STATE OF NEW YORK

8611

2025-2026 Regular Sessions

IN ASSEMBLY

May 22, 2025

Introduced by M. of A. SIMONE, CRUZ -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil rights law, in relation to clarifying the right of publicity; and to amend chapter 304 of the laws of 2020 amending the civil rights law relating to establishing the right of publicity and to providing a right of action for unlawful dissemination or publication of a sexually explicit depiction of an individual, in relation thereto

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

Section 1. Section 50-f of the civil rights law, as added by chapter 304 of the laws of 2020, subparagraph v of paragraph d of subdivision 2 and subdivision 10 as added and subdivisions 11, 12 and 13 as renumbered by chapter 709 of the laws of 2022, is amended to read as follows:

§ 50-f. Right of publicity. 1. For purposes of this section:

a. [~~"deceased performer" means a deceased natural person domiciled in this state at the time of death who, for gain or livelihood, was regularly engaged in acting, singing, dancing, or playing a musical instrument.~~

~~b.~~] "deceased personality" means any deceased natural person domiciled in this state at the time of death [~~whose name, voice, signature, photograph, or likeness has commercial value at the time of his or her death, or because of his or her death, whether or not during the lifetime of that natural person the person used his or her name, voice, signature, photograph, or likeness on or in products, merchandise, or goods, or for purposes of advertising or selling, or solicitation of purchase of, products, merchandise, goods, or services~~].

[~~c.~~] **b.** "digital replica" means a [~~newly created, original,~~] computer-generated, [~~electronic performance by an individual in a separate and newly created, original expressive sound recording or audiovisual work in which the~~] **highly realistic electronic representation that is**

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

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readily identifiable as the voice or visual likeness of an individual [~~did not actually perform,~~] that is [~~so realistic that a reasonable observer would believe it is~~] embodied in a sound recording, image, audiovisual work, or transmission in which the actual individual either did not actually perform or appear, or the actual individual did perform or appear, but the fundamental character of the performance [~~by the individual being portrayed and no other individual~~] or appearance has been materially altered. A digital replica does not include the electronic reproduction, [~~computer generated~~] use of a sample of one sound recording or audiovisual work into another, remixing, mastering, or [~~other~~] digital remastering of [~~an expressive~~] a sound recording or audiovisual work [~~consisting of an individual's original or recorded performance, nor the making or duplication of another recording that consists entirely of the independent fixation of other sounds, even if such sounds imitate or simulate the voice of the individual~~] authorized by the copyright holder.

[~~d.~~] c. "sound recordings" are works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work, regardless of the nature of the material objects, such as disks, tapes, or other phonorecords, in which they are embodied.

d. "audiovisual work" means a work that consists of a series of related images that are intrinsically intended to be shown by the use of machines or devices, including projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material objects, including films or tapes, in which the works are embodied.

2. a. Any person who uses a deceased personality's name, voice, signature, photograph, or likeness, in any manner, on or in products, merchandise, or goods, or for purposes of advertising or selling, or soliciting purchases of, products, merchandise, goods, or services, without prior consent from the person or persons specified in subdivision [~~four~~] five of this section, shall be liable for any damages sustained by the person or persons injured as a result thereof.

b. [~~Any person who uses a deceased performer's digital replica in a scripted audiovisual work as a fictional character or for the live performance of a musical work shall be liable for any damages sustained by the person or persons injured as a result thereof if the use occurs without prior consent from the person or persons in subdivision four of this section, if the use is likely to deceive the public into thinking it was authorized by the person or persons specified in subdivision four of this section. A use shall not be considered likely to deceive the public into thinking it was authorized by the person or persons specified in subdivision four of this section if the person making such use provides a conspicuous disclaimer in the credits of the scripted audiovisual work, and in any related advertisement in which the digital replica appears, stating that the use of the digital replica has not been authorized by the person or persons specified in subdivision four of this section.~~

~~c.~~] In any action brought under this section:

i. the person who violated the section shall be liable to the injured party or parties in an amount equal to the greater of two thousand dollars or the compensatory damages suffered by the injured party or parties, as a result of the unauthorized use, and any profits from the unauthorized use that are attributable to such use and are not taken into account in computing the compensatory damages.

ii. in establishing profits under this subdivision, the injured party or parties shall be required to present proof only of the gross revenue attributable to the unauthorized use, and the person who violated this section is required to prove [~~his or her~~] **their** deductible expenses.

iii. punitive damages may also be awarded to the injured party or parties.

[~~d.~~] **c.** For purposes of this subdivision:

i. it shall not be a violation of paragraph a of this subdivision if the work is a play, book, magazine, newspaper, or other literary work; musical work or composition; work of art or other visual work; work of political, public interest, educational or newsworthy value, including comment, criticism, parody or satire; audio or audiovisual work, radio or television program, if it is fictional or nonfictional entertainment; or an advertisement or commercial announcement for any of the foregoing works.

ii. [~~it shall not be a violation of paragraph b of this subdivision if the work is of parody, satire, commentary, or criticism; works of political or newsworthy value, or similar works, such as documentaries, docudramas, or historical or biographical works, regardless of the degree of fictionalization; a representation of a deceased performer as himself or herself, regardless of the degree of fictionalization, except in a live performance of a musical work; de minimis or incidental; or an advertisement or commercial announcement for any of the foregoing works.~~

~~iii. it shall not be a violation of this section if the use of a name, voice, signature, photograph, or likeness occurs in connection with any news, public affairs, or sports program or account, regardless of format, medium or means of transmission, or any political campaign.~~

~~iv. it shall not be a violation of this section if the use is of a name, voice, signature, photograph, or likeness in a commercial medium solely because the material containing the use is commercially sponsored or contains paid advertising or product placement, or includes within it a use in connection with a product, article of merchandise, good, or service. Rather, it shall be a question of fact whether or not the use of the deceased personality's name, voice, signature, photograph, or likeness was so directly connected with the commercial sponsorship or with the paid advertising or product placement as to constitute a use for which consent is required under this subdivision.~~

~~v.~~] works identified pursuant to this paragraph shall not violate this section, regardless of the medium or means of transmission.

[~~e. In~~] **iii. in** relation to a violation of paragraph a of this subdivision, if a work that is protected under paragraph d of this subdivision includes within it a use in connection with a product, article of merchandise, good, or service, this use shall not be exempt under paragraph [~~d~~] **c** of this subdivision, notwithstanding the unprotected use's inclusion in a work otherwise exempt under paragraph [~~d~~] **c** of this subdivision, if the claimant proves that this use is so directly connected with a product, article of merchandise, good, or service as to constitute an act of advertising, selling, or soliciting purchases of that product, article of merchandise, good, or service by the deceased personality without prior consent for the use under paragraph a of this subdivision from the person or persons specified in subdivision [~~four~~] **five** of this section.

3. **a. A person who produces, distributes, or makes available the digital replica of a deceased personality's voice or likeness in an expressive audiovisual work or sound recording without prior consent from a person specified below shall be liable to any injured party in an**

amount equal to the greater of ten thousand dollars or the actual damages suffered by a person controlling the rights to the deceased personality's likeness.

b. For purposes of this section, it shall not be a violation of paragraph a of this subdivision if:

i. the applicable digital replica is produced or used in a bona fide news, public affairs, or sports broadcast or account, provided that the digital replica is the subject of, or is materially relevant to, the subject of such broadcast or account;

ii. the applicable digital replica is produced or used consistent with the public interest in bona fide commentary, criticism scholarship, satire, or parody;

iii. the applicable digital replica is a representation of the applicable individual as the individual in a documentary or in a historical or biographical manner, including some degree of fictionalization, unless:

A. the production or use is intended to create, and does create, the false impression that the work is an authentic recording in which the individual participated;

B. the digital replica is embodied in a musical sound recording that is synchronized to accompany a motion picture or other audiovisual work except to the extent that the use of digital replicas is protected by the First Amendment to the Constitution of the United States;

iv. the use is fleeting or incidental;

v. the use is in an advertisement or commercial announcement for a work described in subparagraphs i to iii of this paragraph, inclusive.

4. The rights recognized under this section are property rights, freely transferable or descendible, in whole or in part, by contract, license, gift, or by means of any trust or any other testamentary instrument. In the absence of an express transfer in a testamentary instrument of the deceased personality's rights in [~~his or her~~] their name, voice, signature, photograph, or likeness, a provision in the testamentary instrument that provides for the disposition of the residue of the deceased personality's assets shall be effective to transfer the rights recognized under this section in accordance with the terms of that provision. The rights established by this section shall also be freely transferable or descendible by contract, license, gift, trust, or any other testamentary instrument by any subsequent owner of the deceased personality's rights as recognized by this section. Nothing in this section shall be construed to render invalid or unenforceable any contract entered into by a deceased personality during [~~his or her~~] their lifetime by which the deceased personality assigned the rights, in whole or in part, to use [~~his or her~~] their name, voice, signature, photograph, or likeness.

[~~4.~~] 5. The consent required by this section shall be exercisable by the person or persons to whom the right of consent, or portion thereof, has been transferred in accordance with subdivision [~~three~~] four of this section, or if no transfer has occurred, then by the person or persons to whom the right of consent, or portion thereof, has passed in accordance with subdivision [~~five~~] six of this section.

[~~5.~~] 6. Subject to subdivisions [~~three and~~] four and five of this section, the rights under this section of an individual dying intestate shall be distributed under the laws of intestate succession, and the rights and remedies of this article may be exercised and enforced by a person or persons who possess at least a fifty-one percent interest of the individual's rights under this section. Such persons shall make a

proportional accounting to, and shall act at all times in good faith with respect to, any other person in whom the rights being enforced have vested.

[~~6.~~] 7. If any deceased personality does not transfer [~~his or her~~] their rights under this section by contract, or by means of a trust or testamentary instrument, and there are no surviving persons as described in subdivision [~~five~~] six of this section, then the rights set forth in subdivision two of this section shall terminate.

[~~7.~~] 8. a. Any person claiming to be a successor in interest to the rights of a deceased personality under this section or a licensee thereof may register that claim with the secretary of state on a form prescribed by the secretary of state and upon payment of a fee, which the secretary of state shall set by rule. The form shall be verified and shall include the name and date of death of the deceased personality, the name and address of the claimant, the basis of the claim, and the rights claimed. A successor in interest to the rights of a deceased personality under this section or a licensee thereof shall not have a cause of action for a use prohibited by this section that occurs before the successor in interest or licensee registers a claim of the rights.

b. Upon receipt and after filing of any document under this section, the secretary of state shall post the document along with the entire registry of persons claiming to be a successor in interest to the rights of a deceased personality or a registered licensee under this section upon the secretary of state's internet website.

c. Claims registered under this subdivision shall be public records.

[~~8.~~] 9. An action shall not be brought under this section by reason of any use of a deceased personality's name, voice, signature, photograph, or likeness occurring after the expiration of [~~forty~~] seventy years after the death of the deceased personality.

[~~9.~~] 10. Nothing in this section shall apply to the owners or employees of any medium used for advertising, including, but not limited to, newspapers, magazines, radio and television networks and stations, cable television systems, billboards, and transit advertisements, by whom any advertisement or solicitation in violation of this section is published or disseminated, unless it is established that the owners or employees had actual knowledge by prior notification of the unauthorized use of the deceased performer's digital replica or deceased personality's name, voice, signature, photograph, or likeness as prohibited by this section.

[~~10.~~] 11. Nothing in this section shall apply to a person that offers a service that displays, offers for sale or license, sells or licenses a work of art or other visual work, or audiovisual work, to a user, provided the terms of such sale or license do not authorize such user to engage in acts that constitute a violation of this section.

[~~11.~~] 12. The provisions of this section are in addition to, but shall not supersede, any other rights or remedies available in law or equity.

[~~12.~~] 13. This section shall apply to the adjudication of liability and the imposition of any damages or other remedies in cases in which the liability, damages, and other remedies arise from acts occurring directly in this state. For purposes of this section, acts giving rise to liability shall be limited to the use, on or in products, merchandise, goods, or services, or the advertising or selling, or soliciting purchases of, products, merchandise, goods, or services prohibited by this section.

[~~13.~~] 14. Nothing in this section shall be construed to limit, or to enlarge, the protections that 47 U.S.C. § 230 confers on an interactive

computer service for content provided by another information content provider, as such terms are defined in 47 U.S.C. § 230.

§ 2. Section 3 of chapter 304 of the laws of 2020 amending the civil rights law relating to establishing the right of publicity and to providing a right of action for unlawful dissemination or publication of a sexually explicit depiction of an individual, is amended to read as follows:

§ 3. This act shall take effect on the one hundred eightieth day after it shall have become a law[~~, and~~]**; provided that the provisions of section 50-f of the civil rights law as added by section one of this act** shall apply to all living individuals and **to any** deceased individuals who died [~~on or after~~] **prior to and after** such date.

§ 3. This act shall take effect immediately.