

AMENDED IN ASSEMBLY JUNE 29, 1999

AMENDED IN SENATE MARCH 3, 1999

**SENATE BILL**

**No. 209**

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**Introduced by Senator Burton and Assembly Member  
Battin**

~~(Principal coauthor: Assembly Member Battin)~~

**(Coauthors: Senators Hayden, O'Connell, and Solis)**

(Coauthors: Assembly Members Alquist, Cardoza, Cunneen,  
House, Knox, Kuehl, Scott, and Vincent)

January 20, 1999

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An act to amend and renumber Section 990 of the Civil Code, relating to deceased personalities.

LEGISLATIVE COUNSEL'S DIGEST

SB 209, as amended, Burton. Deceased personalities.

Existing law establishes a cause of action for damages on behalf of specified injured parties for the unauthorized use of a deceased personality's name, voice, signature, photograph, or likeness for commercial purposes within 50 years of the personality's death, except as specified.

This bill would ~~amend and renumber~~ *revise* that provision to extend the period of protection from 50 years to 70 years after the personality's death. The bill would also revise the exceptions applicable to this protection, as specified, and would state that ~~a plaintiff has standing to bring an action pursuant to the provision~~ *its provisions apply* if any of the acts giving rise to the action occurred *directly* in this state; ~~whether or not the decedent was a domiciliary of this state at~~

~~the time of death.~~ In addition, the bill would require the Secretary of State, upon the filing of a claim as successor in interest to the rights of a deceased personality, as provided pursuant to existing law, to post the document along with the entire registry of persons filing such claims on the World Wide Web.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 990 of the Civil Code is amended  
2 and renumbered to read:

3 3344.1. (a) Any person who uses a deceased  
4 personality’s name, voice, signature, photograph, or  
5 likeness, in any manner, on or in products, merchandise,  
6 or goods, or for purposes of advertising or selling, or  
7 soliciting purchases of, products, merchandise, goods, or  
8 services, without prior consent from the person or  
9 persons specified in subdivision (c), shall be liable for any  
10 damages sustained by the person or persons injured as a  
11 result thereof. *For purposes of this section, works of*  
12 *expression, including, but not limited to, fictional or*  
13 *nonfictional entertainment, dramatic, literary, and*  
14 *musical works, shall not be considered products,*  
15 *merchandise, goods, or services, unless those works use a*  
16 *deceased personality’s name, voice, signature,*  
17 *photograph, or likeness in any of the following ways: (1)*  
18 *for the purpose of promoting, endorsing, advertising,*  
19 *selling, soliciting of, or use in, a commercial product; (2)*  
20 *in a manner that alters or manipulates the deceased*  
21 *personality’s name, voice, signature, photograph, or*  
22 *likeness using digital technology now known or hereafter*  
23 *developed; or (3) in a manner that is false and known to*  
24 *be false, or with reckless disregard for the falsity of the*  
25 *use, where that use is portrayed as factual.* In addition, in  
26 any action brought under this section, the person who  
27 violated the section shall be liable to the injured party or  
28 parties in an amount equal to the greater of seven  
29 hundred fifty dollars (\$750) or the actual damages



1 suffered by the injured party or parties, as a result of the  
2 unauthorized use, and any profits from the unauthorized  
3 use that are attributable to the use and are not taken into  
4 account in computing the actual damages. In establishing  
5 these profits, the injured party or parties shall be required  
6 to present proof only of the gross revenue attributable to  
7 the use and the person who violated the section is  
8 required to prove his or her deductible expenses.  
9 Punitive damages may also be awarded to the injured  
10 party or parties. The prevailing party or parties in any  
11 action under this section shall also be entitled to  
12 attorneys' fees and costs.

13 (b) The rights recognized under this section are  
14 property rights, freely transferable, in whole or in part, by  
15 contract or by means of trust or testamentary documents,  
16 whether the transfer occurs before the death of the  
17 deceased personality, by the deceased personality or his  
18 or her transferees, or, after the death of the deceased  
19 personality, by the person or persons in whom the rights  
20 vest under this section or the transferees of that person or  
21 persons.

22 (c) The consent required by this section shall be  
23 exercisable by the person or persons to whom the right of  
24 consent (or portion thereof) has been transferred in  
25 accordance with subdivision (b), or if no ~~such~~ transfer has  
26 occurred, then by the person or persons to whom the  
27 right of consent (or portion thereof) has passed in  
28 accordance with subdivision (d).

29 (d) Subject to subdivisions (b) and (c), after the death  
30 of any person, the rights under this section shall belong to  
31 the following person or persons and may be exercised, on  
32 behalf of and for the benefit of all of those persons, by  
33 those persons who, in the aggregate, are entitled to more  
34 than a one-half interest in the rights:

35 (1) The entire interest in those rights belong to the  
36 surviving spouse of the deceased personality unless there  
37 are any surviving children or grandchildren of the  
38 deceased personality, in which case one-half of the entire  
39 interest in those rights belong to the surviving spouse.



1 (2) The entire interest in those rights belong to the  
2 surviving children of the deceased personality and to the  
3 surviving children of any dead child of the deceased  
4 personality unless the deceased personality has a  
5 surviving spouse, in which case the ownership of a  
6 one-half interest in rights is divided among the surviving  
7 children and grandchildren.

8 (3) If there is no surviving spouse, and no surviving  
9 children or grandchildren, then the entire interest in  
10 those rights belong to the surviving parent or parents of  
11 the deceased personality.

12 (4) The rights of the deceased personality's children  
13 and grandchildren are in all cases divided among them  
14 and exercisable in the manner provided in Section 240 of  
15 the Probate Code according to the number of the  
16 deceased personality's children represented; the share of  
17 the children of a dead child of a deceased personality can  
18 be exercised only by the action of a majority of them.

19 (e) If any deceased personality does not transfer his or  
20 her rights under this section by contract, or by means of  
21 a trust or testamentary document, and there are no  
22 surviving persons as described in subdivision (d), then  
23 the rights set forth in subdivision (a) shall terminate.

24 (f) (1) A successor in interest to the rights of a  
25 deceased personality under this section or a licensee  
26 thereof may not recover damages for a use prohibited by  
27 this section that occurs before the successor-in-interest or  
28 licensee registers a claim of the rights under paragraph  
29 (2).

30 (2) Any person claiming to be a successor-in-interest  
31 to the rights of a deceased personality under this section  
32 or a licensee thereof may register that claim with the  
33 Secretary of State on a form prescribed by the Secretary  
34 of State and upon payment of a fee of ten dollars (\$10).  
35 The form shall be verified and shall include the name and  
36 date of death of the deceased personality, the name and  
37 address of the claimant, the basis of the claim, and the  
38 rights claimed.

39 (3) Upon receipt and after filing of any document  
40 under this section, the Secretary of State shall post the



1 document along with the entire registry of persons  
2 claiming to be a successor in interest to the rights of a  
3 deceased personality or a registered licensee under this  
4 section upon the World Wide Web, also known as the  
5 Internet. The Secretary of State may microfilm or  
6 reproduce by other techniques any of the filings or  
7 documents and destroy the original filing or document.  
8 The microfilm or other reproduction of any document  
9 under the ~~provision~~ *provisions* of this section shall be  
10 admissible in any court of law. The microfilm or other  
11 reproduction of any document may be destroyed by the  
12 Secretary of State 70 years after the death of the  
13 personality named therein.

14 (4) Claims registered under this subdivision shall be  
15 public records.

16 (g) No action shall be brought under this section by  
17 reason of any use of a deceased personality's name, voice,  
18 signature, photograph, or likeness occurring after the  
19 expiration of 70 years ~~from~~ *after* the death of the deceased  
20 personality.

21 (h) As used in this section, "deceased personality"  
22 means any natural person whose name, voice, signature,  
23 photograph, or likeness has commercial value at the time  
24 of his or her death, whether or not during the lifetime of  
25 that natural person the person used his or her name,  
26 voice, signature, photograph, or likeness on or in  
27 products, merchandise or goods, or for purposes of  
28 advertising or selling, or solicitation of purchase of,  
29 products, merchandise, goods ~~or service~~, *or services*. A  
30 "deceased personality" shall include, without limitation,  
31 any such natural person who has died within 70 years  
32 prior to January 1, 1985.

33 (i) As used in this section, "photograph" means any  
34 photograph or photographic reproduction, still or  
35 moving, or any video tape or live television transmission,  
36 of any person, such that the deceased personality is  
37 readily identifiable. A deceased personality shall be  
38 deemed to be readily identifiable from a photograph  
39 when one who views the photograph with the naked eye



1 can reasonably determine who the person depicted in the  
2 photograph is.

3 (j) For purposes of this section, a use of a name, voice,  
4 signature, photograph, or likeness in connection with any  
5 news, public affairs, or sports broadcast or account, or any  
6 political campaign, shall not constitute a use for which  
7 consent is required under subdivision (a).

8 (k) The use of a name, voice, signature, photograph, or  
9 likeness in a commercial medium shall not constitute a  
10 use for which consent is required under subdivision (a)  
11 solely because the material containing the use is  
12 commercially sponsored or contains paid advertising.  
13 Rather, it shall be a question of fact whether or not the  
14 use of the deceased personality's name, voice, signature,  
15 photograph, or likeness was so directly connected with  
16 the commercial sponsorship or with the paid advertising  
17 as to constitute a use for which consent is required under  
18 subdivision (a).

19 (l) Nothing in this section shall apply to the owners or  
20 employees of any medium used for advertising,  
21 including, but not limited to, newspapers, magazines,  
22 radio and television networks and stations, cable  
23 television systems, billboards, and transit ads, by whom  
24 any advertisement or solicitation in violation of this  
25 section is published or disseminated, unless it is  
26 established that the owners or employees had knowledge  
27 of the unauthorized use of the deceased personality's  
28 name, voice, signature, photograph, or likeness as  
29 prohibited by this section.

30 (m) The remedies provided for in this section are  
31 cumulative and shall be in addition to any others  
32 provided for by law.

33 ~~(n) This section shall not apply to the use of a deceased~~  
34 ~~personality's name, voice, signature, photograph, or~~  
35 ~~likeness to the extent the use is protected by the~~  
36 ~~constitutional guarantees of freedom of speech or~~  
37 ~~freedom of the press.~~

38 ~~(o) Pursuant to the jurisdiction provided under~~  
39 ~~Section 410.10 of the Code of Civil Procedure, a plaintiff~~  
40 ~~has standing to bring an action pursuant to this section if~~



1 ~~any of the acts giving rise to the action occurred in this~~  
2 ~~state, whether or not the decedent was a domiciliary of~~  
3 ~~this state at the time of death.~~

4 *(n) This section shall apply to the adjudication of*  
5 *liability and the imposition of any damages or other*  
6 *remedies in cases in which the liability, damages, and*  
7 *other remedies arise from acts occurring directly in this*  
8 *state. For purposes of this section, acts giving rise to*  
9 *liability shall be limited to the use, on or in products,*  
10 *merchandise, goods, or services, or the advertising or*  
11 *selling, or soliciting purchases of, products, merchandise,*  
12 *goods, or services prohibited by this section.*

