

3576

2015-2016 Regular Sessions

I N A S S E M B L Y

January 27, 2015

Introduced by M. of A. PAULIN, TITONE, GOTTFRIED, ABINANTI, GALEF,
GUNTHER, ROSENTHAL, SKARTADOS, THIELE, SCARBOROUGH, McDONOUGH -- read
once and referred to the Committee on Judiciary

AN ACT to amend the civil rights law, in relation to establishing a
cause of action for injunction and damages for unlawful surveillance

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

1 Section 1. Section 51 of the civil rights law, as amended by chapter
2 674 of the laws of 1995, is amended to read as follows:
3 S 51. Action for injunction and for damages. 1. Any person whose name,
4 portrait, picture or voice is used within this state for advertising
5 purposes or for the purposes of trade without the written consent first
6 obtained as above provided may maintain an equitable action in the
7 supreme court of this state against the person, firm or corporation so
8 using his name, portrait, picture or voice, to prevent and restrain the
9 use thereof; and may also sue and recover damages for any injuries
10 sustained by reason of such use and if the defendant shall have knowing-
11 ly used such person's name, portrait, picture or voice in such manner as
12 is forbidden or declared to be unlawful by section fifty of this arti-
13 cle, the jury, in its discretion, may award exemplary damages. But noth-
14 ing contained in this article shall be so construed as to prevent any
15 person, firm or corporation from selling or otherwise transferring any
16 material containing such name, portrait, picture or voice in whatever
17 medium to any user of such name, portrait, picture or voice, or to any
18 third party for sale or transfer directly or indirectly to such a user,
19 for use in a manner lawful under this article; nothing contained in this
20 article shall be so construed as to prevent any person, firm or corpo-
21 ration, practicing the profession of photography, from exhibiting in or
22 about his or its establishment specimens of the work of such establish-
23 ment, unless the same is continued by such person, firm or corporation
24 after written notice objecting thereto has been given by the person

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

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

18 2. (A) ANY PERSON WHO IS A SUBJECT OF UNLAWFUL SURVEILLANCE BY A
19 PERSON MAY MAINTAIN AN EQUITABLE ACTION IN THE SUPREME COURT OF THIS
20 STATE AGAINST THE PERSON RESPONSIBLE FOR THE UNLAWFUL SURVEILLANCE TO
21 PREVENT AND RESTRAIN SUCH SURVEILLANCE AND MAY ALSO SUE AND RECOVER
22 DAMAGES FOR ANY INJURIES SUSTAINED BY REASON OF SUCH SURVEILLANCE AND
23 THE JURY, IN ITS DISCRETION, MAY AWARD EXEMPLARY DAMAGES.

24 (B) A PERSON IS A SUBJECT OF UNLAWFUL SURVEILLANCE WHEN ANOTHER
25 PERSON:

26 (1) FOR SUCH OTHER PERSON'S OWN, OR ANOTHER PERSON'S AMUSEMENT, ENTER-
27 TAINMENT, OR PROFIT, OR FOR THE PURPOSE OF DEGRADING OR ABUSING A
28 PERSON, THE PERSON INTENTIONALLY USES OR INSTALLS, OR PERMITS THE UTILI-
29 ZATION OR INSTALLATION OF AN IMAGING DEVICE TO SURREPTITIOUSLY VIEW,
30 BROADCAST OR RECORD A PERSON DRESSING OR UNDRESSING OR THE SEXUAL OR
31 OTHER INTIMATE PARTS OF SUCH PERSON AT A PLACE AND TIME WHEN SUCH PERSON
32 HAS A REASONABLE EXPECTATION OF PRIVACY, WITHOUT SUCH PERSON'S KNOWLEDGE
33 OR CONSENT; OR

34 (2) FOR SUCH OTHER PERSON'S OWN, OR ANOTHER PERSON'S SEXUAL AROUSAL OR
35 SEXUAL GRATIFICATION, THE PERSON INTENTIONALLY USES OF INSTALLS, OR
36 PERMITS THE UTILIZATION OR INSTALLATION OF AN IMAGING DEVICE TO SURREP-
37 TITIOUSLY VIEW, BROADCAST OR RECORD A PERSON DRESSING OR UNDRESSING OR
38 THE SEXUAL OR OTHER INTIMATE PARTS OF SUCH PERSON AT A PLACE AND TIME
39 WHEN SUCH PERSON HAS A REASONABLE EXPECTATION OF PRIVACY, WITHOUT SUCH
40 PERSON'S KNOWLEDGE OR CONSENT; OR

41 (3) (I) FOR NO LEGITIMATE PURPOSE, A PERSON INTENTIONALLY USES OR
42 INSTALLS, OR PERMITS THE UTILIZATION OR INSTALLATION OF AN IMAGING
43 DEVICE TO SURREPTITIOUSLY VIEW, BROADCAST OR RECORD A PERSON IN A
44 BEDROOM, CHANGING ROOM, FITTING ROOM, RESTROOM, TOILET, BATHROOM, WASH-
45 ROOM, SHOWER TO ANY ROOM ASSIGNED TO GUESTS OR PATRONS IN A MOTEL, HOTEL
46 OR INN, WITHOUT SUCH PERSON'S KNOWLEDGE OR CONSENT.

47 (II) FOR PURPOSES OF THIS SUBDIVISION, WHEN A PERSON USES OR INSTALLS,
48 OR PERMITS THE UTILIZATION OR INSTALLATION OF AN IMAGING DEVICE IN A
49 BEDROOM, CHANGING ROOM, FITTING ROOM, RESTROOM, TOILET, BATHROOM, WASH-
50 ROOM, SHOWER OR ANY ROOM ASSIGNED TO GUESTS OR PATRONS IN A HOTEL, MOTEL
51 OR INN, THERE IS A REBUTTABLE PRESUMPTION THAT SUCH PERSON DID SO FOR NO
52 LEGITIMATE PURPOSE; OR

53 (4) WITHOUT THE KNOWLEDGE OR CONSENT OF A PERSON, A PERSON INTEN-
54 TIONALLY USES OR INSTALLS, OR PERMITS THE UTILIZATION OR INSTALLATION OF
55 AN IMAGING DEVICE TO SURREPTITIOUSLY VIEW, BROADCAST OR RECORD, UNDER

1 THE CLOTHING BEING WORN BY SUCH PERSON, THE SEXUAL OR OTHER INTIMATE
2 PARTS OF SUCH PERSON; OR
3 (5) FOR SUCH OTHER PERSON'S OWN, OR ANOTHER PERSON'S AMUSEMENT, ENTER-
4 TAINMENT, PROFIT, SEXUAL AROUSAL OR GRATIFICATION, OR FOR THE PURPOSE OF
5 DEGRADING OR ABUSING A PERSON, THE PERSON INTENTIONALLY USES OR INSTALLS
6 OR PERMITS THE UTILIZATION OR INSTALLATION OF AN IMAGING DEVICE TO
7 SURREPTITIOUSLY VIEW, BROADCAST, OR RECORD ANOTHER PERSON IN AN IDEN-
8 TIFIABLE MANNER ENGAGING IN SEXUAL CONDUCT, IN THE SAME IMAGE WITH THE
9 SEXUAL OR INTIMATE PART OF ANY OTHER PERSON, AT A PLACE AND TIME WHEN
10 SUCH PERSON HAS A REASONABLE EXPECTATION OF PRIVACY, AND WITHOUT SUCH
11 PERSON'S KNOWLEDGE OR CONSENT.
12 (6) FOR PURPOSES OF THIS SUBDIVISION "PERSON" SHALL MEAN A PERSON,
13 FIRM OR CORPORATION.
14 S 2. This act shall take effect on the one hundred eightieth day after
15 it shall have become a law.