

STATE OF NEW YORK

8155

2017-2018 Regular Sessions

IN ASSEMBLY

May 31, 2017

Introduced by M. of A. MORELLE, WEINSTEIN -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil rights law, in relation to the right of publicity; and to amend the civil practice law and rules, in relation to the timeliness of commencement of an action for violation of the right of publicity

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

Section 1. Section 50 of the civil rights law is renumbered section 50-f and a new section 50 is added to read as follows:

§ 50. Definitions. For the purposes of sections fifty-f, fifty-g, fifty-h and fifty-one of this article, the following terms shall have the following meanings:

1. "Characteristic" means a distinctive appearance, gesture or mannerism recognized as an identifying attribute of an individual.

2. "Deceased individual" means any individual, including his or her name, voice, signature or likeness, regardless of the individual's place of domicile, residence or citizenship at the time of death or otherwise, who has died.

3. "Secretary" means the secretary of state.

4. "Fund-raising" means an organized activity to solicit donations of money or other goods or services from persons or entities by an organization, company or public entity.

5. "Individual" means a natural person, living or dead.

6. "Likeness" means an image, photograph, painting, sketching, model, diagram, or other recognizable representation of an individual's face or body, and includes a characteristic.

7. "Name" means the actual or assumed name, or nickname, of a living or deceased individual that identifies that individual.

8. "Person" means any natural person, firm, association, partnership, corporation, company, syndicate, receiver, common law trust, conserva-

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

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tor, statutory trust, or any other entity by whatever name known or however organized, formed or created, and includes not-for-profit corporations, associations, educational and religious institutions, political parties, and community, civic or other organizations.

9. "Photograph" means any photograph or photographic reproduction, still or moving, or any videotape, online or live television transmission, of any individual, in which the individual is readily identifiable.

10. "Registration to establish a claim of right" means a registration by a person claiming to be a successor in interest in the right of publicity of a deceased individual with the department of state.

11. "Signature" means a handwritten or otherwise legally binding form of an individual's name, written or authorized by that individual, that distinguishes the individual from all other individuals.

§ 2. Section 50-f of the civil rights law, as relettered by section one of this act, is amended to read as follows:

§ 50-f. Right of [~~privacy~~] publicity for living and deceased individuals. [~~A person, firm or corporation that uses for advertising purposes, or for the purposes of trade, the name, portrait or picture of any living person without having first obtained the written consent of such person, or if a minor of his or her parent or guardian, is guilty of a misdemeanor.~~] A living or deceased individual's name, voice, signature and likeness, individually and collectively known as his or her right of publicity, is personal property, freely transferable or descendible, in whole or in part, by contract or by means of any trust or testamentary instrument, whether such contract, trust or testamentary instrument was entered into or executed before or after the effective date of the chapter of the laws of two thousand seventeen which amended this section. Such right of publicity shall not be used without obtaining the written consent of the individual, his or her successors or assigns as provided for in the provisions of this article pertaining to the right of publicity or, in the case of a minor, of his or her parent or guardian.

§ 3. The civil rights law is amended by adding two new sections 50-g and 50-h to read as follows:

§ 50-g. Duration of an individual's right of publicity. Every individual's right of publicity shall continue to exist for forty years after his or her death, and does not expire upon the death of the individual, regardless of whether the law of the domicile, residence or citizenship of the individual at the time of death or otherwise recognizes a similar or identical property right.

§ 50-h. Methods of transfer and conveyance. 1. The rights recognized under the provisions of this article pertaining to the right of publicity are freely transferable and descendible, in whole or in part, by the following:

(a) contract;

(b) license;

(c) gift;

(d) trust;

(e) testamentary document. The rights shall vest in the persons entitled to the right of publicity under the testamentary instrument of the deceased individual effective as of the date of that individual's death. In the absence of an express transfer in a testamentary instrument of the deceased individual's right of publicity, a provision in the testamentary instrument that provides for the disposition of the residue of the deceased individual's assets shall be effective to transfer the

1 rights recognized under this article in accordance with the terms of
2 that provision; and

3 (f) intestate succession. The right to publicity of an individual
4 dying intestate shall be distributed under the laws of intestate
5 succession, and the rights and remedies of this article may be exercised
6 and enforced by a person or persons who possess at least a fifty-one
7 percent interest of the individual's right of publicity. Such persons
8 shall make a proportional accounting to, and shall act at all times in
9 good faith with respect to, any other person in whom the rights being
10 enforced have vested.

11 2. The rights established by the provisions of this article pertaining
12 to the right of publicity shall also be freely transferable or descendi-
13 ble by any subsequent owner of the deceased individual's right to
14 publicity as recognized by this article. Nothing in the provisions of
15 this article pertaining to the right of publicity shall be construed to
16 render invalid or unenforceable any contract entered into by a deceased
17 individual during his or her lifetime by which the deceased individual
18 assigned the rights, in whole or in part, to use his or her right of
19 publicity as defined in this article.

20 3. If any deceased individual does not transfer his or her rights
21 under this section by contract, license, gift, trust or testamentary
22 document, and there are no surviving persons as described in paragraph
23 (f) of subdivision one of this section, then the property rights associ-
24 ated with the deceased individual's right of publicity shall terminate.

25 4. Any person claiming to be a successor in interest to the right of
26 publicity of a deceased individual under this article or a licensee of a
27 deceased individual's right of publicity shall register that claim with
28 the secretary on a form prescribed by the secretary and upon payment of
29 a fee of fifty dollars. The form shall include the name and date of
30 death of the deceased individual, the name and address of the claimant,
31 the basis of the claim, and a sworn affidavit under penalty of perjury
32 as to the rights claimed. Claims registered under this registry and
33 information regarding such successors in interest to the deceased indi-
34 vidual's right of publicity shall be public records.

35 5. Upon receipt and after filing of any document pursuant to this
36 section, the secretary shall post the document along with the entire
37 registry of persons claiming to be successors in interest to the
38 deceased individual's right of publicity or a registered licensee under
39 this section upon an internet website developed by the secretary for
40 such purpose. The secretary may reproduce by digital or other means any
41 of the filings or documents and destroy the original filing or document.

42 6. The secretary is authorized to promulgate such regulations as he or
43 she shall deem necessary to implement the provisions of subdivisions
44 four and five of this section.

45 7. No action shall be brought under the provisions of this article
46 pertaining to the right of publicity by reason of any use of a deceased
47 individual's right of publicity occurring after the expiration of the
48 duration of the right of publicity as provided in section fifty-q of
49 this article. Furthermore, no action may be brought under the provisions
50 of this article pertaining to the right of publicity for a violation of
51 a deceased individual's right of publicity unless the claim is regis-
52 tered and posted on the secretary's public internet website within forty
53 years of such individual's death.

54 8. If there is a right of publicity registration for a deceased indi-
55 vidual, any person seeking to license right of publicity for the indi-
56 vidual shall have the right to rely upon such registration and posting

1 and thereby presume that the person who has registered and posted his or
2 her claim on the secretary's public internet website has the right to
3 assign or license the deceased individual's right of publicity. The
4 registration and posting of a person's claim to a deceased individual's
5 right of publicity on the secretary's public internet website shall
6 constitute a defense to an action brought under the provisions of this
7 article pertaining to the right of publicity.

8 9. Any person who knowingly makes a false or fraudulent representation
9 in connection with a registration with the secretary to establish a
10 claim to a deceased individual's right of publicity pursuant to this
11 section shall be liable for any damages sustained as a result of the
12 false or fraudulent registration as determined by a court of competent
13 jurisdiction.

14 10. Any document filed with the secretary, whether such document is a
15 reproduction or an original, may be destroyed by the secretary forty-
16 seven years after the death of the individual whose right of publicity
17 has been registered therein. The secretary shall remove any document
18 registered and posted upon the public internet website upon showing of a
19 court order from a court of competent jurisdiction that a person claim-
20 ing to be a successor in interest to a deceased individual's right of
21 publicity has no property rights in the right of publicity of the
22 deceased.

23 11. Nothing contained in the provisions of this article related to the
24 right of publicity shall be deemed to abrogate or otherwise limit any
25 rights or remedies otherwise conferred by federal or state law.

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. Applicability. The
29 provisions of this article related to the right of publicity apply to an
30 act or event that occurs within New York, regardless of a deceased indi-
31 vidual's domicile, residence or citizenship. Furthermore, the rights
32 recognized under the provisions of this article pertaining to the right
33 of publicity, shall be deemed to exist at the time of death regardless
34 of the domicile, residence or citizenship of any deceased individual.

35 2. Exceptions. Consent for use of another individual's right of
36 publicity as provided in the provisions of this article pertaining to
37 the right of publicity shall not be required when used in connection
38 with the following:

39 (a) news, public affairs or sports broadcast, including the promotion
40 of and advertising for a sports broadcast, an account of public interest
41 or a political campaign;

42 (b) in:

43 (i) a play, book, magazine, newspaper, musical composition, visual
44 work, work of art, audiovisual work, radio or television program if it
45 is fictional or nonfictional entertainment, or a dramatic, literary or
46 musical work;

47 (ii) a work of political, public interest or newsworthy value includ-
48 ing a comment, criticism, parody, satire or a transformative creation of
49 a work of authorship; or

50 (iii) an advertisement or commercial announcement for any of the works
51 described in paragraph (a) of this subdivision or this paragraph; or

52 (c) use of the right of publicity of a deceased individual where the
53 licensee or successor in interest has failed to register and post a
54 claim of right under section fifty-h of this article until such time as
55 a claim of right has been registered and posted as required under such
56 section.

1 3. Limited immunity. Owners or employees of any medium used for adver-
2 tising including, but not limited to, newspapers, magazines, radio and
3 television networks and stations, cable television systems, billboards,
4 and transit ads, by whom any use of an individual's right of publicity
5 for commercial purposes in violation of that individual's right of
6 publicity is published or disseminated, shall not be liable under the
7 provisions of this article pertaining to the right of publicity unless
8 it is established that the owners or employees had knowledge of the
9 unauthorized use as prohibited by the provisions of this article
10 pertaining to the right of publicity.

11 4. Action for injunction and for damages. Any [person] individual
12 either living or deceased whose [name, portrait, picture or voice] right
13 of publicity is used within this state for advertising purposes [or],
14 for the purposes of trade or for purposes of fund-raising or sollicita-
15 tion of donations, without the written consent first obtained as [above]
16 provided [may] in the provisions of this article pertaining to the right
17 of publicity is entitled to maintain an equitable action for violation
18 of the individual's right of publicity in the supreme court of this
19 state against the person[, firm or corporation] so using his [name,
20 portrait, picture or voice] or her right of publicity, to prevent and
21 restrain the use thereof; and may also sue and recover damages for any
22 injuries sustained including an amount equal to the greater of seven
23 hundred fifty dollars or compensatory damages by reason of such use and
24 if the defendant shall have knowingly used such person's [name,
25 portrait, picture or voice] right of publicity in such manner as is
26 forbidden or declared to be unlawful by [section fifty] the provisions
27 of this article relating to the right of publicity, the [jury] finder of
28 fact, in its discretion, may award exemplary damages. [But nothing] A
29 violation of an individual's right of publicity may occur without regard
30 to whether the use or activity is for profit or not-for-profit.

31 5. No defense. It shall not constitute a defense to an action for
32 violation of an individual's right of publicity that such violation
33 includes more than one individual.

34 6. Use and transfer. Nothing contained in this article shall be so
35 construed as to prevent any [~~person, firm or corporation~~] individual or
36 person from selling or otherwise transferring any material containing
37 such [~~name, portrait, picture or voice~~] right of publicity as provided
38 in the provisions of this article relating to the right of publicity in
39 whatever medium to any user of such [~~name, portrait, picture or voice~~]
40 right of publicity, or to any third party for sale or transfer directly
41 or indirectly to such a user, for use in a manner lawful under this
42 article[~~, nothing~~].

43 7. Photographers. Nothing contained in this article shall be so
44 construed as to prevent any person[, ~~firm or corporation~~,] practicing
45 the profession of photography, from exhibiting [~~in or about his or its~~
46 ~~establishment~~] specimens of the work of such [~~establishment~~] photogra-
47 pher, unless the same is continued by such person[, ~~firm or corporation~~]
48 after written notice objecting thereto has been given by the [~~person~~]
49 individual portrayed[~~, and nothing~~].

50 8. Manufacturers, writers, composers and artists. Nothing contained in
51 this article shall be so construed as to prevent any person[, ~~firm or~~
52 ~~corporation~~] from using the [~~name, portrait, picture or voice of~~] right
53 of publicity owned by any manufacturer or dealer in connection with the
54 goods, wares and merchandise manufactured, produced or dealt in by [~~him~~]
55 the manufacturer which [~~he~~] has been sold or disposed of with such
56 [~~name, portrait, picture or voice~~] right of publicity used in connection

1 therewith; or from using the [~~name, portrait, picture or voice~~] right of
2 publicity of any author, composer or artist in connection with his or
3 her literary, musical or artistic productions which he or she has sold
4 or disposed of with such [~~name, portrait, picture or voice~~] right of
5 publicity used in connection therewith.

6 9. Copyright owners of a sound recording. Nothing contained in this
7 section shall be construed to prohibit the copyright owner of a sound
8 recording from disposing of, dealing in, licensing or selling that sound
9 recording to any party, if the right to dispose of, deal in, license or
10 sell such sound recording has been conferred by contract or other writ-
11 ten document by such living person or the holder of such right. [~~Nothing~~
12 ~~contained in the foregoing sentence shall be deemed to abrogate or~~
13 ~~otherwise limit any rights or remedies otherwise conferred by federal~~
14 ~~law or state law.~~]

15 10. Termination of post mortem right of publicity. Nothing in the
16 provisions of this article pertaining to the right of publicity shall be
17 construed as prohibiting the use of the deceased individual's right of
18 publicity that occurs after the expiration of forty years following his
19 or her death. Nor shall anything in the provisions of this article
20 pertaining to the right of publicity be construed as creating liability
21 or giving rise to any remedy for any actions or conduct involving the
22 use of a deceased individual's right of publicity that occurred prior to
23 the effective date of the chapter of the laws of two thousand seventeen
24 which amended this section.

25 11. Statute of Limitations. Actions brought under the provisions of
26 this article pertaining to the right of publicity shall be commenced
27 within one year of the date of discovery of the injury to the plaintiff
28 or from the date through the exercise of due diligence such injury
29 should have been discovered by the plaintiff, whichever is earlier.

30 § 5. The section heading and subdivision 3 of section 215 of the civil
31 practice law and rules are amended to read as follows:

32 Actions to be commenced within one year: against sheriff, coroner or
33 constable; for escape of prisoner; for assault, battery, false imprison-
34 ment, malicious prosecution, libel or slander; for violation of right of
35 [~~privacy~~] publicity; for penalty given to informer; on arbitration
36 award.

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

41 § 6. This act shall take effect on the one hundred eightieth day after
42 it shall have become a law, and shall apply to deceased individuals who
43 died on or after such date.