

SENATE BILL REPORT

ESHB 1074

As Reported By Senate Committee On:
Law & Justice, February 19, 1998

Title: An act relating to the protection of personality rights.

Brief Description: Protecting personality rights.

Sponsors: House Committee on Law & Justice (originally sponsored by Representatives Sheahan, Costa, Hatfield and Constantine).

Brief History:

Committee Activity: Law & Justice: 3/20/97, 4/3/97 [DP]; 2/19/98 [DPA].

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended.

Signed by Senators Roach, Chair; Johnson, Vice Chair; Goings, Kline, Long, McCaslin and Zarelli.

Staff: Harry S. Steinmetz (786-7421)

Background: Although Washington courts have implied that the right of privacy may include protection from the unauthorized appropriation of one's name or likeness, no case or statute has specifically addressed that subject. Other states, however, such as California and Texas, recognize a person's right not to have his or her identity misappropriated for commercial purposes without that person's consent.

Summary of Amended Bill: Every resident of the state has a property right in the use of his or her name, voice, signature, photograph, or likeness in any medium or manner. Likeness includes clear representations of an individual's face, body, distinctive appearance, gestures or mannerisms. If an individual's name, voice, etc., has commercial value, he or she is considered a "personality." Such a person has property rights in his or her name, voice, signature, photograph or likeness in any medium or manner, whether or not he or she resides in the state. These rights also apply in the case of any personality who died after January 1, 1948.

The property right is exclusive to the individual or personality during his or her lifetime, and exists whether or not the individual made commercial use of it while alive. Community property rights are not effected.

The property rights created are freely transferable, assignable and licensable, and do not expire upon death of the owner of the right, but pass by descent to the heirs of devisees of the individual or personality. If no will exists and there are no heirs, the right terminates.

The property right of a deceased individual lasts for ten years after death. The right of a deceased personality lasts for 75 years, whether or not commercial use is made of it.

Any person who uses an individual's or personality's name, etc. without prior written consent infringes this property right, and is liable in an action for damages for the greater of \$1500 or actual damages, plus any profits attributable to the infringement. A court may also enjoin continued infringement, and order that any materials used or made without consent be impounded and destroyed.

There are several exceptions to the use of personality rights, including those that address Free Speech concerns. It is not an infringement if a person uses an individual or personality's name, voice, signature, photograph, or likeness in the following ways:

- (a) in connection with matters of cultural, historical, political, religious, educational, newsworthy, or public interest;
- (b) for the purposes of commentary, criticism, satire, or parody;
- (c) in single and original works of fine art that are not published in more than five copies, and any advertisement for those works;
- (d) in literary, theatrical, or musical work, and any advertisements for those works;
- (e) in a film, radio, television or online program, magazine article, public affairs report, or sports broadcast or account, and any advertisements for those works;
- (f) in any political campaign when the use does not inaccurately claim that the individual or personality endorses the campaign;
- (g) in any advertisement or commercial or packaging for a literary, musical, cinematographic, or other artistic work when the author or creator of the work consented to the use of his or her name, voice, signature, photograph, or likeness with the initial sale, distribution, performance or display of the work;
- (h) in any advertisement or sale of rare or fine products that incorporate the signatures of the authors or artists;
- (i) if an individual's or personality's name is used, in good faith, merely to describe or identify a thing; and
- (j) if the use is in connection with matters of cultural, historical, political, religious, educational, newsworthy, or public interest, and the use is in the form of a paid advertisement, so long as the principle purpose of the advertisement is to comment on the matter.

Amended Bill Compared to Original Bill: Greater clarity is provided on how personality rights pass upon the death of the individual. The definition of a definable group is clarified. Dates are corrected.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: There is a great deal of confusion over the use of personality rights. This bill will provide certainty in the area, therefore it is supported by the advertisers, the media as well as the personalities and the attorneys. This is part of a national trend to more clearly define these rights.

Testimony Against: None.

Testified: Yale Lewis Jr., WSBA, Intellectual Property Section (pro).