

STATE OF NEW YORK

8663

IN SENATE

May 10, 2018

Introduced by Sen. BOYLE -- 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 dissemination of an intimate image

The People of the State of New York, represented in Senate and Assembly, 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 § 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
25 portrayed; and nothing contained in this article shall be so construed
26 as to prevent any person, firm or corporation from using the name,
27 portrait, picture or voice of any manufacturer or dealer in connection

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

LBD15897-01-8

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

15 2. (a) Any person who is a subject of unlawful dissemination of an
16 intimate image may maintain an equitable action in the supreme court of
17 this state against the person responsible for the unlawful dissemination
18 to prevent and restrain such dissemination and may also sue and recover
19 damages for any injuries sustained by reason of such dissemination and
20 the jury, in its discretion, may award exemplary damages. In any action
21 brought under this subdivision, the court may award reasonable attor-
22 ney's fees to a prevailing plaintiff.

23 (b) A person is a subject of unlawful dissemination of an intimate
24 image when another person, for such other person's own, or another
25 person's amusement, entertainment, or for the purpose of harassing,
26 annoying, alarming, degrading or abusing a person, intentionally dissem-
27 inates or threatens to disseminate an image or images through photo-
28 graph, film, videotape, recording, or any other reproduction of the
29 sexual or other intimate parts of another person without explicit
30 consent of such person to disseminate such images.

31 (c) In any action brought under this subdivision, the plaintiff may
32 proceed under pseudonym and all identifying information about the plain-
33 tiff may be redacted from pleadings and court filings. The court shall
34 inform the plaintiff of the option to proceed under pseudonym at the
35 earliest point and shall maintain records in a manner that protects the
36 plaintiff's confidentiality.

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