
ENGROSSED SUBSTITUTE HOUSE BILL 1074

State of Washington

55th Legislature

1997 Regular Session

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

Read first time 02/04/97.

1 AN ACT Relating to the protection of personality rights; adding a
2 new chapter to Title 63 RCW; and prescribing penalties.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** Unless the context clearly requires
5 otherwise, the definitions in this section apply throughout this
6 chapter.

7 (1) "Deceased personality" means any individual whose name, voice,
8 signature, photograph, or likeness had commercial value at the time of
9 his or her death, whether or not during the lifetime of that individual
10 he or she used his or her name, voice, signature, photograph, or
11 likeness on or in products, merchandise or goods, or for purposes of
12 advertising or selling, or solicitation of purchase of, products,
13 merchandise, goods, or services. A "deceased personality" includes,
14 without limitation, any such individual who has died within fifty years
15 prior to January 1, 1995.

16 (2) "Definable group" means an assemblage of individuals existing
17 or brought together with or without interrelation, orderly form, or
18 arrangement, including but not limited to, a crowd at any sporting

1 event, a crowd in any street or public building, the audience at any
2 theatrical or stage production, a musical group, or a baseball 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. 2.** (1) Every individual residing in this state
38 has a property right in the use of his or her name, voice, signature,

1 photograph, or likeness in any medium in any manner, and such right
2 shall be freely transferable, assignable, and licensable, in whole or
3 in part, by contract or inter vivos transfer, and shall not expire upon
4 the death of the individual so protected but shall be descendible to
5 the heirs or devisees of the individual protected by subsection (3) of
6 this section. A property right exists whether or not such rights were
7 commercially exploited by the individual during the individual's
8 lifetime.

9 (2) Every personality has a property right in the use of his or her
10 name, voice, signature, photograph, or likeness in any medium in any
11 manner, and such right shall be freely transferable, assignable, and
12 licensable, in whole or in part, by contract or inter vivos transfer,
13 and shall not expire upon the death of the personality so protected,
14 but shall be descendible to the heirs or devisees of the personality
15 protected by subsection (3) of this section. A property right exists
16 whether or not such rights were commercially exploited by the
17 personality during the personality's lifetime.

18 (3) The rights in a deceased individual's or a deceased
19 personality's name, voice, signature, photograph, or likeness and the
20 other rights afforded under this section shall be owned by the
21 following persons and may be exercised, on behalf of and for the
22 benefit of all, by those persons or individuals who, in the aggregate,
23 are entitled to more than a one-half interest in the rights:

24 (a) The assignee or transferee of such rights, provided that such
25 assignment or transfer was made in writing and signed by the individual
26 or personality prior to his or her death;

27 (b) In the absence of a transfer prior to death, the rights shall
28 pass pursuant to the will or other testamentary document of the
29 deceased individual or deceased personality; and

30 (c) If there are no persons entitled to the rights pursuant to (a)
31 or (b) of this subsection, the laws of intestate succession of the
32 state administering the estate and property of the deceased individual
33 or deceased personality shall apply, regardless of whether the state
34 recognizes the property rights in name, voice, signature, photograph,
35 or likeness.

36 (4) If there are no surviving persons as described in subsection
37 (3) of this section, the rights then shall terminate.

1 NEW SECTION. **Sec. 3.** (1) The rights protected in this chapter are
2 exclusive to the individual, subject to the assignment or licensing of
3 such rights, during such individual's lifetime and to the class
4 entitled to such rights under section 2 of this act for a period of ten
5 years after the death of the individual.

6 (2) For personalities, the rights protected in this chapter are
7 exclusive to the personality, subject to the assignment or licensing of
8 such rights, during such personality's lifetime and to the class
9 entitled to such rights under section 2 of this act for a period of
10 seventy-five years after the death of the personality.

11 (3) The rights in an individual's name, voice, signature,
12 photograph, or likeness shall terminate if it can be shown that, after
13 the death of the individual, such rights have not been commercially
14 exploited for a period of three consecutive years. This subsection
15 shall not apply to deceased personalities.

16 (4) For three years after the death of the individual or
17 personality, the rights granted in this chapter may be exercised by an
18 executor, administrator, or guardian, as authorized by a court or by
19 law.

20 NEW SECTION. **Sec. 4.** Any person who uses or authorizes the use of
21 a living or deceased individual's or personality's name, voice,
22 signature, photograph, or likeness in any medium, in any manner, on or
23 in goods, merchandise, or products entered into commerce in this state,
24 or for purposes of advertising products, merchandise, goods, or
25 services, or for purposes of fund raising or solicitation of donations,
26 or if any person disseminates or publishes such advertisements in this
27 state, without the prior written consent of the owner of the right, has
28 infringed such right. An infringement may occur under this section
29 without regard to whether the use or activity is for profit or not for
30 profit.

31 NEW SECTION. **Sec. 5.** (1) The superior courts of this state may
32 grant injunctions on reasonable terms to prevent or restrain the
33 unauthorized use of the rights in a living or deceased individual's or
34 personality's name, voice, signature, photograph, or likeness.

35 (2) Any person who infringes the rights under this chapter shall be
36 liable for the greater of one thousand five hundred dollars or the
37 actual damages sustained as a result of the infringement, and any

1 profits that are attributable to the infringement and not taken into
2 account when calculating actual damages. To prove profits under this
3 section, the injured party or parties must submit proof of gross
4 revenues attributable to the infringement, and the infringing party is
5 required to prove his or her deductible expenses.

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

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

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

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

22 NEW SECTION. **Sec. 6.** (1) For purposes of section 4 of this act,
23 the use of a name, voice, signature, photograph, or likeness in
24 connection with matters of cultural, historical, political, religious,
25 educational, newsworthy, or public interest, including, without
26 limitation, comment, criticism, satire, and parody relating thereto,
27 shall not constitute a use for which consent is required under this
28 chapter. A matter exempt from consent under this subsection does not
29 lose such exempt status because it appears in the form of a paid
30 advertisement if it is clear that the principal purpose of the
31 advertisement is to comment on such matter.

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

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

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

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

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

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

19 (3) It is no defense to an infringement action under this chapter
20 that a photograph includes more than one individual or personality so
21 identifiable. However, the individuals or personalities complaining of
22 the use shall be represented on their own rather than solely as members
23 of a definable group represented in the photograph.

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

31 (5) This chapter does not apply to a use or authorization of use of
32 an individual's or personality's name that is merely descriptive and
33 used fairly and in good faith only to identify or describe something
34 other than the individual or personality, such as, without limitation,
35 to describe or identify a place, a legacy, a style, a theory, an
36 ownership interest, or a party to a transaction or to accurately
37 describe the goods or services of a party.

1 NEW SECTION. **Sec. 7.** Sections 1 through 6 of this act constitute
2 a new chapter in Title 63 RCW.

--- **END** ---