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SUBSTITUTE HOUSE BILL 2727

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**State of Washington**                      **60th Legislature**                      **2008 Regular Session**

**By** House Judiciary (originally sponsored by Representatives Lantz, Pedersen, Rodne, Goodman, Williams, and Green)

READ FIRST TIME 02/05/08.

1            AN ACT Relating to the rights of deceased personalities; amending  
2 RCW 63.60.010, 63.60.020, and 63.60.030; and creating a new section.

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

4            **Sec. 1.** RCW 63.60.010 and 1998 c 274 s 1 are each amended to read  
5 as follows:

6            Every individual or personality(~~(, as the case may be,)~~) has a  
7 property right in the use of his or her name, voice, signature,  
8 photograph, or likeness(~~(, and)~~). Such right exists in the name,  
9 voice, signature, photograph, or likeness of individuals or  
10 personalities deceased before, on, or after June 11, 1998. This right  
11 shall be freely transferable, assignable, and licensable, in whole or  
12 in part, by any otherwise permissible form of inter vivos or  
13 testamentary transfer, including without limitation a will or other  
14 testamentary instrument, trust, contract, community property agreement,  
15 or cotenancy with survivorship provisions or payable-on-death  
16 provisions, whether the will or other testamentary instrument, trust,  
17 contract, community property agreement, or cotenancy document is  
18 entered into or executed before, on, or after June 11, 1998, by the  
19 deceased individual or personality or by any subsequent owner of the

1 deceased individual's or personality's rights as recognized by this  
2 chapter; or, if none is applicable, then the owner of the rights shall  
3 be determined under the laws of intestate succession applicable to  
4 interests in intangible personal property. The property right does not  
5 expire upon the death of the individual or personality, (~~as the case~~  
6 ~~may be~~) regardless of whether the law of the domicile, residence, or  
7 citizenship of the individual or personality at the time of death or  
8 otherwise recognizes a similar or identical property right. The right  
9 exists whether or not it was commercially exploited by the individual  
10 or the personality during the individual's or the personality's  
11 lifetime. The rights recognized under this chapter shall be deemed to  
12 have existed before June 11, 1998, and at the time of death of any  
13 deceased individual or personality or subsequent successor of their  
14 rights for the purpose of determining the person or persons entitled to  
15 these property rights as provided in RCW 63.60.030. This chapter is  
16 intended to apply to all individuals and personalities, living and  
17 deceased, regardless of place of domicile or place of domicile at time  
18 of death.

19 **Sec. 2.** RCW 63.60.020 and 2004 c 71 s 1 are each amended to read  
20 as follows:

21 Unless the context clearly requires otherwise, the definitions in  
22 this section apply throughout this chapter.

23 (1) "Deceased individual" means any individual, regardless of the  
24 individual's place of domicile, residence, or citizenship at the time  
25 of death or otherwise, who has died within ten years before January 1,  
26 1998, or thereafter.

27 (2) "Deceased personality" means any individual, regardless of the  
28 personality's place of domicile, residence, or citizenship at the time  
29 of death or otherwise, whose name, voice, signature, photograph, or  
30 likeness had commercial value at the time of his or her death, whether  
31 or not during the lifetime of that individual he or she used his or her  
32 name, voice, signature, photograph, or likeness on or in products,  
33 merchandise or goods, or for purposes of advertising or selling, or  
34 soliciting the purchase or sale of, products, merchandise, goods, or  
35 services. A "deceased personality" includes, without limitation, any  
36 such individual who has died within fifty years before January 1, 1998,  
37 or thereafter.

1 ((+2)) (3) "Fund-raising" means an organized activity to solicit  
2 donations of money or other goods or services from persons or entities  
3 by an organization, company, or public entity. A fund-raising activity  
4 does not include a live, public performance by an individual or group  
5 of individuals for which money is received in solicited or unsolicited  
6 gratuities.

7 ((+3)) (4) "Individual" means a natural person, living or dead.

8 ((+4)) (5) "Likeness" means an image, painting, sketching, model,  
9 diagram, or other clear representation, other than a photograph, of an  
10 individual's face, body, or parts thereof, or the distinctive  
11 appearance, gestures, or mannerisms of an individual.

12 ((+5)) (6) "Name" means the actual or assumed name, or nickname,  
13 of a living or deceased individual that is intended to identify that  
14 individual.

15 ((+6)) (7) "Person" means any natural person, firm, association,  
16 partnership, corporation, joint stock company, syndicate, receiver,  
17 common law trust, conservator, statutory trust, or any other concern by  
18 whatever name known or however organized, formed, or created, and  
19 includes not-for-profit corporations, associations, educational and  
20 religious institutions, political parties, and community, civic, or  
21 other organizations.

22 ((+7)) (8) "Personality" means any individual whose name, voice,  
23 signature, photograph, or likeness has commercial value, whether or not  
24 that individual uses his or her name, voice, signature, photograph, or  
25 likeness on or in products, merchandise, or goods, or for purposes of  
26 advertising or selling, or solicitation of purchase of, products,  
27 merchandise, goods, or services.

28 ((+8)) (9) "Photograph" means any photograph or photographic  
29 reproduction, still or moving, or any videotape, online or live  
30 television transmission, of any individual, so that the individual is  
31 readily identifiable.

32 ((+9)) (10) "Signature" means the one handwritten or otherwise  
33 legally binding form of an individual's name, written or authorized by  
34 that individual, that distinguishes the individual from all others.

35 **Sec. 3.** RCW 63.60.030 and 1998 c 274 s 3 are each amended to read  
36 as follows:

37 (1) Every individual or personality(~~(, as the case may be,)~~) has a

1 property right in the use of his or her name, voice, signature,  
2 photograph, or likeness(~~(, and)~~). Such right shall be freely  
3 transferable, assignable, and licensable, in whole or in part, by  
4 contract or inter vivos transfer(~~(, and)~~). This right shall not expire  
5 upon the death of the individual or personality, (~~as the case may be,~~  
6 ~~so protected~~) but shall (~~pass~~) be owned and enforceable by the  
7 following successors, heirs, or other transferees of living or deceased  
8 individuals or personalities:

9 (a) Except where such rights were transferred or assigned before  
10 such deceased personality's death by means of any contract or trust  
11 instrument, the right shall be owned by the person entitled to such  
12 rights under the deceased individual's or personality's(~~(, as the case~~  
13 ~~may be,)~~) last will and testament or, if none, then by the  
14 beneficiaries or heirs under the laws of intestate succession  
15 applicable to interests in intangible personal property generally of  
16 the individual's or personality's(~~(, as the case may be,)~~) domicile,  
17 regardless of whether the law of the domicile of the deceased  
18 individual or personality, at the time of death, or thereafter,  
19 recognizes a similar or identical property right; or

20 (b) If the deceased individual or personality(~~(, as the case may~~  
21 ~~be,)~~) transferred or assigned any interest in the personality rights  
22 during his or her life by means of any contract or trust instrument,  
23 then the transferred or assigned interest shall (~~pass~~) be held as  
24 follows:

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

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

30 (iii) If the interest is subject to any contract, including without  
31 limitation an exclusive license, assignment, or a community property  
32 agreement, in accordance with the terms of the applicable contract or  
33 contracts;

34 (iv) If the interest has been transferred or assigned to a third  
35 person in a form that is not addressed (~~earlier~~) in this section, by  
36 the individual or personality, or the successor, heir, or other  
37 transferee of the living or deceased individual or personality, then  
38 the interest may be transferred, assigned, or licensed by such third

1 person, in whole or in part, by any otherwise permissible form of inter  
2 vivos or testamentary transfer or, if none is applicable, under the  
3 laws of intestate succession applicable to interests in intangible  
4 personal property of the third person's domicile, regardless of whether  
5 the law of the domicile of the deceased third party, at the time of  
6 death, or thereafter, recognizes a similar or identical property right.

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

12 (3) The rights recognized under this chapter shall be deemed to  
13 have existed before June 11, 1998, and at the time of death of any  
14 deceased individual or personality or subsequent successor of their  
15 rights for the purpose of determining the person or persons entitled to  
16 these property rights as provided in this section.

17 NEW SECTION. **Sec. 4.** This act applies to all causes of action  
18 commenced on or after June 11, 1998, regardless of when the cause of  
19 action arose. To this extent, this act applies retroactively, but in  
20 all other respects it applies prospectively.

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