

HOUSE BILL REPORT

HB 1580

As Passed Legislature

Title: An act relating to personality rights.

Brief Description: Revising provisions of the personality rights act.

Sponsors: By Representatives Lantz, Carrell, Flannigan, Campbell, Morris and Pettigrew.

Brief History:

Committee Activity:

Judiciary: 2/14/03, 2/25/03 [DP].

Floor Activity:

Passed House: 3/12/03, 94-0;

Passed House: 2/11/04, 93-0.

Passed Senate: 3/5/04, 49-0.

Passed Legislature.

Brief Summary of Bill

- Specifies that it is not an infringement under the Personality Rights Act to distribute, promote, transfer, or license a photograph or material containing a person's name, voice, signature, photograph, or likeness to a third party for lawful use, or for the third party to further distribute, promote, transfer, or license the material for lawful use.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 9 members: Representatives Lantz, Chair; Moeller, Vice Chair; Carrell, Ranking Minority Member; McMahan, Assistant Ranking Minority Member; Campbell, Flannigan, Kirby, Lovick and Newhouse.

Staff: Trudes Tango Hutcheson (786-7384).

Background:

In 1998 the Legislature enacted the Personality Rights Act (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 individual or personality during his or her lifetime. It may be assigned or licensed while the individual or personality is alive, or may descend through a will or under the laws governing distribution of property if there is no will. The property right exists whether or not an individual or personality made commercial use of it while alive.

The extent 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." For personalities, the property right exists for 75 years after death. For individuals, the property right continues for 10 years after the individual dies.

Any person who uses an individual's or personality'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.

The Act provides 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 work and any advertisements for those works;
- in a film, radio, television, or online program, or magazines articles; or
- an insignificant or incidental use.

When the Act was first introduced in the Legislature, it contained a provision specifying how a person may sue when the person was photographed as part of a "definable group," such as a crowd at a sporting event. The provision was eventually removed from the bill, but the term "definable group" remains in the definitions.

Summary of Bill:

The definition of "definable group" is removed. A parent of a minor child may exercise the minor child's individual or personality rights granted under the Act.

The Act does not apply to the distribution, promotion, transfer, or license of a photograph or other material containing a person's name, voice, signature, photograph, or likeness to a third party for use in a manner that is lawful, and to the third party's further distribution, promotion, transfer, or license for a use that is lawful.

Appropriation: None.

Fiscal Note: Not Requested.

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

Testimony For: The Personality Rights Act has not been amended since 1998. Seattle has become the center for digital media now and people are using the Act. This bill is simply housekeeping. It addresses an oversight that wasn't taken care of when the Act was originally passed. The bill clarifies that the act of distributing material to a third party is not itself an infringement if the original use of the material was not an infringement. This is a common sense change.

Testimony Against: None.

Testified: Representative Lantz, prime sponsor; Lew McMurrin, Washington Software Alliance; Karen Davis, Elliot, Ostrander, Preston Law Firm; and David Green, Corbis Corporation.