

# Initiative Measure No. 1037

Filed

JAN 23 2009

SECRETARY OF STATE

1 AN ACT Relating to honoring and protecting Washington state service  
2 members; and adding new sections to chapter 63.60 RCW.

3 BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 63.60 RCW  
5 to read as follows:

6 (1) The right to control and to choose whether and how to use a  
7 service member's name, portrait, or picture for commercial purposes is  
8 recognized as each service member's right of publicity.

9 (2) A person who advertises for the sale of goods or merchandise,  
10 solicits patronage for business, or receives consideration for the sale  
11 of any goods or merchandise is liable for using the name, portrait, or  
12 picture of any service member without having obtained prior consent to  
13 the use by (a) the service member, (b) the service member's spouse, (c)  
14 an immediate family member of the service member, (d) a parent, if the  
15 service member is a minor, or (e) a legally designated representative.

16 (3) A person who uses the name, portrait, or picture of a service  
17 member for a prohibited purpose without prior consent from the service  
18 member or person who may enforce the service member's rights and  
19 remedies is subject to the following:

1 (a) Injunctive relief to prevent or restrain the unauthorized use;  
2 (b) Treble damages;  
3 (c) Punitive or exemplary damages; or  
4 (d) Attorney fees and costs.  
5 (4) In calculating damages, any profits from the unauthorized use  
6 that are attributable to that use must be taken into account.  
7 (5) The rights and remedies provided in this section supplement any  
8 other rights and remedies provided by law, including the common law  
9 right of privacy.  
10 (6) Any claim for relief that is requested pursuant to this section  
11 must be brought within five years after the unauthorized publication.  
12 (7) The right of publicity is a property right that survives a  
13 service member's death. After the service member's death, only the  
14 following individuals may enforce the service member's rights and  
15 remedies:  
16 (a) The service member's legally designated representative;  
17 (b) The service member's spouse;  
18 (c) The service member's parents;  
19 (d) The service member's children; or  
20 (e) The service member's grandchildren.  
21 (8) This section does not apply to the following:  
22 (a) The use of a service member's name, portrait, or picture in an  
23 attempt to portray, describe, or impersonate that service member in a  
24 live performance; a single and original work of fine art; a play, book,  
25 article, musical work, or film; or on radio, television, or other audio  
26 or audiovisual work if the performance, musical work, play, book,  
27 article, or film does not itself constitute a commercial advertisement  
28 for any goods or merchandise;  
29 (b) The use of a service member's name, portrait, or picture for  
30 noncommercial purposes, including any news, public affairs, or sports  
31 broadcast or account;  
32 (c) The use of a service member's name in truthfully identifying  
33 the service member as the author of a particular work or program or as  
34 the performer in a particular performance;  
35 (d) Any promotional materials, advertisements, or commercial  
36 announcements for a use described in (a), (b), or (c) of this  
37 subsection;

1 (e) The use of photographs, video recordings, and images by a  
2 person, firm, or corporation practicing the profession of photography  
3 to exhibit, in or about the professional photographer's place of  
4 business or portfolio, specimens of the professional photographer's  
5 work, unless the exhibition is continued by the professional  
6 photographer after written notice objecting to the exhibition by the  
7 portrayed service member or a person who may enforce the service  
8 member's rights and remedies;

9 (f) A service member's picture or portrait that is not facially  
10 identifiable; or

11 (g) A photograph of a monument or a memorial that is placed on any  
12 goods or merchandise.

13 (9) For the purposes of this section, "service member" means a  
14 current or former active or reserve member of the United States  
15 military or naval forces, or a national guard member.

16 NEW SECTION. **Sec. 2.** A new section is added to chapter 63.60 RCW  
17 to read as follows:

18 (1) A person shall not knowingly use the name, portrait, or picture  
19 of a deceased service member for the purpose of advertising for the  
20 sale of any goods, wares, or merchandise or for the solicitation of  
21 patronage for any business without having obtained prior consent to the  
22 use by the service member or by the service member's spouse; immediate  
23 family member; trustee, if the service member is a minor; or legally  
24 designated representative.

25 (2) Any person who is injured by the use of the name, portrait, or  
26 picture of a deceased service member in violation of subsection (1) of  
27 this section may bring a civil action against the person who committed  
28 the violation.

29 (3) This section does not apply to the following:

30 (a) The use of a service member's name, portrait, or picture in an  
31 attempt to portray, describe, or impersonate that service member in a  
32 live performance; a single and original work of fine art; a play, book,  
33 article, musical work, or film; or on a radio broadcast, television  
34 program, or other audio or audiovisual work if the performance, musical  
35 work, play, book, article, or film does not itself constitute a  
36 commercial advertisement for any goods, wares, or merchandise;

1 (b) The use of a service member's name, portrait, or picture for  
2 noncommercial purposes, including any news, public affairs, or sports  
3 broadcast or account;

4 (c) The use of a service member's name in truthfully identifying  
5 the service member as the author of a particular work or program or as  
6 the performer in a particular performance;

7 (d) Any promotional materials, advertisements, or commercial  
8 announcements for a use described in (a), (b), or (c) of this  
9 subsection;

10 (e) The use of photographs, video recordings, and images by a  
11 person, firm, or corporation practicing the profession of photography  
12 to exhibit, in or about the professional photographer's place of  
13 business or portfolio, specimens of the professional photographer's  
14 work, unless the exhibition is continued by the professional  
15 photographer after written notice objecting to the exhibition by the  
16 portrayed service member or a person who may enforce the service  
17 member's rights and remedies;

18 (f) A service member's picture or portrait that is not facially  
19 identifiable; or

20 (g) A photograph of a monument or a memorial that is placed on any  
21 goods or merchandise.

22 (4) For the purposes of this section, "service member" means a  
23 current or former active or reserve member of the United States  
24 military or naval forces, or a national guard member.

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