

2 **ESHB 1074** - S COMM AMD
3 By Committee on Law & Justice

4 NOT ADOPTED 3/6/98

5 Strike everything after the enacting clause and insert the
6 following:

7 NEW SECTION. **Sec. 1.** Every individual or personality, as the
8 case may be, has a property right in the use of his or her name, voice,
9 signature, photograph, or likeness, and such right shall be freely
10 transferable, assignable, and licensable, in whole or in part, by any
11 otherwise permissible form of inter vivos or testamentary transfer,
12 including without limitation a will, trust, contract, community
13 property agreement, or cotenancy with survivorship provisions or
14 payable-on-death provisions, or, if none is applicable, under the laws
15 of intestate succession applicable to interests in intangible personal
16 property. The property right does not expire upon the death of the
17 individual or personality, as the case may be. The right exists
18 whether or not it was commercially exploited by the individual or the
19 personality during the individual's or the personality's lifetime.

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

23 (1) "Deceased personality" means any individual whose name, voice,
24 signature, photograph, or likeness had commercial value at the time of
25 his or her death, whether or not during the lifetime of that individual
26 he or she used 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 soliciting the purchase or sale of,
29 products, merchandise, goods, or services. A "deceased personality"
30 includes, without limitation, any such individual who has died within
31 fifty years before January 1, 1998.

32 (2) "Definable group" means an assemblage of individuals existing
33 or brought together with or without interrelation, orderly form, or
34 arrangement, including but not limited to: A crowd at any sporting
35 event; a crowd in any street or public building; the audience at any

1 theatrical, musical, or stage production; or a performing group or
2 sports 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. 3.** (1) Every individual or personality, as the
38 case may be, has a property right in the use of his or her name, voice,

1 signature, photograph, or likeness, and such right shall be freely
2 transferable, assignable, and licensable, in whole or in part, by
3 contract or inter vivos transfer, and shall not expire upon the death
4 of the individual or personality, as the case may be, so protected but
5 shall pass:

6 (a) Under the deceased individual's or personality's, as the case
7 may be, last will and testament or, if none, then under the laws of
8 intestate succession applicable to interests in intangible personal
9 property of the individual's or personality's, as the case may be,
10 domicile; or

11 (b) If the individual or personality, as the case may be,
12 transferred or assigned any interest in the personality rights during
13 his or her life, then the transferred or assigned interest shall pass
14 as follows:

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

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

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

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

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

33 NEW SECTION. **Sec. 4.** (1) For individuals, except to the extent
34 that the individual may have assigned or licensed such rights, the
35 rights protected in this chapter are exclusive to the individual,
36 subject to the assignment or licensing of such rights, during such
37 individual's lifetime and are exclusive to the persons entitled to such
38 rights under section 3 of this act for a period of ten years after the

1 death of the individual except to the extent that the persons entitled
2 to such rights under section 3 of this act may have assigned or
3 licensed such rights to others.

4 (2) For personalities, except to the extent that the personality
5 may have assigned or licensed such rights, the rights protected in this
6 chapter are exclusive to the personality, subject to the assignment or
7 licensing of such rights, during such personality's lifetime and to the
8 persons entitled to such rights under section 3 of this act for a
9 period of seventy-five years after the death of the personality except
10 to the extent that the persons entitled to such rights under section 3
11 of this act may have assigned or licensed such rights to others.

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

17 NEW SECTION. **Sec. 5.** Any person who uses or authorizes the use of
18 a living or deceased individual's or personality's name, voice,
19 signature, photograph, or likeness, on or in goods, merchandise, or
20 products entered into commerce in this state, or for purposes of
21 advertising products, merchandise, goods, or services, or for purposes
22 of fund raising or solicitation of donations, or if any person
23 disseminates or publishes such advertisements in this state, without
24 the prior written consent of the owner of the right, has infringed such
25 right. An infringement may occur under this section without regard to
26 whether the use or activity is for profit or not for profit.

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

31 (2) Any person who infringes the rights under this chapter shall be
32 liable for the greater of one thousand five hundred dollars or the
33 actual damages sustained as a result of the infringement, and any
34 profits that are attributable to the infringement and not taken into
35 account when calculating actual damages. To prove profits under this
36 section, the injured party or parties must submit proof of gross

1 revenues attributable to the infringement, and the infringing party is
2 required to prove his or her deductible expenses.

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

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

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

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

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

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

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

35 (b) A literary work, theatrical work, musical composition, film,
36 radio, online or television program, magazine article, news story,
37 public affairs report, or sports broadcast or account, or with any

1 political campaign when the use does not inaccurately claim or state an
2 endorsement by the individual or personality;

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

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

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

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

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

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

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

