S T A T E O F N E W Y O R K

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:

Section 1. The civil rights law is amended by adding a new section 50-f to read as follows:

S 50-F. USE OF THE PERSONA OF A DECEASED PERSONALITY PROHIBITED. 1. NO PERSON, FIRM OR CORPORATION SHALL USE FOR ADVERTISING PURPOSES OR FOR THE PURPOSES OF TRADE, THE PERSONA OF ANY DECEASED PERSONALITY WITHOUT HAVING FIRST OBTAINED THE WRITTEN CONSENT OF THE PERSON OR PERSONS IDENTIFIED IN SUBDIVISION TEN OF THIS SECTION WHO HAVE REGISTERED THEIR CLAIM OF RIGHTS PURSUANT TO SUBDIVISION TWELVE OF THIS SECTION UNLESS OTHERWISE PROVIDED HEREIN.

2. AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "PERSONA" MEANS THE NAME, INCLUDING LEGAL AND PROFESSIONAL NAME, PORTRAIT AND/OR PICTURE OF A NATURAL PERSON.

(B) "DECEASED PERSONALITY" MEANS ANY NATURAL PERSON WHOSE PERSONA HAD COMMERCIAL VALUE PRIOR TO HIS OR HER DEATH, AND WHO DIED A DOMICILIARY OF THE STATE OF NEW YORK ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION.

3. NOTHING IN THIS SECTION SHALL BE READ AS PROHIBITING THE USE OF A DECEASED PERSONALITY'S PERSONA THAT OCCURS AFTER THE EXPIRATION OF TWENTY-FIVE YEARS FOLLOWING THE DEATH OF THAT DECEASED PERSONALITY. NOR SHALL ANYTHING IN THIS SECTION BE READ AS CREATING LIABILITY OR GIVING RISE TO ANY REMEDY FOR ANY ACTIONS OR CONDUCT INVOLVING THE USE OF A DECEASED PERSONALITY'S PERSONA THAT COMMENCED BEFORE EITHER THE EFFECTIVE DATE OF THIS SECTION OR THE POSTING OF THE REGISTRY PURSUANT TO 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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4. NOTWITHSTANDING ANY CONTRARY PROVISION OF THIS SECTION, THE CREATOR OR AUTHOR OF A PORTRAIT OR PICTURE (INCLUDING A PHOTOGRAPH OR AN AUDIO-VISUAL IMAGE), OF A DECEASED PERSONALITY THAT IS THE PROPERTY OF SUCH CREATOR OR AUTHOR OR THE SUCCESSOR IN INTEREST THERETO SHALL RETAIN INVIOLATE ALL RIGHTS AND TITLE, HOWEVER HELD, TO THAT PORTRAIT OR PICTURE, INCLUDING THE RIGHT TO LICENSE, SUBLICENSE, ASSIGN, TRANSFER, SELL, OR OTHERWISE DISPOSE OF SUCH RIGHTS AND TITLE, AND ANY OTHER RIGHT, POWER OR INTEREST WHICH SUCH CREATOR OR AUTHOR OR SUCCESSOR IN INTEREST POSSESSED PRIOR TO THE EFFECTIVE DATE OF THIS SECTION, AND A THIRD-PARTY ENTITY MAY ENTER INTO AN AGREEMENT WITH SUCH CREATOR OR AUTHOR OR SUCCESSOR IN INTEREST FOR LICENSURE OF THE USE OF SUCH PORTRAIT OR PICTURE, OR TO RECEIVE BY ASSIGNMENT, TRANSFER, OR SALE THE RIGHTS AND TITLE TO SUCH PORTRAIT OR PICTURE TO THE SAME EXTENT WHICH SUCH THIRD-PARTY ENTITY POSSESSED OR WOULD HAVE POSSESSED PRIOR TO THE EFFECTIVE DATE OF THIS SECTION. THE CREATOR OR AUTHOR OR SUCCESSOR IN INTEREST SHALL HAVE NO LIABILITY UNDER THIS SECTION FOR THE USE OF A DECEASED PERSONALITY'S PERSONA BY ANY SUCH THIRD-PARTY ENTITY OR FOR ANY SUCH THIRD-PARTY ENTITY'S FAILURE TO OBTAIN ANY PERMISSION FOR SUCH USE REQUIRED BY THIS SECTION. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO REQUIRE THE CREATOR, AUTHOR, SUCCESSOR IN INTEREST OR THIRD-PARTY TO OBTAIN PERMISSION TO UTILIZE SUCH PICTURES AND PHOTOGRAPHS FOR ADVERTIS-ING PURPOSES, OR FOR THE PURPOSES OF TRADE FROM PERSONS IDENTIFIED IN SUBDIVISION TWELVE OF THIS SECTION FOR ANY OF THE FOLLOWING: USE ON ANY PAPER PRODUCTS, INCLUDING WITHOUT LIMITATION CALENDARS, POSTERS, GREET-ING CARDS, NAPKINS, AND OTHER SIMILAR PRODUCTS; USE OF THE PORTRAIT OR PICTURE ON NOVELTY AND SOUVENIR PRODUCTS; USE ON TOTE BAGS OR APPAREL, OR WHERE THE USE OF THE IMAGE CONSTITUTES A CONSTITUTIONALLY-PROTECTED EXPRESSION.

5. FOR PURPOSES OF THIS SECTION, A PLAY, BOOK, STORY, ARTICLE, MAGA-ZINE, NEWSPAPER, NEWSLETTER, OTHER PERIODICAL, GRAPHIC NOVEL, MUSICAL COMPOSITION, SOUND RECORDING, DOCUMENTARY, MOTION PICTURE OR TELEVISION PROGRAM OR OTHER AUDIOVISUAL WORK, RADIO OR OTHER AUDIO PROGRAM, WORK OF ART (INCLUDING WITHOUT LIMITATION PHOTOGRAPHS AND ILLUSTRATIONS), ART REPRODUCTION OR OTHER WORK DERIVED FROM SUCH WORK OF ART, CALENDAR, GAME, WORK OF POLITICAL OR NEWSWORTHY VALUE, INFORMATIONAL WORK, OR ANY OTHER EDITORIAL, ARTISTIC OR OTHER EXPRESSIVE WORK, REGARDLESS OF LENGTH OR FORMAT, OR ANY ADVERTISEMENT, PROMOTION OR COMMERCIAL ANNOUNCEMENT FOR ANY SUCH WORK, IN ALL CASES 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 WORK IS NOT BEING USED AS A PURELY COMMERCIAL ADVERTISEMENT OR ENDORSEMENT. LIKEWISE, THIS SECTION SHALL NOT PROHIBIT THE USE OF A DECEASED PERSONALITY'S PERSONA IN ANY ADVERTISEMENT, PROMOTION OR COMMERCIAL ANNOUNCEMENT FOR AN AGGREGATOR OF THE CONTENT SPECIFIED ABOVE WHEN THAT ADVERTISEMENT, PROMOTIONAL MATERIAL OR COMMERCIAL ANNOUNCEMENT ACCURATELY DEPICTS ALL OR PART OF THE CONTENT AVAILABLE TO THE AGGREGATOR'S CUSTOMERS.

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

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

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

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

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

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

11. THE REMEDIES FOR ANY VIOLATION OF THIS SECTION SHALL BE LIMITED TO THOSE SPECIFIED IN SECTION FIFTY-ONE OF THIS ARTICLE, AND THE EXCEPTIONS TO LIABILITY SPECIFIED IN SECTION FIFTY-ONE OF THIS ARTICLE SHALL LIKEWISE BE APPLICABLE TO ANY ASSERTED VIOLATION OF THIS SECTION.

12. NO SUCCESSOR IN INTEREST TO THE RIGHTS OF A DECEASED PERSONALITY UNDER THIS SECTION OR A LICENSEE THEREOF MAY FILE A CLAIM OR SEEK ANY REMEDY WHATSOEVER FOR A USE PROHIBITED BY THIS SECTION THAT COMMENCED BEFORE EITHER THE EFFECTIVE DATE OF THIS SECTION OR BEFORE THE SUCCESSOR IN INTEREST OR LICENSEE REGISTERS A CLAIM OF THE RIGHTS UNDER THIS SUBDIVISION AND THE SECRETARY OF STATE POSTS THE REGISTRY UNDER THIS SUBDIVISION. ANY PERSON OR PERSONS CLAIMING TO BE A SUCCESSOR IN INTEREST UNDER THIS SECTION MUST OWN OR COLLECTIVELY OWN MORE THAN FIFTY PERCENT OF THE RIGHTS IN THE DECEASED PERSONALITY'S PERSONA IN ACCORDANCE WITH SUBDIVISION SEVEN, EIGHT OR NINE OF THIS SECTION, OR A LICENSEE THEREOF, AND MUST FIRST REGISTER WITHIN ONE YEAR OF THE DEATH OF THE DECEASED PERSONALITY A VERIFIED CLAIM WITH THE SECRETARY OF STATE OF THE STATE OF NEW YORK ON A FORM PRESCRIBED BY SUCH SECRETARY, WHICH SHALL INCLUDE THE NAME AND DATE OF DEATH OF THE DECEASED PERSONALITY, THE NAMES AND ADDRESSES OF THE CLAIMANTS, THE BASIS OF THE CLAIM, AND THE RIGHTS CLAIMED. AS SOON AS SHALL BE PRACTICABLE, THE SECRETARY OF STATE SHALL CREATE A SYSTEM WHICH ALLOWS, UPON RECEIPT AND AFTER FILING OF ANY DOCUMENT UNDER THIS SECTION, SUCH SECRETARY TO POST THE DOCUMENT ALONG WITH THE ENTIRE REGISTRY OF PERSONS CLAIMING TO BE A SUCCESSOR IN INTEREST TO THE RIGHTS OF A DECEASED PERSONALITY OR A REGISTERED LICENSEE UNDER THIS SECTION UPON THE DEPARTMENT OF STATE WEBSITE, PROVIDED THAT INSTEAD OF THE NAME AND ADDRESS OF THE CLAIMANT, THE CLAIMANT MAY REQUEST THAT THE CONTACT LISTED ON THE WEBSITE BE THE DESIGNATED REPRESENTATIVE OR AGENT. CLAIMS REGISTERED UNDER THIS SUBDIVISION SHALL BE PUBLIC RECORDS. THE COST FOR FILING SHALL BE ONE HUNDRED DOLLARS. THE SECRETARY OF STATE SHALL PROMULGATE REGULATIONS FOR CARRYING OUT THE PROVISIONS OF THIS SUBDIVISION.

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

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

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