

5337

2011-2012 Regular Sessions

I N S E N A T E

May 9, 2011

Introduced by Sen. DeFRANCISCO -- read twice and ordered printed, and when printed to be committed to the Committee on Veterans, Homeland Security and Military Affairs

AN ACT to amend the military law, the civil rights law and the penal law, in relation to unauthorized use of names and images of members of the armed forces or organized militia of New York

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The military law is amended by adding a new section 267 to
2 read as follows:

3 S 267. RIGHT OF PRIVACY OF MILITARY PERSONNEL. A PERSON, FIRM OR
4 CORPORATION THAT USES FOR ADVERTISING PURPOSES, OR FOR THE PURPOSES OF
5 TRADE, THE NAME, PORTRAIT OR PICTURE OF ANY MEMBER OF THE ARMED FORCES
6 OR ORGANIZED MILITIA OF NEW YORK, LIVING OR DECEASED, WITHOUT HAVING
7 FIRST OBTAINED THE WRITTEN CONSENT OF SUCH PERSON IF LIVING, OR IF
8 DECEASED OF HIS OR HER SURVIVING RELATIVES INCLUDING ANY SPOUSE, CHIL-
9 DREN, PARENTS, GRANDPARENTS AND SIBLINGS, IS GUILTY OF A CLASS E FELONY.

10 S 2. Section 50 of the civil rights law is amended to read as follows:

11 S 50. Right of privacy. 1. A person, firm or corporation that uses for
12 advertising purposes, or for the purposes of trade, the name, portrait
13 or picture of any living person without having first obtained the writ-
14 ten consent of such person, or if a minor of his or her parent or guard-
15 ian, is guilty of a CLASS A misdemeanor.

16 2. A PERSON, FIRM OR CORPORATION THAT USES FOR ADVERTISING PURPOSES,
17 OR FOR THE PURPOSES OF TRADE, THE NAME, PORTRAIT OR PICTURE OF ANY
18 MEMBER OF THE ARMED FORCES OR ORGANIZED MILITIA OF NEW YORK, LIVING OR
19 DECEASED, WITHOUT HAVING FIRST OBTAINED THE WRITTEN CONSENT OF SUCH
20 PERSON IF LIVING, OR IF DECEASED OF HIS OR HER SURVIVING RELATIVES
21 INCLUDING ANY SPOUSE, CHILDREN, PARENTS, GRANDPARENTS AND SIBLINGS, IS
22 GUILTY OF A CLASS E FELONY.

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

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1 S 3. The penal law is amended by adding two new sections 250.70 and
2 270.75 to read as follows:

3 S 250.70 INVASION OF PRIVACY IN THE SECOND DEGREE.

4 A PERSON IS GUILTY OF INVASION OF PRIVACY IN THE SECOND DEGREE WHEN HE
5 OR SHE USES FOR ADVERTISING OR TRADE PURPOSES, THE NAME, PORTRAIT OR
6 PICTURE OF ANY LIVING PERSON, WITHOUT HAVING FIRST OBTAINED THE WRITTEN
7 CONSENT OF SUCH PERSON, OR THE NAME, PORTRAIT OR PICTURE IS OF A MINOR,
8 WITHOUT HAVING FIRST OBTAINED PERMISSION OF HIS OR HER PARENT OR GUARDI-
9 AN.

10 INVASION OF PRIVACY IN THE SECOND DEGREE IS A CLASS A MISDEMEANOR.

11 S 250.75 INVASION OF PRIVACY IN THE FIRST DEGREE.

12 A PERSON IS GUILTY OF INVASION OF PRIVACY IN THE FIRST DEGREE WHEN HE
13 OR SHE USES FOR ADVERTISING OR TRADE PURPOSES, THE NAME, PORTRAIT OR
14 PICTURE OF ANY MEMBER OF THE ARMED FORCES OR ORGANIZED MILITIA OF NEW
15 YORK, WITHOUT HAVING FIRST OBTAINED THE WRITTEN CONSENT OF SUCH PERSON,
16 OR IF THE NAME, PORTRAIT OR PICTURE IS OF A DECEASED MEMBER OF THE ARMED
17 FORCES OR ORGANIZED MILITIA OF NEW YORK, WITHOUT HAVING FIRST OBTAINED
18 PERMISSION OF HIS OR HER SURVIVING RELATIVES INCLUDING ANY SPOUSE, CHIL-
19 DREN, PARENTS, GRANDPARENTS AND SIBLINGS.

20 INVASION OF PRIVACY IN THE FIRST DEGREE IS A CLASS E FELONY.

21 S 4. Severability. If any clause, sentence, paragraph, subdivision,
22 section or part of this article shall be adjudged by a court of compe-
23 tent jurisdiction to be invalid, such judgment shall not affect, impair
24 or invalidate the remainder thereof, but shall be confined in its opera-
25 tion to the clause, sentence, paragraph, subdivision, section or part of
26 this article directly involved in the controversy in which such judgment
27 shall have been rendered.

28 S 5. This act shall take effect immediately.