

HOUSE BILL REPORT

SHB 2727

As Passed Legislature

Title: An act relating to the rights of deceased personalities.

Brief Description: Extending personality rights to deceased persons.

Sponsors: By House Committee on Judiciary (originally sponsored by Representatives Lantz, Pedersen, Rodne, Goodman, Williams and Green).

Brief History:

Committee Activity:

Judiciary: 1/25/08, 2/5/08 [DPS].

Floor Activity:

Passed House: 2/14/08, 94-0.

Passed Senate: 3/7/08, 46-0.

Passed Legislature.

Brief Summary of Substitute Bill

- Provides that personality rights exist before, on, or after June 11, 1998.
- Applies to all individuals and personalities, living and deceased, regardless of place of domicile or place of domicile at time of death.
- Provides that personality rights are freely transferrable by the individual or personality or any subsequent owner, through any permissible inter vivos or testamentary instrument, regardless of when the transferring instrument was entered or executed.
- Provides that personality rights of a deceased shall be owned and enforceable by those designated in a testamentary instrument or by intestate succession, regardless of whether the law of the domicile of the deceased recognizes a similar or identical property right.

HOUSE COMMITTEE ON JUDICIARY

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Lantz, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Ahern, Kirby, Pedersen, Ross and Williams.

Minority Report: Do not pass. Signed by 2 members: Representatives Flannigan and Moeller.

Staff: Sean Gamble (786-5793) and Lara Zarowsky (786-7123).

Background:

In 1998 the Legislature enacted the Personality Rights Act, which established that every person has a property right in the use of his or her name, voice, signature, photograph, or likeness. The property right is exclusive to the person during his or her lifetime. It may be assigned or licensed while the person is alive. The property right does not expire when the person dies. It may descend in a will or other testamentary transfer, or, if none is available, by the laws of intestate succession. The right exists whether or not it was commercially exploited during the person's lifetime.

The duration of the property right depends upon whether the person's name, voice, signature, photograph, or likeness has commercial value. If it has commercial value, he or she is considered a "personality." Deceased personalities include all such persons who have died since 1948. For deceased personalities, the property right exists for 75 years after death. For deceased individuals not considered personalities, the property right continues for 10 years after the individual dies.

Any person who uses a personality's or individual's name, voice, signature, photograph, or likeness without prior consent infringes on this property right and is liable in an action for damages for the greater of \$1,500 or actual damages, plus any profits attributable to the infringement.

There are several exceptions to the use of a person's name, voice, signature, photograph, or likeness. For example, it is not an infringement if the use is:

- in connection with matters of cultural, historical, political, religious, educational, newsworthy, or public interest;
- for purposes of commentary, criticism, satire, or parody;
- in single original works of fine art that are not published in more than five copies;
- in literary, theatrical, or musical works, and any advertisements for those works;
- in a film, radio, television, or online program, or magazine articles; or
- an insignificant or incidental use.

Summary of Substitute Bill:

Personality rights exist for all individuals or personalities deceased on June 11, 1998.

When Applicable

The provisions of the bill apply to all causes of action commenced on or after June 11, 1998, regardless of when the cause of action arose.

The provisions of this bill apply to all individuals and personalities, living and deceased, regardless of place of domicile or place of domicile at time of death.

Determination of Rights

Personality rights shall be deemed to have existed before June 11, 1998, for purposes of determining who is entitled to the rights recognized under this chapter.

Transferability of Rights

An individual or personality, or any subsequent owner of that individual or personality's personality rights, may freely transfer their interest through any permissible inter vivos or testamentary instrument, regardless of when the transferring instrument was entered or executed.

Personality rights do not expire and are owned and enforceable by those designated in a testamentary instrument or by intestate succession upon the death of the person, regardless of whether the law of the deceased person's domicile, residence, or citizenship, recognizes a similar or identical property right.

Definitions

A definition for "deceased individual" is added. A deceased individual is any individual, regardless of the individual's place of domicile, residence, or citizenship at the time of death, who has died since 1988.

The language used to define "deceased personality" is modified to include the phrase, "regardless of the personality's place of domicile, residence, or citizenship at the time of death or otherwise."

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) Ninth Circuit cases have raised some concern over the existing Personality Rights Act. Princess Diana and Jimi Hendrix's personality rights have not been protected. This bill seeks to tighten up the law to protect deceased personalities who died before 1998. This concerns civil liability and has the potential to cover multiple infringements. People have organized their interests based on the existing law of personality rights, and this bill clarifies and tightens up existing protections. Everyone is protected, but litigation tends to be over unauthorized commercial use. Global businesses in stock photography and rights service

businesses support this bill, because it protects representation of famous personalities. This bill clarifies the law by confirming the original intent that deceased personalities before 1998 were covered, and their wills were covered, and that Washington covers and provides protection, regardless of whether the deceased personality died in Washington. The clarifications are necessary to ensure protection of this property right. This bill is important in Washington state because of the presence of Getty Images and Corbis, regarding their licensing of rights of publicity.

(Opposed) None.

Persons Testifying: Representative Pedersen, prime sponsor; Lew McMurrin, Washington Software Alliance; Jim Mitchell, Corbis; and Karen Davis, Elliott/Ostrander.

Persons Signed In To Testify But Not Testifying: None.