

# STATE OF NEW YORK

5029

2017-2018 Regular Sessions

## IN SENATE

March 6, 2017

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

AN ACT to amend the criminal procedure law and the civil rights law, in relation to when booking photographs shall be made available

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

1 Section 1. Subdivision 3 of section 160.10 of the criminal procedure  
2 law, as amended by chapter 762 of the laws of 1971, is amended to read  
3 as follows:

4 3. Whenever fingerprints are required to be taken pursuant to subdivi-  
5 sion one or permitted to be taken pursuant to subdivision two, the  
6 photograph and palmprints of the arrested person or the defendant, as  
7 the case may be, may also be taken. During the pendency of the charge  
8 or charges brought with respect to such arrest, summons or appearance  
9 ticket, a photograph taken pursuant to this subdivision may not be made  
10 publicly available, but shall be made available (a) to a person, agency  
11 or entity performing a criminal justice function, as defined in subdivi-  
12 sion ten of section eight hundred thirty-five of the executive law, upon  
13 its request, for any such function, which may when appropriate include  
14 public release of such photograph; (b) pursuant to a court order direct-  
15 ing the release of such photograph; and (c) to the arrested person or  
16 defendant, upon his or her request.

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

19 § 51. Action for injunction and for damages. Any person whose name,  
20 portrait, picture or voice is used within this state for advertising  
21 purposes or for the purposes of trade without the written consent first  
22 obtained as [~~above~~] provided in section fifty of this article may main-  
23 tain an equitable action in the supreme court of this state against the  
24 person, firm or corporation so using his or her name, portrait, picture  
25 or voice, to prevent and restrain the use thereof; and may also sue and

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

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1 recover damages for any injuries sustained by reason of such use and if  
2 the defendant shall have knowingly used such person's name, portrait,  
3 picture or voice in such manner as is forbidden or declared to be unlaw-  
4 ful by section fifty of this article, the jury, in its discretion, may  
5 award exemplary damages. But nothing contained in this article shall be  
6 so construed as to prevent any person, firm or corporation from selling  
7 or otherwise transferring any material containing such name, portrait,  
8 picture or voice in whatever medium to any user of such name, portrait,  
9 picture or voice, or to any third party for sale or transfer directly or  
10 indirectly to such a user, for use in a manner lawful under this arti-  
11 cle; nothing contained in this article shall be so construed as to  
12 prevent any person, firm or corporation, practicing the profession of  
13 photography, from exhibiting in or about his or its establishment speci-  
14 mens of the work of such establishment, unless the same is continued by  
15 such person, firm or corporation after written notice objecting thereto  
16 has been given by the person portrayed; and nothing contained in this  
17 article shall be so construed as to prevent any person, firm or corpo-  
18 ration from using the name, portrait, picture or voice of any manufac-  
19 turer or dealer in connection with the goods, wares and merchandise  
20 manufactured, produced or dealt in by him which he has sold or disposed  
21 of with such name, portrait, picture or voice used in connection there-  
22 with; or from using the name, portrait, picture or voice of any author,  
23 composer or artist in connection with his literary, musical or artistic  
24 productions which he has sold or disposed of with such name, portrait,  
25 picture or voice used in connection therewith. Nothing contained in  
26 this section shall be construed to prohibit the copyright owner of a  
27 sound recording from disposing of, dealing in, licensing or selling that  
28 sound recording to any party, if the right to dispose of, deal in,  
29 license or sell such sound recording has been conferred by contract or  
30 other written document by such living person or the holder of such  
31 right. Nothing contained in the foregoing sentence shall be deemed to  
32 abrogate or otherwise limit any rights or remedies otherwise conferred  
33 by federal law or state law.

34 § 3. This act shall take effect on the sixtieth day after it shall  
35 have become a law.