

PROPERTY CODE

CHAPTER 26. USE OF A DECEASED INDIVIDUAL'S NAME, VOICE, SIGNATURE, PHOTOGRAPH, OR LIKENESS

Sec. 26.001. DEFINITIONS. In this chapter:

(1) "Photograph" means a photograph or photographic reproduction, still or moving, videotape, or live television transmission of an individual in a manner that allows a person viewing the photograph with the naked eye to reasonably determine the identity of the individual.

(2) "Property right" means the property right created by this chapter.

(3) "Name" means the actual or assumed name used by an individual which, when used in conjunction with other information, is intended to identify a particular person.

(4) "Media enterprise" means a newspaper, magazine, radio station or network, television station or network, or cable television system.

Added by Acts 1987, 70th Leg., ch. 152, Sec. 1, eff. Sept. 1, 1987.

Sec. 26.002. PROPERTY RIGHT ESTABLISHED. An individual has a property right in the use of the individual's name, voice, signature, photograph, or likeness after the death of the individual.

Added by Acts 1987, 70th Leg., ch. 152, Sec. 1, eff. Sept. 1, 1987.

Sec. 26.003. APPLICABILITY. This chapter applies to an individual:

(1) alive on or after September 1, 1987, or who died before September 1, 1987, but on or after January 1, 1937; and

(2) whose name, voice, signature, photograph, or likeness has commercial value at the time of his or her death or comes to have commercial value after that time.

Added by Acts 1987, 70th Leg., ch. 152, Sec. 1, eff. Sept. 1, 1987.

Sec. 26.004. TRANSFERABILITY. (a) The property right is freely transferable, in whole or in part, by contract or by means of trust or testamentary documents.

(b) The property right may be transferred before or after the death of the individual.

Added by Acts 1987, 70th Leg., ch. 152, Sec. 1, eff. Sept. 1, 1987.

Sec. 26.005. OWNERSHIP AFTER DEATH OF INDIVIDUAL. (a) If the ownership of the property right of an individual has not been transferred at or before the death of the individual, the property right vests as follows:

(1) if there is a surviving spouse but there are no surviving children or grandchildren, the entire interest vests in the surviving spouse;

(2) if there is a surviving spouse and surviving children or grandchildren, one-half the interest vests in the surviving spouse and one-half the interest vests in the surviving children or grandchildren;

(3) if there is no surviving spouse, the entire interest vests in the surviving children of the deceased individual and the surviving children of any deceased children of the deceased individual; or

(4) if there is no surviving spouse, children, or grandchildren, the entire interest vests in the surviving parents of the deceased individual.

(b) The interests of the deceased individual's children and grandchildren are divided among them and exercisable on a per stirpes basis in the manner provided by Section 43, Texas Probate Code, according to the number of the deceased individual's children represented. If there is more than one child of a deceased child of the deceased individual, the share of a child of a deceased child may only be exercised by a majority of the children of the deceased child.

(c) If the property right is split among more than one person, those persons who own more than a one-half interest in the aggregate may exercise the right on behalf of all persons who own the right.

Added by Acts 1987, 70th Leg., ch. 152, Sec. 1, eff. Sept. 1, 1987.

Sec. 26.006. REGISTRATION OF CLAIM. (a) A person who claims to own a property right may register that claim with the secretary of state.

(b) The secretary of state shall provide a form for registration of a claim under this section. The form must be verified and must include:

(1) the name and date of death of the deceased

individual;

- (2) the name and address of the claimant;
- (3) a statement of the basis of the claim; and
- (4) a statement of the right claimed.

(c) The secretary of state may microfilm or reproduce by another technique a document filed under this section and destroy the original document.

(d) A document or a reproduction of a document filed under this section is admissible in evidence.

(e) The secretary of state may destroy all documents filed under this section after the 50th anniversary of the date of death of the individual whose property right they concern.

(f) The fee for filing a claim is \$25.

(g) A document filed under this section is a public record.

Added by Acts 1987, 70th Leg., ch. 152, Sec. 1, eff. Sept. 1, 1987.

Sec. 26.007. EFFECT OF REGISTRATION. (a) Registration of a claim is prima facie evidence of a valid claim to a property right.

(b) A registered claim is superior to a conflicting, unregistered claim unless a court invalidates the registered claim.

Added by Acts 1987, 70th Leg., ch. 152, Sec. 1, eff. Sept. 1, 1987.

Sec. 26.008. EXERCISE OF OWNERSHIP FOR FIRST YEAR FOLLOWING DEATH OF INDIVIDUAL. (a) Except as provided by Subsection (b), for the first year following the death of the individual a property right may be exercised, if authorized by law or an appointing court, by the following persons who may be appointed by a court for the benefit of the estate of the deceased individual:

- (1) an independent executor;
- (2) an executor;
- (3) an independent administrator;
- (4) a temporary or permanent administrator; or
- (5) a temporary or permanent guardian.

(b) For the first year following the death of the individual, an owner of a property right may exercise that right only if the owner registers a valid claim as provided by Section 26.006.

Added by Acts 1987, 70th Leg., ch. 152, Sec. 1, eff. Sept. 1, 1987.

Sec. 26.009. EXERCISE OF OWNERSHIP AFTER FIRST YEAR FOLLOWING DEATH OF INDIVIDUAL. After the first year following the death of the individual, an owner of a property right may exercise that right whether or not the owner has registered a claim as provided by Section 26.006.

Added by Acts 1987, 70th Leg., ch. 152, Sec. 1, eff. Sept. 1, 1987.

Sec. 26.010. TERMINATION. A property right expires on the first anniversary of the date of death of the individual if:

- (1) the individual has not transferred the right; and
- (2) a surviving person under Section 26.005 does not exist.

Added by Acts 1987, 70th Leg., ch. 152, Sec. 1, eff. Sept. 1, 1987.

Sec. 26.011. UNAUTHORIZED USES. Except as provided by Section 26.012, a person may not use, without the written consent of a person who may exercise the property right, a deceased individual's name, voice, signature, photograph, or likeness in any manner, including:

- (1) in connection with products, merchandise, or goods; or
- (2) for the purpose of advertising, selling, or soliciting the purchase of products, merchandise, goods, or services.

Added by Acts 1987, 70th Leg., ch. 152, Sec. 1, eff. Sept. 1, 1987.

Sec. 26.012. PERMITTED USES. (a) A person may use a deceased individual's name, voice, signature, photograph, or likeness in:

- (1) a play, book, film, radio program, or television program;
- (2) a magazine or newspaper article;
- (3) material that is primarily of political or newsworthy value;
- (4) single and original works of fine art; or
- (5) an advertisement or commercial announcement concerning a use under this subsection.

(b) A media enterprise may use a deceased individual's name, voice, signature, photograph, or likeness in connection with the coverage of news, public affairs, a sporting event, or a political campaign without consent. Any use other than the above by a media enterprise of a deceased individual's name, voice, signature, photograph, or likeness shall require consent if the material

constituting the use is integrally and directly connected with commercial sponsorship or paid advertising. No consent shall be required for the use of the deceased individual's name, voice, signature, photograph, or likeness by a media enterprise if the broadcast or article is not commercially sponsored or does not contain paid advertising.

(c) A person who is an owner or employee of a media enterprise, including a newspaper, magazine, radio station or network, television station or network, cable television system, billboard, or transit ad, that is used for advertising a deceased individual's name, voice, signature, photograph, or likeness in a manner not authorized by this section is not liable for damages as provided by this section unless the person:

(1) knew that the use was not authorized by this section; or

(2) used the deceased individual's name, voice, signature, photograph, or likeness in a manner primarily intended to advertise or promote the media enterprise itself.

(d) A person may use a deceased individual's name, voice, signature, photograph, or likeness in any manner after the 50th anniversary of the date of the individual's death.

Added by Acts 1987, 70th Leg., ch. 152, Sec. 1, eff. Sept. 1, 1987.

Sec. 26.013. LIABILITY FOR UNAUTHORIZED USE. (a) A person who uses a deceased individual's name, voice, signature, photograph, or likeness in a manner not authorized by this chapter is liable to the person who owns the property right for:

(1) the amount of any damages sustained, as a result of the unauthorized use, by the person who owns the property right or \$2,500, whichever is greater;

(2) the amount of any profits from the unauthorized use that are attributable to that use;

(3) the amount of any exemplary damages that may be awarded; and

(4) reasonable attorney's fees and expenses and court costs incurred in recovering the damages and profits established by this section.

(b) The amount of profits under Subsection (a)(2) may be established by a showing of the gross revenue attributable to the unauthorized use minus any expenses that the person who committed the unauthorized use may prove.

Added by Acts 1987, 70th Leg., ch. 152, Sec. 1, eff. Sept. 1, 1987.

Sec. 26.014. OTHER RIGHTS NOT AFFECTED. This chapter does not affect a right an individual may have in the use of the individual's name, voice, signature, photograph, or likeness before the death of the individual.

Added by Acts 1987, 70th Leg., ch. 152, Sec. 1, eff. Sept. 1, 1987.

Sec. 26.015. DEFENSES TO LIABILITY. A person shall not be liable for damages under this chapter if he has acted in reliance on the results of a probate proceeding governing the estate of the deceased personality in question.

Added by Acts 1987, 70th Leg., ch. 152, Sec. 1, eff. Sept. 1, 1987.