

5066

2009-2010 Regular Sessions

I N   S E N A T E

April 27, 2009

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Introduced by Sen. SCHNEIDERMAN -- read twice and ordered printed, and  
when printed to be committed to the Committee on Codes

AN ACT amended the civil rights law, in relation to prohibiting the use  
of the name, portrait and/or picture 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.  
4     NO 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 TEN OF THIS SECTION WHO HAVE REGISTERED THEIR  
8     CLAIM OF RIGHTS PURSUANT TO SUBDIVISION TWELVE OF THIS SECTION UNLESS  
9     OTHERWISE PROVIDED HEREIN.  
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 AND/OR PICTURE OF A NATURAL PERSON.  
14    (B) "DECEASED PERSONALITY" MEANS ANY NATURAL PERSON WHOSE PERSONA HAD  
15    COMMERCIAL VALUE PRIOR TO HIS OR HER DEATH, AND WHO DIED A DOMICILIARY  
16    OF THE STATE OF NEW YORK ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION.  
17    3. NOTHING IN THIS SECTION SHALL BE READ AS PROHIBITING THE USE OF A  
18    DECEASED PERSONALITY'S PERSONA THAT OCCURS AFTER THE EXPIRATION OF TWENTY-FIVE  
19    YEARS FOLLOWING THE DEATH OF THAT DECEASED PERSONALITY. NOR  
20    SHALL ANYTHING IN THIS SECTION BE READ AS CREATING LIABILITY OR GIVING  
21    RISE TO ANY REMEDY FOR ANY ACTIONS OR CONDUCT INVOLVING THE USE OF A  
22    DECEASED PERSONALITY'S PERSONA THAT COMMENCED BEFORE EITHER THE EFFECTIVE  
23    DATE OF THIS SECTION OR THE POSTING OF THE REGISTRY PURSUANT TO  
24    SUBDIVISION TWELVE OF THIS SECTION.

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

LBD11639-01-9

1 4. NOTWITHSTANDING ANY CONTRARY PROVISION OF THIS SECTION, THE CREATOR  
2 OR AUTHOR OF A PORTRAIT OR PICTURE (INCLUDING A PHOTOGRAPH OR AN AUDIO-  
3 VISUAL IMAGE), OF A DECEASED PERSONALITY THAT IS THE PROPERTY OF SUCH  
4 CREATOR OR AUTHOR OR THE SUCCESSOR IN INTEREST THERETO SHALL RETAIN  
5 INVIOLEATE ALL RIGHTS AND TITLE, HOWEVER HELD, TO THAT PORTRAIT OR  
6 PICTURE, INCLUDING THE RIGHT TO LICENSE, SUBLICENSE, ASSIGN, TRANSFER,  
7 SELL, OR OTHERWISE DISPOSE OF SUCH RIGHTS AND TITLE, AND ANY OTHER  
8 RIGHT, POWER OR INTEREST WHICH SUCH CREATOR OR AUTHOR OR SUCCESSOR IN  
9 INTEREST POSSESSED PRIOR TO THE EFFECTIVE DATE OF THIS SECTION, AND A  
10 THIRD-PARTY ENTITY MAY ENTER INTO AN AGREEMENT WITH SUCH CREATOR OR  
11 AUTHOR OR SUCCESSOR IN INTEREST FOR LICENSURE OF THE USE OF SUCH  
12 PORTRAIT OR PICTURE, OR TO RECEIVE BY ASSIGNMENT, TRANSFER, OR SALE THE  
13 RIGHTS AND TITLE TO SUCH PORTRAIT OR PICTURE TO THE SAME EXTENT WHICH  
14 SUCH THIRD-PARTY ENTITY POSSESSED OR WOULD HAVE POSSESSED PRIOR TO THE  
15 EFFECTIVE DATE OF THIS SECTION. THE CREATOR OR AUTHOR OR SUCCESSOR IN  
16 INTEREST SHALL HAVE NO LIABILITY UNDER THIS SECTION FOR THE USE OF A  
17 DECEASED PERSONALITY'S PERSONA BY ANY SUCH THIRD-PARTY ENTITY OR FOR ANY  
18 SUCH THIRD-PARTY ENTITY'S FAILURE TO OBTAIN ANY PERMISSION FOR SUCH USE  
19 REQUIRED BY THIS SECTION. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO  
20 REQUIRE THE CREATOR, AUTHOR, SUCCESSOR IN INTEREST OR THIRD-PARTY TO  
21 OBTAIN PERMISSION TO UTILIZE SUCH PICTURES AND PHOTOGRAPHS FOR ADVERTIS-  
22 ING PURPOSES, OR FOR THE PURPOSES OF TRADE FROM PERSONS IDENTIFIED IN  
23 SUBDIVISION TWELVE OF THIS SECTION FOR ANY OF THE FOLLOWING: USE ON ANY  
24 PAPER PRODUCTS, INCLUDING WITHOUT LIMITATION CALENDARS, POSTERS, GREET-  
25 ING CARDS, NAPKINS, AND OTHER SIMILAR PRODUCTS; USE OF THE PORTRAIT OR  
26 PICTURE ON NOVELTY AND SOUVENIR PRODUCTS; USE ON TOTE BAGS OR APPAREL,  
27 OR WHERE THE USE OF THE IMAGE CONSTITUTES A CONSTITUTIONALLY-PROTECTED  
28 EXPRESSION.

29 5. FOR PURPOSES OF THIS SECTION, A PLAY, BOOK, STORY, ARTICLE, MAGA-  
30 ZINE, NEWSPAPER, NEWSLETTER, OTHER PERIODICAL, GRAPHIC NOVEL, MUSICAL  
31 COMPOSITION, SOUND RECORDING, DOCUMENTARY, MOTION PICTURE OR TELEVISION  
32 PROGRAM OR OTHER AUDIOVISUAL WORK, RADIO OR OTHER AUDIO PROGRAM, WORK OF  
33 ART (INCLUDING WITHOUT LIMITATION PHOTOGRAPHS AND ILLUSTRATIONS), ART  
34 REPRODUCTION OR OTHER WORK DERIVED FROM SUCH WORK OF ART, CALENDAR,  
35 GAME, WORK OF POLITICAL OR NEWSWORTHY VALUE, INFORMATIONAL WORK, OR ANY  
36 OTHER EDITORIAL, ARTISTIC OR OTHER EXPRESSIVE WORK, REGARDLESS OF LENGTH  
37 OR FORMAT, OR ANY ADVERTISEMENT, PROMOTION OR COMMERCIAL ANNOUNCEMENT  
38 FOR ANY SUCH WORK, IN ALL CASES IN ANY MEDIUM NOW KNOWN OR HEREAFTER  
39 DEvised, SHALL NOT BE CONSIDERED TO HAVE USED A DECEASED PERSONALITY'S  
40 PERSONA FOR ADVERTISING PURPOSES OR FOR THE PURPOSES OF TRADE, SO LONG  
41 AS SUCH WORK IS NOT BEING USED AS A PURELY COMMERCIAL ADVERTISEMENT OR  
42 ENDORSEMENT. LIKEWISE, THIS SECTION SHALL NOT PROHIBIT THE USE OF A  
43 DECEASED PERSONALITY'S PERSONA IN ANY ADVERTISEMENT, PROMOTION OR  
44 COMMERCIAL ANNOUNCEMENT FOR AN AGGREGATOR OF THE CONTENT SPECIFIED ABOVE  
45 WHEN THAT ADVERTISEMENT, PROMOTIONAL MATERIAL OR COMMERCIAL ANNOUNCEMENT  
46 ACCURATELY DEPICTS ALL OR PART OF THE CONTENT AVAILABLE TO THE  
47 AGGREGATOR'S CUSTOMERS.

48 6. THIS SECTION SHALL NOT PROHIBIT THE USE OF A DECEASED PERSONALITY'S  
49 PERSONA TO ACCURATELY IDENTIFY THAT DECEASED PERSONALITY'S CONTRIBUTIONS  
50 TO A WORK OR A PERFORMANCE, UNDER CIRCUMSTANCES IN WHICH THE WORK OR  
51 PERFORMANCE IS OTHERWISE LAWFULLY REPRODUCED, EXHIBITED, OR BROADCAST.

52 7. A DECEASED PERSONALITY'S PERSONA IS PERSONAL PROPERTY, FREELY  
53 TRANSFERABLE OR DESCENDIBLE, IN WHOLE OR IN PART, BY CONTRACT, BY MEANS  
54 OF ANY TRUST OR TESTAMENTARY INSTRUMENT, PROVIDED SUCH CONTRACT, TRUST  
55 OR TESTAMENTARY INSTRUMENT IS ENTERED INTO OR EXECUTED ON OR AFTER THE  
56 EFFECTIVE DATE OF THIS SECTION, BY THE DECEASED PERSONALITY OR BY ANY

1 SUBSEQUENT OWNER OF THE DECEASED PERSONALITY'S PERSONA AS RECOGNIZED BY  
2 THIS SECTION.

3 8. THE RIGHTS RECOGNIZED UNDER THIS SECTION ARE EXPRESSLY PROSPECTIVE.  
4 SUCH RIGHTS MAY BE PASSED OR ASSIGNED PRIOR TO SUCH DECEASED PERSONAL-  
5 ITY'S DEATH BY MEANS OF ANY CONTRACT OR TRUST INSTRUMENT, OR SET FORTH  
6 AS A SPECIFIC BEQUEST WITHIN A TESTAMENTARY INSTRUMENT OF THE DECEASED  
7 PERSONALITY EFFECTIVE AS OF THE DATE OF HIS OR HER DEATH.

8 9. IF NO TRANSFER OF SOME OR ALL OF THE RIGHTS RECOGNIZED UNDER THIS  
9 SECTION HAS OCCURRED IN ACCORDANCE WITH SUBDIVISION EIGHT OF THIS  
10 SECTION, THEN SUCH RIGHTS SHALL BE DEEMED TO HAVE PASSED IN ACCORDANCE  
11 WITH SECTION 4-1.1 OF THE ESTATES, POWERS AND TRUSTS LAW; PROVIDED,  
12 HOWEVER, THAT IF THERE ARE NO SURVIVING NATURAL PERSONS TO WHOM SAID  
13 RIGHTS PASS BY INTESTATE SUCCESSION, THEN SAID RIGHTS SHALL TERMINATE.

14 10. THE WRITTEN CONSENT REQUIRED BY THIS SECTION SHALL BE EXERCISABLE  
15 BY THE PERSON OR PERSONS WHO COLLECTIVELY OWN MORE THAN FIFTY PERCENT OF  
16 THE RIGHTS IN THE DECEASED PERSONALITY'S PERSONA IN ACCORDANCE WITH  
17 SUBDIVISION EIGHT OR NINE OF THIS SECTION AND WHO HAVE REGISTERED THEIR  
18 CLAIM OF RIGHTS PURSUANT TO SUBDIVISION TWELVE OF THIS SECTION. RELIANCE  
19 UPON SUCH WRITTEN CONSENT PROVIDED BY THOSE WHO HAVE REGISTERED A CLAIM  
20 OF RIGHTS UNDER SUBDIVISION TWELVE OF THIS SECTION SHALL BE A COMPLETE  
21 DEFENSE IN ANY ACTION BROUGHT UNDER THIS SECTION.

22 11. THE REMEDIES FOR ANY VIOLATION OF THIS SECTION SHALL BE LIMITED TO  
23 THOSE SPECIFIED IN SECTION FIFTY-ONE OF THIS ARTICLE, AND THE EXCEPTIONS  
24 TO LIABILITY SPECIFIED IN SECTION FIFTY-ONE OF THIS ARTICLE SHALL LIKE-  
25 WISE BE APPLICABLE TO ANY ASSERTED VIOLATION OF THIS SECTION.

26 12. NO SUCCESSOR IN INTEREST TO THE RIGHTS OF A DECEASED PERSONALITY  
27 UNDER THIS SECTION OR A LICENSEE THEREOF MAY FILE A CLAIM OR SEEK ANY  
28 REMEDY WHATSOEVER FOR A USE PROHIBITED BY THIS SECTION THAT COMMENCED  
29 BEFORE EITHER THE EFFECTIVE DATE OF THIS SECTION OR BEFORE THE SUCCESSOR  
30 IN INTEREST OR LICENSEE REGISTERS A CLAIM OF THE RIGHTS UNDER THIS  
31 SUBDIVISION AND THE SECRETARY OF STATE POSTS THE REGISTRY UNDER THIS  
32 SUBDIVISION. ANY PERSON OR PERSONS CLAIMING TO BE A SUCCESSOR IN INTER-  
33 EST UNDER THIS SECTION MUST OWN OR COLLECTIVELY OWN MORE THAN FIFTY  
34 PERCENT OF THE RIGHTS IN THE DECEASED PERSONALITY'S PERSONA IN ACCORD-  
35 ANCE WITH SUBDIVISION SEVEN, EIGHT OR NINE OF THIS SECTION, OR A LICEN-  
36 SEE THEREOF, AND MUST FIRST REGISTER WITHIN ONE YEAR OF THE DEATH OF THE  
37 DECEASED PERSONALITY A VERIFIED CLAIM WITH THE SECRETARY OF STATE OF THE  
38 STATE OF NEW YORK ON A FORM PRESCRIBED BY SUCH SECRETARY, WHICH SHALL  
39 INCLUDE THE NAME AND DATE OF DEATH OF THE DECEASED PERSONALITY, THE  
40 NAMES AND ADDRESSES OF THE CLAIMANTS, THE BASIS OF THE CLAIM, AND THE  
41 RIGHTS CLAIMED. AS SOON AS SHALL BE PRACTICABLE, THE SECRETARY OF STATE  
42 SHALL CREATE A SYSTEM WHICH ALLOWS, UPON RECEIPT AND AFTER FILING OF ANY  
43 DOCUMENT UNDER THIS SECTION, SUCH SECRETARY TO POST THE DOCUMENT ALONG  
44 WITH THE ENTIRE REGISTRY OF PERSONS CLAIMING TO BE A SUCCESSOR IN INTER-  
45 EST TO THE RIGHTS OF A DECEASED PERSONALITY OR A REGISTERED LICENSEE  
46 UNDER THIS SECTION UPON THE DEPARTMENT OF STATE WEBSITE, PROVIDED THAT  
47 INSTEAD OF THE NAME AND ADDRESS OF THE CLAIMANT, THE CLAIMANT MAY  
48 REQUEST THAT THE CONTACT LISTED ON THE WEBSITE BE THE DESIGNATED REPRESENTATIVE OR AGENT. CLAIMS REGISTERED UNDER THIS SUBDIVISION SHALL BE  
49 PUBLIC RECORDS. THE COST FOR FILING SHALL BE ONE HUNDRED DOLLARS. THE  
50 SECRETARY OF STATE SHALL PROMULGATE REGULATIONS FOR CARRYING OUT THE  
51 PROVISIONS OF THIS SUBDIVISION.

52  
53 13. ANY ACTION TO ENFORCE THIS SECTION SHALL BE SUBJECT TO THE ONE  
54 YEAR LIMITATION PERIOD SET FORTH IN SUBDIVISION THREE OF SECTION TWO  
55 HUNDRED FIFTEEN OF THE CIVIL PRACTICE LAW AND RULES.

1     S 2. If any clause, sentence, paragraph, section or part of this act  
2 shall be adjudged by any court of competent jurisdiction to be invalid,  
3 such judgment shall not affect, impair or invalidate the remainder ther-  
4 eof, but shall be confined in its operation to the clause, sentence,  
5 paragraph, section or part thereof directly involved in the controversy  
6 in which such judgment shall have been rendered.  
7     S 3. This act shall take effect on the first of January next succeed-  
8 ing the date on which it shall have become a law.