STATE OF NEW YORK

1057

2017-2018 Regular Sessions

IN SENATE

January 6, 2017

Introduced by Sen. CARLUCCI -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

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 Assembly, do enact as follows:

Section 1. Section 51 of the civil rights law, as amended by chapter 674 of the laws of 1995, is amended to read as follows:

§ 51. Action for injunction and for damages. **1.** Any person whose name, portrait, picture or voice is used within this state for advertising purposes or for the purposes of trade without the written consent first obtained as above provided may maintain an equitable action in the supreme court of this state against the person, firm or corporation so using his name, portrait, picture or voice, to prevent and restrain the use thereof; and may also sue and recover damages for any injuries sustained by reason of such use and if the defendant shall have knowingly used such person's name, portrait, picture or voice in such manner as is forbidden or declared to be unlawful by section fifty of this article, the jury, in its discretion, may award exemplary damages. But nothing contained in this article shall be so construed as to prevent any person, firm or corporation from selling or otherwise transferring any material containing such name, portrait, picture or voice in whatever medium to any user of such name, portrait, picture or voice, or to any third party for sale or transfer directly or indirectly to such a user, for use in a manner lawful under this article; nothing contained in this article shall be so construed as to prevent any person, firm or corporation, practicing the profession of photography, from exhibiting in or about his or its establishment specimens of the work of such establishment, unless the same is continued by such person, firm or corporation after written notice objecting thereto has been given by the person portrayed; and nothing contained in this article shall be so construed

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

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

2. (a) Any person who is a subject of unlawful surveillance by a person may maintain an equitable action in the supreme court of this state against the person responsible for the unlawful surveillance to prevent and restrain such surveillance and may also sue and recover damages for any injuries sustained by reason of such surveillance and the jury, in its discretion, may award exemplary damages.

(b) A person is a subject of unlawful surveillance when another person:

(1) For such other person's own, or another person's amusement, entertainment, or profit, or for the purpose of degrading or abusing a person, the person intentionally uses or installs, or permits the utilization or installation of an imaging device to surreptitiously view, broadcast or record a person dressing or undressing or the sexual or other intimate parts of such person at a place and time when such person has a reasonable expectation of privacy, without such person's knowledge or consent; or

(2) For such other person's own, or another person's sexual arousal or sexual gratification, the person intentionally uses of installs, or permits the utilization or installation of an imaging device to surreptitiously view, broadcast or record a person dressing or undressing or the sexual or other intimate parts of such person at a place and time when such person has a reasonable expectation of privacy, without such person's knowledge or consent; or

(3) (i) For no legitimate purpose, a person intentionally uses or installs, or permits the utilization or installation of an imaging device to surreptitiously view, broadcast or record a person in a bedroom, changing room, fitting room, restroom, toilet, bathroom, washroom, shower to any room assigned to guests or patrons in a motel, hotel or inn, without such person's knowledge or consent.

(ii) For purposes of this subdivision, when a person uses or installs, or permits the utilization or installation of an imaging device in a bedroom, changing room, fitting room, restroom, toilet, bathroom, washroom, shower or any room assigned to guests or patrons in a hotel, motel or inn, there is a rebuttable presumption that such person did so for no legitimate purpose; or

(4) Without the knowledge or consent of a person, a person intentionally uses or installs, or permits the utilization or installation of an imaging device to surreptitiously view, broadcast or record, under the clothing being worn by such person, the sexual or other intimate parts of such person; or

(5) For such other person's own, or another person's amusement, entertainment, profit, sexual arousal or gratification, or for the purpose of degrading or abusing a person, the person intentionally uses or installs or permits the utilization or installation of an imaging device to surreptitiously view, broadcast, or record another person in an identifiable manner engaging in sexual conduct, in the same image with the sexual or intimate part of any other person, at a place and time when such person has a reasonable expectation of privacy, and without such person's knowledge or consent.

(6) For purposes of this subdivision "person" shall mean a person, firm or corporation.

§ 2. This act shall take effect on the one hundred eightieth day after it shall have become a law.