

STATE OF NEW YORK

8155--A

2017-2018 Regular Sessions

IN ASSEMBLY

May 31, 2017

Introduced by M. of A. MORELLE, WEINSTEIN -- read once and referred to the Committee on Judiciary -- reported and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the civil rights law, in relation to the right of publicity; and to amend the civil practice law and rules, in relation to the timeliness of commencement of an action for violation of the right of publicity

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

Section 1. Section 50 of the civil rights law is renumbered section 50-f and a new section 50 is added to read as follows:

§ 50. Definitions. For the purposes of sections fifty-f, fifty-g, fifty-h, fifty-i and fifty-one of this article, the following terms shall have the following meanings:

1. "Characteristic" means a distinctive appearance, gesture or mannerism recognized as an identifying attribute of an individual.

2. "Deceased individual" means any individual, including his or her name, voice, signature or likeness, regardless of the individual's place of domicile, residence or citizenship at the time of death or otherwise, who has died.

3. "Secretary" means the secretary of state.

4. "Fund-raising" means an organized activity to solicit donations of money or other goods or services from persons or entities by an organization, company or public entity.

5. "Individual" means a natural person, living or dead.

6. "Likeness" means an image, digital replica, photograph, painting, sketching, model, diagram, or other recognizable representation of an individual's face or body, and includes a characteristic. A digital replica is a computer-generated or electronic, photo-realistic reproduction of an individual's likeness, whether animated or static.

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

LBD11384-04-7

7. "Name" means the actual or assumed name, or nickname, of a living or deceased individual that identifies that individual.

8. "Person" means any natural person, firm, association, partnership, corporation, company, syndicate, receiver, common law trust, conservator, statutory trust, or any other entity by whatever name known or however organized, formed or created, and includes not-for-profit corporations, associations, educational and religious institutions, political parties, and community, civic or other organizations.

9. "Photograph" means any photograph or photographic reproduction, still or moving, or any videotape, online or live television transmission, of any individual, in which the individual is readily identifiable.

10. "Registration to establish a claim of right" means a registration by a person claiming to be a successor in interest in the right of publicity of a deceased individual with the department of state.

11. "Right of publicity" includes the right of privacy, and means an individual's name, voice, signature and likeness, individually and collectively known as his or her right of publicity.

12. "Signature" means a handwritten or otherwise legally binding form of an individual's name, written or authorized by that individual, that distinguishes the individual from all other individuals.

§ 2. Section 50-f of the civil rights law, as renumbered by section one of this act, is amended to read as follows:

§ 50-f. Right of ~~[privacy]~~ publicity for living and deceased individuals. ~~[A person, firm or corporation that uses for advertising purposes, or for the purposes of trade, the name, portrait or picture of any living person without having first obtained the written consent of such person, or if a minor of his or her parent or guardian, is guilty of a misdemeanor.]~~ A living or deceased individual's name, voice, signature and likeness, individually and collectively known as his or her right of publicity, is personal property, freely transferable or descendible, in whole or in part, by contract or by means of any trust or testamentary instrument, whether such contract, trust or testamentary instrument was entered into or executed before or after the effective date of the chapter of the laws of two thousand seventeen which amended this section. Such right of publicity shall not be used without obtaining the written consent of the individual, his or her successors or assigns as provided for in the provisions of this article pertaining to the right of publicity or, in the case of a minor, of his or her parent or guardian.

§ 3. The civil rights law is amended by adding three new sections 50-g, 50-h and 50-i to read as follows:

§ 50-g. Duration of an individual's right of publicity. Every individual's right of publicity shall continue to exist for forty years after his or her death, and does not expire upon the death of the individual, regardless of whether the law of the domicile, residence or citizenship of the individual at the time of death or otherwise recognizes a similar or identical property right.

§ 50-h. Methods of transfer and conveyance. 1. The rights recognized under the provisions of this article pertaining to the right of publicity are freely transferable and descendible, in whole or in part, by the following:

- (a) contract;
- (b) license;
- (c) gift;
- (d) trust;

1 (e) testamentary document. The rights shall vest in the persons enti-
2 tled to the right of publicity under the testamentary instrument of the
3 deceased individual effective as of the date of that individual's death.
4 In the absence of an express transfer in a testamentary instrument of
5 the deceased individual's right of publicity, a provision in the testa-
6 mentary instrument that provides for the disposition of the residue of
7 the deceased individual's assets shall be effective to transfer the
8 rights recognized under this article in accordance with the terms of
9 that provision; and

10 (f) intestate succession. The right to publicity of an individual
11 dying intestate shall be distributed under the laws of intestate
12 succession, and the rights and remedies of this article may be exercised
13 and enforced by a person or persons who possess at least a fifty-one
14 percent interest of the individual's right of publicity. Such persons
15 shall make a proportional accounting to, and shall act at all times in
16 good faith with respect to, any other person in whom the rights being
17 enforced have vested.

18 2. The rights established by the provisions of this article pertaining
19 to the right of publicity shall also be freely transferable or descendi-
20 ble by any subsequent owner of the deceased individual's right to
21 publicity as recognized by this article. Nothing in the provisions of
22 this article pertaining to the right of publicity shall be construed to
23 render invalid or unenforceable any contract entered into by a deceased
24 individual during his or her lifetime by which the deceased individual
25 assigned the rights, in whole or in part, to use his or her right of
26 publicity as defined in this article.

27 3. If any deceased individual does not transfer his or her rights
28 under this section by contract, license, gift, trust or testamentary
29 document, and there are no surviving persons as described in paragraph
30 (f) of subdivision one of this section, then the property rights associ-
31 ated with the deceased individual's right of publicity shall terminate.

32 4. Any person claiming to be a successor in interest to the right of
33 publicity of a deceased individual under this article or a licensee of a
34 deceased individual's right of publicity shall register that claim with
35 the secretary on a form prescribed by the secretary and upon payment of
36 a fee of fifty dollars. The form shall include the name and date of
37 death of the deceased individual, the name and address of the claimant,
38 the basis of the claim, and a sworn affidavit under penalty of perjury
39 as to the rights claimed. Claims registered under this registry and
40 information regarding such successors in interest to the deceased indi-
41 vidual's right of publicity shall be public records.

42 5. Upon receipt and after filing of any document pursuant to this
43 section, the secretary shall post the document along with the entire
44 registry of persons claiming to be successors in interest to the
45 deceased individual's right of publicity or a registered licensee under
46 this section upon an internet website developed by the secretary for
47 such purpose. The secretary may reproduce by digital or other means any
48 of the filings or documents and destroy the original filing or document.

49 6. The secretary is authorized to promulgate such regulations as he or
50 she shall deem necessary to implement the provisions of subdivisions
51 four and five of this section.

52 7. No action shall be brought under the provisions of this article
53 pertaining to the right of publicity by reason of any use of a deceased
54 individual's right of publicity occurring after the expiration of the
55 duration of the right of publicity as provided in section fifty-g of
56 this article. Furthermore, no action may be brought under the provisions

1 of this article pertaining to the right of publicity for a violation of
2 a deceased individual's right of publicity unless the claim is regis-
3 tered and posted on the secretary's public internet website within forty
4 years of such individual's death.

5 8. If there is a right of publicity registration for a deceased indi-
6 vidual, any person seeking to license right of publicity for the indi-
7 vidual shall have the right to rely upon such registration and posting
8 and thereby presume that the person who has registered and posted his or
9 her claim on the secretary's public internet website has the right to
10 assign or license the deceased individual's right of publicity. The
11 registration and posting of a person's claim to a deceased individual's
12 right of publicity on the secretary's public internet website shall
13 constitute a defense to an action brought under the provisions of this
14 article pertaining to the right of publicity.

15 9. Any person who knowingly makes a false or fraudulent representation
16 in connection with a registration with the secretary to establish a
17 claim to a deceased individual's right of publicity pursuant to this
18 section shall be liable for any damages sustained as a result of the
19 false or fraudulent registration as determined by a court of competent
20 jurisdiction.

21 10. Any document filed with the secretary, whether such document is a
22 reproduction or an original, may be destroyed by the secretary forty-
23 seven years after the death of the individual whose right of publicity
24 has been registered therein. The secretary shall remove any document
25 registered and posted upon the public internet website upon showing of a
26 court order from a court of competent jurisdiction that a person claim-
27 ing to be a successor in interest to a deceased individual's right of
28 publicity has no property rights in the right of publicity of the
29 deceased.

30 § 50-i. No abrogation of rights and remedies. Nothing contained in the
31 provisions of this article related to the right of publicity shall be
32 deemed to abrogate or otherwise limit any rights or remedies otherwise
33 conferred by federal or state law.

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

36 § 51. Action for injunction and for damages. 1. Applicability. The
37 provisions of this article related to the right of publicity apply to an
38 act or event that occurs within New York, regardless of a deceased indi-
39 vidual's domicile, residence or citizenship. Furthermore, the rights
40 recognized under the provisions of this article pertaining to the right
41 of publicity, shall be deemed to exist at the time of death regardless
42 of the domicile, residence or citizenship of any deceased individual.

43 2. Exceptions. Consent for use of another individual's right of
44 publicity as provided in the provisions of this article pertaining to
45 the right of publicity shall not be required when used in connection
46 with the following:

47 (a) news, public affairs or sports broadcast, including the promotion
48 of and advertising for a public affairs or sports broadcast, an account
49 of public interest or a political campaign;

50 (b) in:

51 (i) a play, book, magazine, newspaper, musical composition, visual
52 work, work of art, audiovisual work, radio or television program if it
53 is fictional or nonfictional entertainment, or a dramatic, literary or
54 musical work;

1 (ii) a work of political, public interest or newsworthy value includ-
2 ing a comment, criticism, parody, satire or a transformative creation of
3 a work of authorship; or

4 (iii) an advertisement or commercial announcement for any of the works
5 described in paragraph (a) of this subdivision or this paragraph; or

6 (c) use of the right of publicity of a deceased individual where the
7 licensee or successor in interest has failed to register and post a
8 claim of right under section fifty-h of this article until such time as
9 a claim of right has been registered and posted as required under such
10 section.

11 (d) however, subject to the First Amendment of the United States
12 Constitution and section eight of article one of the New York state
13 constitution, a work that is exempt under this subdivision that includes
14 a commercial use and replicates the professional performance or activ-
15 ities rendered by an individual, shall not be exempt under this subdivi-
16 sion where the replication is inextricably intertwined with the right of
17 publicity of such individual.

18 3. Limited immunity. Owners or employees of any medium used for adver-
19 tising including, but not limited to, newspapers, magazines, radio and
20 television networks and stations, cable television systems, billboards,
21 and transit ads, by whom any use of an individual's right of publicity
22 for commercial purposes in violation of that individual's right of
23 publicity is published or disseminated, shall not be liable under the
24 provisions of this article pertaining to the right of publicity unless
25 it is established that the owners or employees had knowledge of the
26 unauthorized use as prohibited by the provisions of this article
27 pertaining to the right of publicity.

28 4. Action for injunction and for damages. Any [person] individual
29 either living or deceased whose [name, portrait, picture or voice] right
30 of publicity is used within this state for advertising purposes [or],
31 for the purposes of trade or for purposes of fund-raising or sollicita-
32 tion of donations, without the written consent first obtained as [above]
33 provided [may] in the provisions of this article pertaining to the right
34 of publicity is entitled to maintain an equitable action for violation
35 of the individual's right of publicity in the supreme court of this
36 state against the person[, firm or corporation] so using his [name,
37 portrait, picture or voice] or her right of publicity, to prevent and
38 restrain the use thereof; and may also sue and recover damages for any
39 injuries sustained including an amount equal to the greater of seven
40 hundred fifty dollars or compensatory damages by reason of such use and
41 if the defendant shall have knowingly used such person's [name,
42 portrait, picture or voice] right of publicity in such manner as is
43 forbidden or declared to be unlawful by [section fifty] the provisions
44 of this article relating to the right of publicity, the [jury] finder of
45 fact, in its discretion, may award exemplary damages. [But nothing] A
46 violation of an individual's right of publicity may occur without regard
47 to whether the use or activity is for profit or not-for-profit with the
48 exception of the use of an individual's right of publicity for fund-
49 raising purposes by not-for-profit radio and television stations
50 licensed by the Federal Communications Commission of the Untied States.

51 5. No defense. It shall not constitute a defense to an action for
52 violation of an individual's right of publicity that such violation
53 includes more than one individual.

54 6. Use and transfer. Nothing contained in this article shall be so
55 construed as to prevent any [person, firm or corporation] individual or
56 person from selling or otherwise transferring any material containing

1 such [~~name, portrait, picture or voice~~] right of publicity as provided
2 in the provisions of this article relating to the right of publicity in
3 whatever medium to any user of such [~~name, portrait, picture or voice~~]
4 right of publicity, or to any third party for sale or transfer directly
5 or indirectly to such a user, for use in a manner lawful under this
6 article[~~, nothing~~].

7 7. Photographers. Nothing contained in this article shall be so
8 construed as to prevent any person[~~, firm or corporation,~~] practicing
9 the profession of photography, from exhibiting [~~in or about his or its~~
10 ~~establishment~~] specimens of the work of such [~~establishment~~] photogra-
11 pher, unless the same is continued by such person[~~, firm or corporation~~]
12 after written notice objecting thereto has been given by the [~~person~~]
13 individual portrayed[~~, and nothing~~].

14 8. Manufacturers, writers, composers and artists. Nothing contained in
15 this article shall be so construed as to prevent any person[~~, firm or~~
16 ~~corporation~~] from using the [~~name, portrait, picture or voice of~~] right
17 of publicity owned by any manufacturer or dealer in connection with the
18 goods, wares and merchandise manufactured, produced or dealt in by [~~him~~]
19 the manufacturer which [~~he~~] has been sold or disposed of with such
20 [~~name, portrait, picture or voice~~] right of publicity used in connection
21 therewith; or from using the [~~name, portrait, picture or voice~~] right of
22 publicity of any author, composer or artist in connection with his or
23 her literary, musical or artistic productions which he or she has sold
24 or disposed of with such [~~name, portrait, picture or voice~~] right of
25 publicity used in connection therewith.

26 9. Copyright owners of a sound recording. Nothing contained in this
27 section shall be construed to prohibit the copyright owner of a sound
28 recording from disposing of, dealing in, licensing or selling that sound
29 recording to any party, if the right to dispose of, deal in, license or
30 sell such sound recording has been conferred by contract or other writ-
31 ten document by such living person or the holder of such right. [~~Nothing~~
32 ~~contained in the foregoing sentence shall be deemed to abrogate or~~
33 ~~otherwise limit any rights or remedies otherwise conferred by federal~~
34 ~~law or state law.~~]

35 10. Termination of post mortem right of publicity. Nothing in the
36 provisions of this article pertaining to the right of publicity shall be
37 construed as prohibiting the use of the deceased individual's right of
38 publicity that occurs after the expiration of forty years following his
39 or her death. Nor shall anything in the provisions of this article
40 pertaining to the right of publicity be construed as creating liability
41 or giving rise to any remedy for any actions or conduct involving the
42 use of a deceased individual's right of publicity that occurred prior to
43 the effective date of the chapter of the laws of two thousand seventeen
44 which amended this section.

45 11. Statute of Limitations. Actions brought under the provisions of
46 this article pertaining to the right of publicity shall be commenced
47 within one year of the date of discovery of the injury to the plaintiff
48 or from the date through the exercise of due diligence such injury
49 should have been discovered by the plaintiff, whichever is earlier.

50 § 5. The section heading and subdivision 3 of section 215 of the civil
51 practice law and rules are amended to read as follows:

52 Actions to be commenced within one year: against sheriff, coroner or
53 constable; for escape of prisoner; for assault, battery, false imprison-
54 ment, malicious prosecution, libel or slander; for violation of right of
55 [~~privacy~~] publicity; for penalty given to informer; on arbitration
56 award.

1 3. an action to recover damages for assault, battery, false imprison-
2 ment, malicious prosecution, libel, slander, false words causing special
3 damages, or a violation of the right of [~~privacy~~] publicity under
4 [~~section fifty-one~~] article five of the civil rights law;
5 § 6. This act shall take effect on the one hundred eightieth day after
6 it shall have become a law, and shall apply to deceased individuals who
7 died on or after such date.