

6790

I N S E N A T E

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Introduced by Sens. SAMPSON, GOLDEN, ADAMS -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the civil rights law, in relation to prohibiting the use of the persona of a deceased personality

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 Section 1. The civil rights law is amended by adding a new section
2 50-f to read as follows:
3 S 50-F. USE OF THE PERSONA OF A DECEASED PERSONALITY PROHIBITED. 1. NO
4 PERSON, FIRM OR CORPORATION SHALL USE FOR ADVERTISING PURPOSES OR FOR
5 THE PURPOSES OF TRADE, THE PERSONA OF ANY DECEASED PERSONALITY WITHOUT
6 HAVING FIRST OBTAINED THE WRITTEN CONSENT OF THE PERSON OR PERSONS IDENTIFIED
7 IN SUBDIVISION FOURTEEN OF THIS SECTION WHO HAVE REGISTERED THEIR
8 CLAIM OF RIGHTS PURSUANT TO SUBDIVISION SEVENTEEN OF THIS SECTION, OR AS
9 OTHERWISE PROVIDED IN THIS SECTION.
10 2. AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING
11 MEANINGS:
12 A. "PERSONA" MEANS THE NAME, INCLUDING LEGAL AND PROFESSIONAL NAME,
13 PORTRAIT, VOICE AND/OR PICTURE OF A NATURAL PERSON.
14 B. "DECEASED PERSONALITY" MEANS ANY NATURAL PERSON WHO: (1) DIED A
15 DOMICILIARY OF THE STATE OF NEW YORK ON OR AFTER, OR WITHIN SEVENTY
16 YEARS PRIOR TO, THE EFFECTIVE DATE OF THIS SECTION; AND (2) WHOSE PERSONA
17 WAS OF COMMERCIAL VALUE AT THE TIME OF HIS OR HER DEATH, WHETHER OR
18 NOT THE INDIVIDUAL USED HIS OR HER PERSONA FOR ADVERTISING PURPOSES OR
19 FOR THE PURPOSES OF TRADE DURING HIS OR HER LIFETIME.
20 3. NOTHING IN THIS SECTION SHALL BE READ AS PROHIBITING THE USE OF A
21 DECEASED PERSONALITY'S PERSONA THAT OCCURS AFTER THE EXPIRATION OF
22 SEVENTY YEARS FOLLOWING THE DEATH OF THAT DECEASED PERSONALITY. NOR
23 SHALL ANYTHING IN THIS SECTION BE READ AS CREATING LIABILITY OR GIVING
24 RISE TO ANY REMEDY FOR ANY ACTIONS OR CONDUCT INVOLVING THE USE OF A
25 DECEASED PERSONALITY'S PERSONA THAT OCCURRED PRIOR TO THE EFFECTIVE DATE
26 OF THIS SECTION.
27 4. THE WRITTEN CONSENT SPECIFIED IN SUBDIVISION ONE OF THIS SECTION
28 SHALL NOT BE REQUIRED IN CONNECTION WITH THE USE OF A DECEASED PERSONAL-

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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ITY'S PERSONA FOR OTHER THAN ADVERTISING PURPOSES OR THE PURPOSES OF TRADE.

5. FOR PURPOSES OF THIS SECTION, THE FOLLOWING WORKS, OR NON-UTILITARIAN EXPRESSIVE WORKS DERIVED THEREFROM, REGARDLESS OF LENGTH OR FORMAT, APPEARING IN ANY MEDIUM NOW KNOWN OR HEREAFTER DEvised, SHALL NOT BE CONSIDERED TO HAVE USED A DECEASED PERSONALITY'S PERSONA FOR ADVERTISING PURPOSES OR FOR THE PURPOSES OF TRADE, SO LONG AS SUCH WORKS DO NOT CONSTITUTE AN ADVERTISEMENT, ENDORSEMENT OR SOLICITATION FOR THE SALE OR PURCHASE OF A PRODUCT, ARTICLE OF MERCHANDISE, GOOD OR SERVICE OTHER THAN THE FOLLOWING WORKS, OR NON-UTILITARIAN EXPRESSIVE WORKS DERIVED THEREFROM, WHICH ARE EXEMPT UNDER THIS SECTION:

A. A PLAY, BOOK, STORY, GRAPHIC NOVEL, OR OTHER LITERARY OR THEATRICAL WORK;

B. AN ARTICLE, EDITORIAL, COMMENTARY, MAGAZINE, NEWSPAPER, NEWSLETTER OR OTHER PERIODICAL;

C. A MUSICAL COMPOSITION;

D. A RADIO PROGRAM, SOUND RECORDING, OR OTHER SIMILAR NON-UTILITARIAN EXPRESSIVE AUDIO WORK;

E. A DOCUMENTARY, MOTION PICTURE, TELEVISION PROGRAM OR OTHER SIMILAR NON-UTILITARIAN EXPRESSIVE AUDIOVISUAL WORK;

F. A PHOTOGRAPH OR POSTER, OR REPRODUCTION THEREOF;

G. AN ORIGINAL WORK OF ART, ART REPRODUCTION, OR OTHER SIMILAR NON-UTILITARIAN EXPRESSIVE WORK;

H. A GAME THAT USES THE PERSONAS OF MULTIPLE DECEASED PERSONALITIES;

I. A WORK OF POLITICAL OR NEWSWORTHY VALUE;

J. A NEWS, PUBLIC AFFAIRS, PUBLIC INTEREST OR SPORTS BROADCAST OR ACCOUNT;

K. ANY WORK USED IN CONNECTION WITH ANY POLITICAL CAMPAIGN;

L. A CALENDAR OR GREETING CARD;

M. A TEE-SHIRT WHERE THE PORTRAIT OR PICTURE OF A DECEASED PERSONALITY APPEARS ON THE TEE-SHIRT ITSELF, AND NOT AS PART OF ANY HANG TAG OR OTHER LABEL;

N. ANY OTHER EDITORIAL, ARTISTIC OR NON-UTILITARIAN EXPRESSIVE WORK; OR

O. ANY ADVERTISEMENT, PROMOTION OR COMMERCIAL ANNOUNCEMENT FOR ANY OF THE PRECEDING WORKS.

IN THE CASE OF ALL WORKS IDENTIFIED IN PARAGRAPHS A THROUGH O OF THIS SUBDIVISION, THE WRITTEN CONSENT SPECIFIED IN SUBDIVISION ONE OF THIS SECTION SHALL NOT BE REQUIRED.

6. NO PERSON OR ENTITY POSSESSING RIGHTS OR TITLE, HOWEVER HELD, IN A WORK ENCOMPASSING ANY ASPECT OR ASPECTS OF A DECEASED PERSONALITY'S PERSONA SHALL BE RENDERED LIABLE UNDER THIS SECTION FOR LICENSING OR OTHERWISE AUTHORIZING THE USE OF SUCH WORK BY A THIRD PARTY, OR FOR DISPLAYING IMAGES OF SUCH WORK AS AVAILABLE FOR LICENSE OR SIMILAR USE BY A THIRD PARTY, SO LONG AS SUCH PERSON OR ENTITY DOES NOT (I) KNOW AND INTEND THAT THE THIRD PARTY PLANS TO USE SUCH WORK TO ENGAGE IN AN UNAUTHORIZED USE OF THE DECEASED PERSONALITY'S PERSONA AS PROHIBITED BY THIS SECTION, OR (II) DOES NOT WARRANT OR REPRESENT THAT THE THIRD PARTY MAY USE THE LICENSED OR AUTHORIZED ASPECT OF THE DECEASED PERSONALITY'S PERSONA FOR ADVERTISING PURPOSES OR FOR THE PURPOSES OF TRADE WITHOUT FIRST OBTAINING THE WRITTEN CONSENT REQUIRED BY SUBDIVISION ONE OF THIS SECTION. IN THE EVENT THAT SUCH THIRD PARTY LICENSEE WISHES TO USE ANY ASPECT OF A DECEASED PERSONALITY'S PERSONA ENCOMPASSED IN SUCH WORK FOR ADVERTISING PURPOSES OR FOR THE PURPOSES OF TRADE, WITHOUT THE PRIOR KNOWLEDGE AND INTENT OF THE LICENSING OR AUTHORIZING PERSON OR ENTITY,

1 IT SHALL BE THE SOLE RESPONSIBILITY OF THE THIRD PARTY LICENSEE TO
2 OBTAIN THE WRITTEN CONSENT REQUIRED BY SUBDIVISION ONE OF THIS SECTION.

3 7. UNLESS OTHERWISE AGREED TO IN WRITING, ONLY THE PERSONS OR ENTITIES
4 WHO ACTUALLY AUTHORIZE, MANUFACTURE OR OTHERWISE CREATE AN ADVERTISE-
5 MENT, PRODUCT, ARTICLE OF MERCHANDISE, GOOD OR SERVICE EMBODYING A
6 DECEASED PERSONALITY'S PERSONA SHALL BE RESPONSIBLE FOR OBTAINING THE
7 WRITTEN CONSENT REQUIRED BY SUBDIVISION ONE OF THIS SECTION; A MERE
8 DISTRIBUTOR OR TRANSMITTER OF SUCH AN ADVERTISEMENT, PRODUCT, ARTICLE OF
9 MERCHANDISE, GOOD OR SERVICE SHALL NOT BE LIABLE FOR ANY VIOLATION OF
10 THIS SECTION, UNLESS SAID DISTRIBUTOR OR TRANSMITTER KNOWINGLY AND
11 INTENTIONALLY ENGAGES IN AN UNAUTHORIZED USE OF THE DECEASED PERSONAL-
12 ITY'S PERSONA AS PROHIBITED BY THIS SECTION.

13 8. THIS SECTION SHALL NOT PROHIBIT THE USE OF A DECEASED PERSONALITY'S
14 PERSONA IN PROMOTIONAL MATERIAL OR AN ADVERTISEMENT FOR A NEWS REPORTING
15 OR AN ENTERTAINMENT MEDIUM THAT:

16 A. USES ALL OR PART OF A PAST OR FUTURE EDITION OF THE MEDIUM'S OWN
17 BROADCAST OR PUBLICATION; AND

18 B. DOES NOT CONVEY OR REASONABLY SUGGEST THAT THE DECEASED PERSONALITY
19 ENDORSES THE NEWS REPORTING OR ENTERTAINMENT MEDIUM.

20 9. THIS SECTION SHALL NOT PROHIBIT THE USE OF A DECEASED PERSONALITY'S
21 PERSONA IN PROMOTIONAL MATERIAL OR AN ADVERTISEMENT FOR AN AGGREGATOR OF
22 NEWS REPORTING AND/OR ENTERTAINMENT CONTENT THAT:

23 A. USES ALL OR A PART OF THE CONTENT OF ANY NEWS MEDIUM OR ENTER-
24 TAINMENT MEDIUM AVAILABLE TO THE AGGREGATOR'S CUSTOMERS; AND

25 B. DOES NOT CONVEY OR REASONABLY SUGGEST THAT THE DECEASED PERSONALITY
26 ENDORSES THE NEWS AND/OR ENTERTAINMENT AGGREGATOR. AS USED IN THIS
27 SUBDIVISION, THE TERM "AGGREGATOR" MEANS A PARTY WHO RECEIVES CONTENT
28 NOT OF ITS OWN CREATION FROM OTHERS WHICH IT TRANSMITS OR OTHERWISE
29 PROVIDES TO OTHERS.

30 10. THIS SECTION SHALL NOT PROHIBIT THE USE OF A DECEASED PERSONAL-
31 ITY'S PERSONA TO ACCURATELY IDENTIFY THAT DECEASED PERSONALITY AS THE
32 AUTHOR OF OR CONTRIBUTOR TO A WORK OR A PERFORMER OF A RECORDED PERFORM-
33 ANCE, UNDER CIRCUMSTANCES IN WHICH THE WORK OR RECORDED PERFORMANCE IS
34 OTHERWISE LAWFULLY REPRODUCED, EXHIBITED, OR BROADCAST.

35 11. A DECEASED PERSONALITY'S PERSONA IS PERSONAL PROPERTY, FREELY
36 TRANSFERABLE OR DESCENDIBLE, IN WHOLE OR IN PART, BY CONTRACT OR BY
37 MEANS OF ANY TRUST OR TESTAMENTARY INSTRUMENT, WHETHER SUCH CONTRACT,
38 TRUST OR TESTAMENTARY INSTRUMENT IS ENTERED INTO OR EXECUTED BEFORE OR
39 AFTER THE EFFECTIVE DATE OF THIS SECTION, BY THE DECEASED PERSONALITY OR
40 BY ANY SUBSEQUENT OWNER OF THE DECEASED PERSONALITY'S PERSONA AS RECOG-
41 NIZED BY THIS SECTION.

42 12. THE RIGHTS RECOGNIZED UNDER THIS SECTION ARE EXPRESSLY MADE RETRO-
43 ACTIVE AND SHALL BE DEEMED TO HAVE EXISTED AT THE TIME OF DEATH OF ANY
44 DECEASED PERSONALITY WHO DIED WITHIN SEVENTY YEARS PRIOR TO THE EFFEC-
45 TIVE DATE OF THIS SECTION AND, EXCEPT WHERE SUCH RIGHTS WERE PASSED OR
46 ASSIGNED PRIOR TO SUCH DECEASED PERSONALITY'S DEATH BY MEANS OF ANY
47 CONTRACT OR TRUST INSTRUMENT, SHALL BE DEEMED TO HAVE VESTED IN THE
48 PERSON OR PERSONS ENTITLED TO THESE RIGHTS UNDER THE TESTAMENTARY
49 INSTRUMENT OF THE DECEASED PERSONALITY EFFECTIVE AS OF THE DATE OF HIS
50 OR HER DEATH. IN THE ABSENCE OF A TRANSFER ELSEWHERE IN A TESTAMENTARY
51 INSTRUMENT OF THE PERSONA OF A DECEASED PERSONALITY RECOGNIZED UNDER
52 THIS SECTION, A PROVISION IN THE TESTAMENTARY INSTRUMENT THAT PROVIDES
53 FOR THE DISPOSITION OF THE RESIDUE OF THE DECEASED PERSONALITY'S ASSETS
54 SHALL BE EFFECTIVE TO TRANSFER THE DECEASED PERSONALITY'S PERSONA IN
55 ACCORDANCE WITH THE TERMS OF THAT PROVISION.

1 13. IF NO TRANSFER OF SOME OR ALL OF THE RIGHTS RECOGNIZED UNDER THIS
2 SECTION HAS OCCURRED IN ACCORDANCE WITH SUBDIVISION ELEVEN OR TWELVE OF
3 THIS SECTION, THEN SUCH RIGHTS SHALL BE DEEMED TO HAVE PASSED IN ACCORD-
4 ANCE WITH SECTION 4-1.1 OF THE ESTATES, POWERS AND TRUSTS LAW; PROVIDED,
5 HOWEVER, THAT IF THERE ARE NO SURVIVING NATURAL PERSONS TO WHOM SAID
6 RIGHTS PASS BY INTESTATE SUCCESSION, THEN SAID RIGHTS SHALL TERMINATE.

7 14. THE WRITTEN CONSENT REQUIRED BY THIS SECTION SHALL BE EXERCISABLE
8 BY THE PERSON OR PERSONS WHO COLLECTIVELY OWN MORE THAN FIFTY PERCENT OF
9 THE RIGHTS IN THE DECEASED PERSONALITY'S PERSONA IN ACCORDANCE WITH
10 SUBDIVISIONS ELEVEN, TWELVE AND THIRTEEN OF THIS SECTION. RELIANCE UPON
11 SUCH WRITTEN CONSENT PROVIDED BY THOSE WHO HAVE REGISTERED A CLAIM OF
12 RIGHTS UNDER SUBDIVISION SEVENTEEN OF THIS SECTION SHALL BE A COMPLETE
13 DEFENSE IN ANY ACTION BROUGHT UNDER THIS SECTION.

14 15. NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE CONTRARY, IF
15 AN ACTION WAS TAKEN PRIOR TO THE EFFECTIVE DATE OF THIS SECTION TO EXER-
16 CISE A DECEASED PERSONALITY'S PERSONA RIGHTS, UNDER THE LAWS OF ANY
17 OTHER STATE, BY ONE OR MORE LIVING SPOUSE, CHILDREN OR GRANDCHILDREN
18 (OTHER THAN A PERSON DISINHERITED BY THE DECEASED PERSONALITY IN A
19 TESTAMENTARY INSTRUMENT), AND THE EXERCISE OF THOSE PERSONA RIGHTS WAS
20 NOT CHALLENGED SUCCESSFULLY IN A COURT ACTION BY A PERSON DESCRIBED IN
21 SUBDIVISION ELEVEN OF THIS SECTION, THAT EXERCISE SHALL NOT BE AFFECTED
22 BY SUCH SUBDIVISION. IN SUCH A CASE, THE PERSONA RIGHTS THAT WOULD
23 OTHERWISE VEST IN ONE OR MORE PERSONS DESCRIBED IN SUBDIVISION ELEVEN OF
24 THIS SECTION SHALL VEST SOLELY IN THE SPOUSE, CHILDREN OR GRANDCHILDREN
25 DESCRIBED HEREIN (OTHER THAN A PERSON DISINHERITED BY THE DECEASED
26 PERSONALITY IN A TESTAMENTARY INSTRUMENT) FOR ALL FUTURE PURPOSES.

27 16. THE REMEDIES FOR ANY VIOLATION OF THIS SECTION SHALL BE LIMITED TO
28 THOSE SPECIFIED IN SECTION FIFTY-ONE OF THIS ARTICLE, AND THE EXCEPTIONS
29 TO LIABILITY SPECIFIED IN SECTION FIFTY-ONE OF THIS ARTICLE SHALL LIKE-
30 WISE BE APPLICABLE TO ANY ASSERTED VIOLATION OF THIS SECTION.

31 17. ANY PERSON OR PERSONS CLAIMING TO BE A SUCCESSOR-IN-INTEREST TO
32 THE RIGHTS IN A DECEASED PERSONALITY'S PERSONA UNDER THIS SECTION, OR A
33 LICENSEE THEREOF, MAY REGISTER A VERIFIED CLAIM WITH THE SECRETARY OF
34 STATE OF THE STATE OF NEW YORK ON A FORM PRESCRIBED BY SUCH SECRETARY,
35 WHICH SHALL INCLUDE THE NAME AND DATE OF DEATH OF THE DECEASED PERSONAL-
36 ITY, THE NAME AND ADDRESS OF THE CLAIMANT, THE BASIS OF THE CLAIM, AND
37 THE RIGHTS CLAIMED. AS SOON AS SHALL BE PRACTICABLE, THE SECRETARY OF
38 STATE SHALL CREATE A SYSTEM WHICH ALLOWS, UPON RECEIPT AND AFTER FILING
39 OF ANY DOCUMENT UNDER THIS SECTION, SUCH SECRETARY TO POST THE DOCUMENT
40 ALONG WITH THE ENTIRE REGISTRY OF PERSONS CLAIMING TO BE A
41 SUCCESSOR-IN-INTEREST TO THE RIGHTS OF A DECEASED PERSONALITY OR A
42 REGISTERED LICENSEE UNDER THIS SECTION UPON THE DEPARTMENT OF STATE
43 WEBSITE, PROVIDED THAT INSTEAD OF THE NAME AND ADDRESS OF THE CLAIMANT,
44 THE CLAIMANT MAY REQUEST THAT THE CONTACT LISTED ON THE WEBSITE BE THE
45 DESIGNATED REPRESENTATIVE OR AGENT. CLAIMS REGISTERED UNDER THIS SUBDI-
46 VISION SHALL BE PUBLIC RECORDS; SUCH CLAIMS SHALL BE DEEMED VALID UNLESS
47 AND UNTIL OTHERWISE ADJUDICATED BY A COURT OF COMPETENT JURISDICTION.
48 THE COST FOR FILING SHALL BE ONE HUNDRED DOLLARS. THE SECRETARY OF STATE
49 SHALL PROMULGATE REGULATIONS FOR CARRYING OUT THE PROVISIONS OF THIS
50 SUBDIVISION.

51 18. NO SUCCESSOR-IN-INTEREST TO THE RIGHTS OF A DECEASED PERSONALITY
52 UNDER THIS SECTION, NOR ANY LICENSEE THEREOF, MAY FILE OR MAINTAIN AN
53 ACTION FOR A USE PROHIBITED BY THIS SECTION THAT OCCURS BEFORE THE
54 SUCCESSOR-IN-INTEREST OR LICENSEE REGISTERS A CLAIM OF RIGHTS UNDER
55 SUBDIVISION SEVENTEEN OF THIS SECTION.

1 19. IF NO CLAIM OF RIGHTS TO THE PERSONA OF A DECEASED PERSONALITY HAS
2 BEEN VALIDLY REGISTERED UNDER SUBDIVISION SEVENTEEN OF THIS SECTION, ANY
3 PERSON WISHING TO USE SUCH DECEASED PERSONALITY'S PERSONA, INCLUDING FOR
4 ADVERTISING PURPOSES OR FOR THE PURPOSES OF TRADE, MAY DO SO WITHOUT
5 VIOLATING THIS SECTION.

6 20. ANY ACTION TO ENFORCE THIS SECTION SHALL BE SUBJECT TO THE
7 ONE-YEAR LIMITATION PERIOD SET FORTH IN SUBDIVISION THREE OF SECTION TWO
8 HUNDRED FIFTEEN OF THE CIVIL PRACTICE LAW AND RULES.

9 S 2. If any clause, sentence, paragraph, section or part of this act
10 shall be adjudged by any court of competent jurisdiction to be invalid,
11 such judgment shall not affect, impair or invalidate the remainder ther-
12 eof, but shall be confined in its operation to the clause, sentence,
13 paragraph, section or part thereof directly involved in the controversy
14 in which such judgment shall have been rendered.

15 S 3. This act shall take effect on the first of April next succeeding
16 the date on which it shall have become a law.