

2999

2011-2012 Regular Sessions

I N S E N A T E

February 4, 2011

Introduced by Sen. GOLDEN -- 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.

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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.