

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 1074

55th Legislature
1998 Regular Session

Passed by the House March 10, 1998
Yeas 97 Nays 1

Speaker of the
House of Representatives

Passed by the Senate March 6, 1998
Yeas 32 Nays 17

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1074** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

Secretary of State
State of Washington

ENGROSSED SUBSTITUTE HOUSE BILL 1074

AS AMENDED BY THE SENATE

Passed Legislature - 1998 Regular Session

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

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

4 (1) "Deceased personality" means any individual whose name, voice,
5 signature, photograph, or likeness had commercial value at the time of
6 his or her death, whether or not during the lifetime of that individual
7 he or she used his or her name, voice, signature, photograph, or
8 likeness on or in products, merchandise or goods, or for purposes of
9 advertising or selling, or soliciting the purchase or sale of,
10 products, merchandise, goods, or services. A "deceased personality"
11 includes, without limitation, any such individual who has died within
12 fifty years before January 1, 1998.

13 (2) "Definable group" means an assemblage of individuals existing
14 or brought together with or without interrelation, orderly form, or
15 arrangement, including but not limited to: A crowd at any sporting
16 event; a crowd in any street or public building; the audience at any
17 theatrical, musical, or stage production; or a performing group or
18 sports team.

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

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

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

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

33 (7) "Person" means any natural person, firm, association,
34 partnership, corporation, joint stock company, syndicate, receiver,
35 common law trust, conservator, statutory trust, or any other concern by
36 whatever name known or however organized, formed, or created, and
37 includes not-for-profit corporations, associations, educational and
38 religious institutions, political parties, and community, civic, or
39 other organizations.

1 (8) "Personality" means any individual whose name, voice,
2 signature, photograph, or likeness has commercial value, whether or not
3 that individual uses his or her name, voice, signature, photograph, or
4 likeness on or in products, merchandise, or goods, or for purposes of
5 advertising or selling, or solicitation of purchase of, products,
6 merchandise, goods, or services.

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

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

14 NEW SECTION. **Sec. 3.** (1) Every individual or personality, as the
15 case may be, has a property right in the use of his or her name, voice,
16 signature, photograph, or likeness, and such right shall be freely
17 transferable, assignable, and licensable, in whole or in part, by
18 contract or inter vivos transfer, and shall not expire upon the death
19 of the individual or personality, as the case may be, so protected but
20 shall pass:

21 (a) Under the deceased individual's or personality's, as the case
22 may be, last will and testament or, if none, then under the laws of
23 intestate succession applicable to interests in intangible personal
24 property of the individual's or personality's, as the case may be,
25 domicile; or

26 (b) If the individual or personality, as the case may be,
27 transferred or assigned any interest in the personality rights during
28 his or her life, then the transferred or assigned interest shall pass
29 as follows:

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

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

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

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

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

11 NEW SECTION. **Sec. 4.** (1) For individuals, except to the extent
12 that the individual may have assigned or licensed such rights, the
13 rights protected in this chapter are exclusive to the individual,
14 subject to the assignment or licensing of such rights, during such
15 individual's lifetime and are exclusive to the persons entitled to such
16 rights under section 3 of this act for a period of ten years after the
17 death of the individual except to the extent that the persons entitled
18 to such rights under section 3 of this act may have assigned or
19 licensed such rights to others.

20 (2) For personalities, except to the extent that the personality
21 may have assigned or licensed such rights, the rights protected in this
22 chapter are exclusive to the personality, subject to the assignment or
23 licensing of such rights, during such personality's lifetime and to the
24 persons entitled to such rights under section 3 of this act for a
25 period of seventy-five years after the death of the personality except
26 to the extent that the persons entitled to such rights under section 3
27 of this act may have assigned or licensed such rights to others.

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

33 NEW SECTION. **Sec. 5.** Any person who uses or authorizes the use of
34 a living or deceased individual's or personality's name, voice,
35 signature, photograph, or likeness, on or in goods, merchandise, or
36 products entered into commerce in this state, or for purposes of
37 advertising products, merchandise, goods, or services, or for purposes

1 of fund raising or solicitation of donations, or if any person
2 disseminates or publishes such advertisements in this state, without
3 written or oral, express or implied consent of the owner of the right,
4 has infringed such right. An infringement may occur under this section
5 without regard to whether the use or activity is for profit or not for
6 profit.

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

11 (2) Any person who infringes the rights under this chapter shall be
12 liable for the greater of one thousand five hundred dollars or the
13 actual damages sustained as a result of the infringement, and any
14 profits that are attributable to the infringement and not taken into
15 account when calculating actual damages. To prove profits under this
16 section, the injured party or parties must submit proof of gross
17 revenues attributable to the infringement, and the infringing party is
18 required to prove his or her deductible expenses. For the purposes of
19 computing statutory damages, use of a name, voice, signature,
20 photograph, and/or likeness in or related to one work constitutes a
21 single act of infringement regardless of the number of copies made or
22 the number of times the name, voice, signature, photograph, or likeness
23 is displayed.

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

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

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

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

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

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

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

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

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

26 (d) An advertisement, commercial announcement, or packaging for the
27 authorized sale, distribution, performance, broadcast, or display of a
28 literary, musical, cinematographic, or other artistic work using the
29 name, voice, signature, photograph, or likeness of the writer, author,
30 composer, director, actor, or artist who created the work, where such
31 individual or personality consented to the use of his or her name,
32 voice, signature, photograph, or likeness on or in connection with the
33 initial sale, distribution, performance, or display thereof; and

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

37 (3) It is no defense to an infringement action under this chapter
38 that the use of an individual's or personality's name, voice,

1 signature, photograph, or likeness includes more than one individual or
2 personality so identifiable. However, the individuals or personalities
3 complaining of the use shall not bring their cause of action as a class
4 action.

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

12 (5) This chapter does not apply to a use or authorization of use of
13 an individual's or personality's name that is merely descriptive and
14 used fairly and in good faith only to identify or describe something
15 other than the individual or personality, such as, without limitation,
16 to describe or identify a place, a legacy, a style, a theory, an
17 ownership interest, or a party to a transaction or to accurately
18 describe the goods or services of a party.

19 (6) This chapter does not apply to the use of an individual's or
20 personality's name, voice, signature, photograph, or likeness when the
21 use of the individual's or personality's name, voice, signature,
22 photograph, or likeness is an insignificant, de minimis, or incidental
23 use.

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

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

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