STATE OF NEW YORK

323

2019-2020 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 9, 2019

Introduced by M. of A. BRAUNSTEIN, ABINANTI, GOTTFRIED, MOSLEY, O'DONNELL, GOODELL, RAIA, McDONOUGH, BRABENEC -- Multi-Sponsored by -- M. of A. COOK, GARBARINO, LIFTON, RIVERA -- read once and referred 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:

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

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

§ 2. 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. 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 **in section fifty of this article** may main-

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

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tain an equitable action in the supreme court of this state against the person, firm or corporation so using his **or her** 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 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.

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