

STATE OF NEW YORK

5857

2017-2018 Regular Sessions

IN SENATE

May 3, 2017

Introduced by Sens. SAVINO, AVELLA -- read twice and ordered printed,
and when printed to be committed to the Committee on Judiciary

AN ACT to amend the civil practice law and rules and the civil rights
law, in relation to the right to privacy and persona rights

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

1 Section 1. Subdivision 3 of section 215 of the civil practice law and
2 rules is amended to read as follows:

3 3. an action to recover damages for assault, battery, false imprison-
4 ment, malicious prosecution, libel, slander, false words causing special
5 damages[~~, or a violation of the right of privacy under section fifty-one~~
6 ~~of the civil rights law~~];

7 § 2. The article heading of article 5 of the civil rights law is
8 amended to read as follows:

9 Right of Privacy and Persona Rights

10 § 3. Section 50 of the civil rights law is amended to read as follows:

11 § 50. Right of privacy and persona rights. 1. (a) The term "person",
12 as used in this article, shall mean a person, corporation, partnership,
13 limited liability company, limited liability partnership, trust, estate,
14 or other legal entity.

15 (b) The term "persona", as used in this article, shall mean a person's
16 name, portrait, picture, image, voice, signature, photograph, likeness,
17 distinctive appearance, gestures or mannerisms.

18 2. A person[~~, firm or corporation~~] that uses for advertising purposes,
19 or for the purposes of trade, the [~~name, portrait or picture~~] persona of
20 any [~~living~~] person, living or deceased, without having first obtained
21 the written consent of such person, or if a minor of his or her parent
22 or guardian, or if such person is deceased his or her successors in
23 interest, is guilty of a misdemeanor.

24 3. In regards to the deceased individual, written consent required by
25 this article shall be exercisable by the person or persons who collec-

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[~~-~~] is old law to be omitted.

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1 tively own more than fifty percent of the rights of the deceased perso-
2 na. Reasonable reliance upon such written consent shall be a defense to
3 any action brought under this article.

4 4. The property right established by this article exists in a deceased
5 individual who died on or after, or within seventy years prior to, the
6 effective date of this subdivision. The persona rights recognized under
7 this section are property rights, freely transferable or descendible, in
8 whole or in part, by contract or by means of any trust or any other
9 testamentary instrument, and shall exist for seventy years after the
10 death of the individual.

11 5. In the absence of a transfer in a testamentary instrument of the
12 persona of a deceased individual recognized under this section, a
13 provision in the testamentary instrument that provides for the disposi-
14 tion of the residue of the deceased individual's assets shall be effec-
15 tive to transfer the deceased individual's persona in accordance with
16 the terms of that provision.

17 6. Persona rights recognized, under this section relating to a
18 deceased individual who died within seventy years prior to the effective
19 date of this article, by a person identified as entitled to inherit the
20 deceased individual's property under the laws of intestacy applicable to
21 the estate of the person in effect at the time of the deceased individ-
22 ual's death, other than a person who was disinherited by the deceased
23 individual in a testamentary instrument, shall not be affected, even if
24 the laws of intestacy do not otherwise apply to the estate of the
25 deceased individual because of a testamentary instrument.

26 § 4. Section 51 of the civil rights law, as amended by chapter 674 of
27 the laws of 1995, is amended to read as follows:

28 § 51. Action for injunction and for damages. 1. Any person, as
29 defined in section fifty of this article, whose [~~name, portrait, picture~~
30 ~~or voice~~] persona, as defined in section fifty of this article, is used
31 within this state for advertising purposes or for the purposes of trade
32 without the written consent first obtained as [~~above~~] provided [~~may~~] in
33 this article is entitled to maintain an equitable action in the supreme
34 court of this state against the person[~~, firm or corporation~~] so using
35 his [~~name, portrait, picture or voice~~,] or her persona to prevent and
36 restrain the use thereof; and may also sue and recover damages for any
37 injuries sustained, including an amount equal to the greater of seven
38 hundred fifty dollars or what would have been reasonable compensation
39 for the use of the persona, by reason of such use and if the defendant
40 shall have knowingly used such person's [~~name, portrait, picture or~~
41 ~~voice~~] persona in such manner as is forbidden or declared to be unlawful
42 by section fifty of this article, the jury, in its discretion, may award
43 exemplary damages. [~~But nothing~~] The prevailing party in any action
44 under this section shall also be entitled to attorney's fees and costs.
45 Nothing contained in this article shall be so construed as to prevent
46 any person[~~, firm or corporation~~] from selling or otherwise transferring
47 any material containing such [~~name, portrait, picture or voice~~] persona
48 in whatever medium to any user of such [~~name, portrait, picture or~~
49 ~~voice~~] persona, or to any third party for sale or transfer directly or
50 indirectly to such a user, for use in a manner lawful under this arti-
51 cle; nothing contained in this article shall be so construed as to
52 prevent any person[~~, firm or corporation~~, practicing the profession of
53 photography, from exhibiting in or about his, her or its establishment
54 specimens of the work of such establishment, unless the same is contin-
55 ued by such person[~~, firm or corporation~~] after written notice objecting
56 thereto has been given by the person portrayed or their successor in

1 interest; and nothing contained in this article shall be so construed as
2 to prevent any [~~person, firm or corporation~~] from using the [~~name,~~
3 ~~portrait, picture or voice~~] persona of any manufacturer or dealer in
4 connection with the goods, wares and merchandise manufactured, produced
5 or dealt in by him or her which he or she has sold or disposed of with
6 such [~~name, portrait, picture or voice~~] persona used in connection ther-
7ewith; or from using the [~~name, portrait, picture or voice~~] persona of
8 any author, composer or artist in connection with his or her literary,
9 musical or artistic productions which he or she has sold or disposed of
10 with such [~~name, portrait, picture or voice~~] persona used in connection
11 therewith. Nothing contained in this section shall be construed to
12 prohibit the copyright owner of a sound recording from disposing of,
13 dealing in, licensing or selling that sound recording to any party, if
14 the right to dispose of, deal in, license or sell such sound recording
15 has been conferred by contract or other written document by such living
16 person or the holder of such right. Nothing contained in the foregoing
17 sentence shall be deemed to abrogate or otherwise limit any rights or
18 remedies otherwise conferred by federal law or state law.

19 2. Actions brought under this article shall be commenced within three
20 years of the date of discovery of the injury to the plaintiff or from
21 the date through the exercise of reasonable diligence such injury should
22 have been discovered by the plaintiff, whichever is earlier.

23 § 5. This act shall take effect immediately.