his or her name,
17 voice, signature, photograph, or likeness on or in connection with the
18 initial sale, distribution, performance, or display thereof; and

19 (e) The advertisement or sale of a rare or fine product, including
20 but not limited to books, which incorporates the signature of the
21 author.

22 (3) It is no defense to an infringement action under this chapter
23 that the use of an individual's or personality's name, voice,
24 signature, photograph, or likeness includes more than one individual or
25 personality so identifiable. However, the individuals or personalities
26 complaining of the use shall not bring their cause of action as a class
27 action.

28 (4) Section 5 of this act does not apply to the owners or employees
29 of any medium used for advertising, including but not limited to,
30 newspapers, magazines, radio and television stations, on-line service
31 providers, billboards, and transit ads, who have published or
32 disseminated any advertisement or solicitation in violation of this
33 chapter, unless the advertisement or solicitation was intended to
34 promote the medium itself.

35 (5) This chapter does not apply to a use or authorization of use of
36 an individual's or personality's name that is merely descriptive and
37 used fairly and in good faith only to identify or describe something
38 other than the individual or personality, such as, without limitation,
39 to describe or identify a place, a legacy, a style, a theory, an

1 ownership interest, or a party to a transaction or to accurately
2 describe the goods or services of a party.

3 (6) This chapter does not apply to the use of an individual's or
4 personality's name, voice, signature, photograph, or likeness when the
5 use of the individual's or personality's name, voice, signature,
6 photograph, or likeness is an insignificant, de minimis, or incidental
7 use.

8 NEW SECTION. **Sec. 8.** Nothing contained in this chapter is
9 intended to invalidate any community property rights.

10 NEW SECTION. **Sec. 9.** Sections 1 through 8 of this act constitute
11 a new chapter in Title 63 RCW."

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15 On page 1, line 1 of the title, after "rights;" strike the
16 remainder of the title and insert "adding a new chapter to Title 63
17 RCW; and prescribing penalties."

18 EFFECT: Clarifies implied consent; clarifies the calculation of
19 damages in that one violation equals one violation no matter how many
20 times it was reproduced; prohibits class actions; prohibits actions for
21 insignificant, de minimis, or incidental use.

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