

CERTIFICATION OF ENROLLMENT

HOUSE BILL 1580

Chapter 71, Laws of 2004

58th Legislature
2004 Regular Session

PERSONALITY RIGHTS

EFFECTIVE DATE: 6/10/04

Passed by the House February 11, 2004
Yeas 93 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate March 5, 2004
Yeas 49 Nays 0

BRAD OWEN

President of the Senate

Approved March 22, 2004.

GARY F. LOCKE

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 1580** as passed by the House of Representatives and the Senate on the dates hereon set forth.

RICHARD NAFZIGER

Chief Clerk

FILED

March 22, 2004 - 5:17 p.m.

**Secretary of State
State of Washington**

HOUSE BILL 1580

Passed Legislature - 2004 Regular Session

State of Washington 58th Legislature 2003 Regular Session

By Representatives Lantz, Carrell, Flannigan, Campbell, Morris and Pettigrew

Read first time 01/31/2003. Referred to Committee on Judiciary.

1 AN ACT Relating to personality rights; and amending RCW 63.60.020,
2 63.60.040, and 63.60.070.

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

4 **Sec. 1.** RCW 63.60.020 and 1998 c 274 s 2 are each amended to read
5 as follows:

6 Unless the context clearly requires otherwise, the definitions in
7 this section apply throughout this chapter.

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

17 (2) (~~"Definable group" means an assemblage of individuals existing~~
18 ~~or brought together with or without interrelation, orderly form, or~~
19 ~~arrangement, including but not limited to: A crowd at any sporting~~

1 ~~event; a crowd in any street or public building; the audience at any~~
2 ~~theatrical, musical, or stage production; or a performing group or~~
3 ~~sports team.~~

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

10 ~~((4))~~ (3) "Individual" means a natural person, living or dead.

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

15 ~~((6))~~ (5) "Name" means the actual or assumed name, or nickname,
16 of a living or deceased individual that is intended to identify that
17 individual.

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

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

31 ~~((9))~~ (8) "Photograph" means any photograph or photographic
32 reproduction, still or moving, or any videotape, online or live
33 television transmission, of any individual, so that the individual is
34 readily identifiable.

35 ~~((10))~~ (9) "Signature" means the one handwritten or otherwise
36 legally binding form of an individual's name, written or authorized by
37 that individual, that distinguishes the individual from all others.

1 **Sec. 2.** RCW 63.60.040 and 1998 c 274 s 4 are each amended to read
2 as follows:

3 (1) For individuals, except to the extent that the individual may
4 have assigned or licensed such rights, the rights protected in this
5 chapter are exclusive to the individual, subject to the assignment or
6 licensing of such rights, during such individual's lifetime and are
7 exclusive to the persons entitled to such rights under RCW 63.60.030
8 for a period of ten years after the death of the individual except to
9 the extent that the persons entitled to such rights under RCW 63.60.030
10 may have assigned or licensed such rights to others.

11 (2) For personalities, except to the extent that the personality
12 may have assigned or licensed such rights, the rights protected in this
13 chapter are exclusive to the personality, subject to the assignment or
14 licensing of such rights, during such personality's lifetime and to the
15 persons entitled to such rights under RCW 63.60.030 for a period of
16 seventy-five years after the death of the personality except to the
17 extent that the persons entitled to such rights under RCW 63.60.030 may
18 have assigned or licensed such rights to others.

19 (3) The rights granted in this chapter may be exercised by a
20 personal representative, attorney in fact, parent of a minor child, or
21 guardian, or as authorized by a court of competent jurisdiction. The
22 terms "personal representative," "attorney in fact," and "guardian"
23 shall have the same meanings in this chapter as they have in Title 11
24 RCW.

25 **Sec. 3.** RCW 63.60.070 and 1998 c 274 s 7 are each amended to read
26 as follows:

27 (1) For purposes of RCW 63.60.050, the use of a name, voice,
28 signature, photograph, or likeness in connection with matters of
29 cultural, historical, political, religious, educational, newsworthy, or
30 public interest, including, without limitation, comment, criticism,
31 satire, and parody relating thereto, shall not constitute a use for
32 which consent is required under this chapter. A matter exempt from
33 consent under this subsection does not lose such exempt status because
34 it appears in the form of a paid advertisement if it is clear that the
35 principal purpose of the advertisement is to comment on such matter.

36 (2) This chapter does not apply to the use or authorization of use

1 of an individual's or personality's name, voice, signature, photograph,
2 or likeness, in any of the following:

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

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

11 (c) An advertisement or commercial announcement for a use permitted
12 by subsections (1) and (7) of this section and (a) or (b) of this
13 subsection;

14 (d) An advertisement, commercial announcement, or packaging for the
15 authorized sale, distribution, performance, broadcast, or display of a
16 literary, musical, cinematographic, or other artistic work using the
17 name, voice, signature, photograph, or likeness of the writer, author,
18 composer, director, actor, or artist who created the work, where such
19 individual or personality consented to the use of his or her name,
20 voice, signature, photograph, or likeness on or in connection with the
21 initial sale, distribution, performance, or display thereof; and

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

25 (3) It is no defense to an infringement action under this chapter
26 that the use of an individual's or personality's name, voice,
27 signature, photograph, or likeness includes more than one individual or
28 personality so identifiable. However, the individuals or personalities
29 complaining of the use shall not bring their cause of action as a class
30 action.

31 (4) RCW 63.60.050 does not apply to the owners or employees of any
32 medium used for advertising, including but not limited to, newspapers,
33 magazines, radio and television stations, on-line service providers,
34 billboards, and transit ads, who have published or disseminated any
35 advertisement or solicitation in violation of this chapter, unless the
36 advertisement or solicitation was intended to promote the medium
37 itself.

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

8 (6) This chapter does not apply to the use of an individual's or
9 personality's name, voice, signature, photograph, or likeness when the
10 use of the individual's or personality's name, voice, signature,
11 photograph, or likeness is an insignificant, de minimis, or incidental
12 use.

13 (7) This chapter does not apply to the distribution, promotion,
14 transfer, or license of a photograph or other material containing an
15 individual's or personality's name, voice, signature, photograph, or
16 likeness to a third party for use in a manner which is lawful under
17 this chapter, or to a third party for further distribution, promotion,
18 transfer, or license for use in a manner which is lawful under this
19 chapter.

Passed by the House February 11, 2004.

Passed by the Senate March 5, 2004.

Approved by the Governor March 22, 2004.

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