AN ACT to amend the civil rights law and the arts and cultural affairs law, in relation to the right of privacy and 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. "Authorized representative" means an attorney, talent agent, or personal manager authorized to represent the individual, or if the individual does not have an attorney, talent agent, or personal manager, a labor union representing performers in audiovisual work.

2. "Deceased individual" means a natural person who has died while domiciled in the state of New York.

3. "Digital replica" means a newly created, original computer-generated or electronic performance of a living or deceased individual’s likeness or voice in a separate and newly created, original expressive sound recording or audiovisual work that depicts the likeness or voice of the individual being portrayed. A digital replica is included within an individual’s portrait. A digital replica does not include the electronic reproduction, computer generated or other digital re-mastering of an expressive sound recording or audiovisual work of a person’s original or recorded performance.

4. "Secretary" means the secretary of state.

5. "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.

6. "Expressive sound recording or audiovisual work" includes an audio-book, interactive game, live performance, movie, radio or television program, song, or like media if it is fictional, nonfictional, or musical entertainment.

7. "Individual" means a natural person.

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

9. "Nude" means the realistic display of genitals, pubic area, anus, a female’s post-pubescent nipple or areola, including the use of technology to depict the body parts of another as being those of the individual or to impose nude body parts onto the individual.

10. "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.

11. "Persona" means, individually or collectively, the name, portrait or picture, voice, or signature of an individual.
1. For the purposes of the right of privacy, a living individual's persona shall not be used for advertising purposes or purposes of trade without obtaining the written consent of such person, or if a minor of his or her parent or guardian, is guilty of a misdemeanor. 1. For the purposes of the right of publicity, a living individual's persona 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 is entered into or executed before or after the effective date of this subdivision. Such right of publicity shall not be used for advertising purposes or the purposes of trade without obtaining the written consent of the individual, his or her successors or assigns as provided in the provisions of this article pertaining to the right of publicity. In the case of a minor, written consent must first be obtained of his or her parent or guardian for the purposes of an exclusive or non-exclusive license as limited by section 35.03 of the arts and cultural affairs law. A parent or guardian is prohibited from assigning a minor's right of publicity, and such assignments shall be unenforceable. Nothing in this section shall limit any other rights such minor may have.

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

(a) contract;
(b) license;
(c) gift;
(d) trust;
(e) testamentary document. The rights shall vest in the persons entitled to the right of publicity under the testamentary instrument of the deceased individual effective as of the date of that individual’s death. In the express transfer in a testamentary instrument of the deceased individual's right of publicity, a provision in the testamentary instrument that provides for the disposition of the residue of
the deceased individual’s assets shall be effective to transfer the
rights recognized under this article in accordance with the terms of
that provision; and
§ 5959—B 4

(f) intestate succession. The right to publicity 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 deceased individual’s right of publicity. 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.

2. The rights established by the provisions of this article pertaining
to the right of publicity shall also be freely transferable or descend-ri
dible by any subsequent owner of the deceased individual’s right to
publicity as recognized by this article. Nothing in the provisions of
this article pertaining to the right of publicity shall be construed to
render invalid or unenforceable any contract entered into by a deceased
individual during his or her lifetime by which the deceased individual
assigned the rights, in whole or in part, to use his or her right of
publicity as defined in this article.

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

4. Upon the first anniversary of the deceased individual’s death, any
person claiming to be a successor in interest who possesses at least
fifty-one percent interest in the right of publicity of a deceased indi-
vidual under this article or a licensee of a deceased individual’s right
of publicity shall register that claim with the secretary on a form
prescribed by the secretary and upon payment of a fee of one hundred
dollars. A rights holder may voluntarily register the claim at any time
prior to the one-year anniversary of the deceased individual’s death.
The form shall include the name and date of death of the deceased indi-
vidual, the name and address of the claimant, the basis of the claim,
and a sworn affidavit under penalty of perjury as to the rights claimed.
Claims registered under this registry and information regarding such
successors in interest to the deceased individual’s right of publicity
shall be public records.

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

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

7. No action shall be brought under the provisions of this article
pertaining to the right of publicity by reason of any use of a deceased
individual’s right of publicity occurring after the expiration of the
duration of the right of publicity as provided in section fifty-g of
this article. Furthermore, no action may be brought under the provisions
of this article pertaining to the right of publicity for a violation of
a deceased individual’s right of publicity that occurs one year after
the anniversary of a deceased individual’s death unless the claim is
registered. However, an action may be brought under the provisions of
this article pertaining to the right of publicity for a violation of a
§ 5959—B 5
deceased individual’s right of publicity for any subsequent publication,
manufacturing, distribution, or sale or use in violation of a deceased
individual’s right of publicity once a claim has been registered.

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

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

10. Any document filed with the secretary, whether such document is a
reproduction or an original, may be destroyed by the secretary forty-
seven days after the death of the individual whose right of publicity
has been registered therein. The secretary shall remove any document
Use of a digital replica, as defined in subdivision three of section fifty of the civil rights law, as amended by chapter 674 of the laws of 1999, is amended to read as follows:

§ 4. Section 51 of the civil rights law, as amended by chapter 674 of the laws of 1999, is amended to read as follows:

§ 51. Action for injunction and for damages. 1. Applicability. The provisions of this article related to the right of publicity shall be deemed to abrogate or otherwise limit any rights or remedies otherwise conferred by federal or state law.

2. Exceptions. Consent for use of another individual's persona shall not be required if such use is:

(a) in: (i) a play, book, magazine, newspaper, musical composition, visual work, work of art, audiovisual work, radio or television program if it is fictional or nonfictional entertainment, or a dramatic, literary or musical work; (ii) a work of political, public interest or newsworthy value, including a comment, criticism, parody, satire or a transformative creation of a work of authorship; or (iii) an advertisement or commercial announcement for any of the works exempted under this article; or
(c) fundraising purposes by not-for-profit radio and television stations licensed by the federal communications commission of the United States, or by not-for-profit advocacy organizations if the use is for commentary or criticism;
(d) use of the right of publicity of a deceased individual where the licensee or successor in interest has failed to register and post a claim of right under section fifty-h of this article, until such time as a claim of right has been registered and posted as required under such section.
(e) Nothing in this section relating to the right of publicity shall be deemed to abrogate or otherwise limit other rights or exceptions otherwise conferred by state and federal case law interpretations as to the applicability of this section and section fifty of this article made prior to the effective date of the chapter of the laws of two thousand nine which amended this section.

3. Digital replica for purposes of trade in an expressive work. (a) Use of a digital replica, as defined in subdivision three of section fifty of this article, of an individual shall constitute a violation if done without the consent of the individual if the use is:

(i) in an expressive audiovisual or audio work or sound recording, or in a live performance of a dramatic work, in a manner that is intended to create, and that does create, the reasonable impression that the person or college athlete represented by the digital replica is performing, the activity for which he or she is known, in such musical work; or
(ii) in an expressive audiovisual or sound recording, or in a live performance of a musical work, in a manner that is intended to create, and that does create, the reasonable impression that the professional or college athlete represented by the digital replica is engaging in an athletic activity for which he or she is known.
(b) Consent for the use of the digital replica of an individual as provided in the provisions of this article shall not be required if such use is:

(i) for purposes of parody, satire, commentary, or criticism;
(ii) in a work of political, public interest, or newsworthy value, or similar work, including a documentary, regardless of the degree of fictionalization in the work;
(iii) de minimis or incidental; or
(iv) the broadcasting or streaming of a sound recording or audiovisual work that is an electronic reproduction, computer generated or other digital replica of a person's original or recorded performance.

4. Digital replica use in a pornographic work. (a) Use of a digital replica to create sexually explicit material in an expressive audiovisual work shall constitute a violation of the right of privacy if the use is (i) professional or college athlete represented by the digital replica is engaging in the nude or as engaging in sexual acts they did not perform.
(b) Consent shall not be required if such use is:

(i) in relation to a matter of legitimate public purpose; or
(ii) in a work of political or newsworthy value, or similar work or

boards, and transit advertising, who make unauthorized use of an individual's persona or digital replica for the purpose of advertising or trade shall not be liable for such use under the provisions of this article unless it is established that such owner or employee had actual knowledge of such unauthorized use and that such owner or employee had actual knowledge by prior notification of the unauthorized use, through presence or inclusion, of the individual's persona in such advertisement or publication.

6. Actions for injunction and for damages. Any person whose [name, portrait, picture or voice] persona is used within this state for advertising or the purposes of trade without the written consent first obtained as [above] provided [may] in the provisions of this article is entitled to maintain an equitable action in the supreme court of this state against the person[firm or corporation] so using his [name, portrait, picture or voice] or her persona, to prevent and restrain the use thereof; and may also sue and recover damages for any injuries sustained including an amount equal to the greater of seven hundred fifty dollars or compensatory damages by reason of such use and if the defendant shall have knowingly used such person's [name, portrait, picture or voice] persona in such manner as is forbidden or declared to be unlawful by [section fifty] the provisions of this article relating to the right of privacy or the right of publicity, the jury finding fact in its discretion, may award exemplary damages. [But nothing] A violation of an individual's right of privacy or right of publicity may occur without regard to whether the use or activity is for profit or not-for-profit.

7. No defense. It shall not constitute a defense to an action for violation of an individual's right of privacy or right of publicity that such violation includes more than one individual.

8. Use. Nothing contained in this article shall be so construed as to prevent any [person, firm or corporation] individual or person from selling or otherwise transferring any material containing such [name, portrait, picture or voice] persona in whatever medium to any user of such [name, portrait, picture or voice] persona, 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 from using the [name, portrait, picture or voice] persona in connection therewith; or from using the [name, portrait, picture or voice] persona used in connection therewith; or from using the [name, portrait, picture or voice] persona used in connection therewith; or from using the [name, portrait, picture or voice] persona of any author, composer or artist in connection with his or her literary, musical or artistic productions which he or she has sold or disposed of with such [name, portrait, picture or voice] persona used in connection therewith.

9. Visual work. Nothing contained in this article shall be so construed as to prevent any person from exhibiting or displaying visual work, including in a gallery or on an online portfolio specimens of the work or from making the visual work available for licensing purposes in so far as the terms of the sale or license does not permit the user to violate this article.

10. Manufacturers, writers, composers and artists. 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] persona owned by any manufacturer or dealer in connection with the goods, wares and merchandise manufactured, produced or dealt in by [him] the manufacturer or [he] has sold or disposed of, with such [name, portrait, picture or voice] persona used in connection therewith; or from using the [name, portrait, picture or voice] persona of any author, composer or artist in connection with his or her literary, musical or visual work.

11. Limited immunity. 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 advertising, who make unauthorized use of an individual's right of privacy or the right of publicity in this article shall be so construed as to prevent any person from using the [name, portrait, picture or voice] persona of any manufacturer or dealer in connection with the goods, wares and merchandise manufactured, produced or dealt in by [him] the manufacturer or [he] has sold or disposed of, with such [name, portrait, picture or voice] persona used in connection therewith, 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.

12. Termination of post mortem right of publicity. Nothing in the provisions of this article pertaining to the right of publicity shall be construed as prohibiting the use of the deceased individual's right of publicity that occurs after the expiration of forty years following his or her death. Nor shall anything in the provisions of this article pertaining to the right of publicity be construed as creating liability or giving rise to any remedy for any actions or conduct involving the use of an individual's right of publicity that occurred prior to the effective date of the chapter of the laws of two thousand nineteen which amended this section.
22 § 43. Statute of limitations. Actions brought under the provisions of
23 this article pertaining to the right of publicity shall be commenced
24 within one year of the date of discovery of the injury to the plaintiff
25 or from the date through the exercise of due diligence such injury
26 should have been discovered by the plaintiff, whichever is earlier.
27 § 5. The section heading and subdivision 3 of section 215 of the civil
28 practice law and rules are amended to read as follows:
29 Actions to be commenced within one year: against sheriff, coroner or
30 constable; for escape of prisoner; for assault, battery, false imprison-
31 ment, malicious prosecution, libel or slander; for violation of right of
32 privacy or the right of publicity; for penalty given to informer; on
33 arbitration award.
34 3. an action to recover damages for assault, battery, false imprison-
35 ment, malicious prosecution, libel, slander, false words causing special
36 damages, or a violation of the right of privacy or the right of public-
37 ity under [section fifty-one] article five of the civil rights law;
38 § 6. Subdivision 1 of section 35.03 of the arts and cultural affairs
39 law, paragraph (a) as amended by chapter 411 of the laws of 2013, is
40 amended to read as follows:
41 1. A contract made by an infant or made by a parent or guardian of an
42 infant, or a contract proposed to be so made, under which (a) the infant
43 is to perform or render services as an actor, actress, model, dancer,
44 musician, vocalist or other performing artist, or as a participant or
45 player in professional sports, [or] (b) a person is employed to render
46 services to the infant in connection with such services of the infant or
47 in connection with contracts therefor, or (c) the infant is bound to an
48 exclusive licensing contract beyond twenty-one months for use of their
49 persona for advertising purposes or purposes of trade, as defined by the
50 civil rights law, may be approved by the supreme court or the surro-
51 gate's court as provided in this section where the infant is a resident
52 of this state or the services of the infant are to be performed or
53 rendered in this state. If the contract is so approved the infant may
54 not, either during his minority or upon reaching his majority, disaffirm
55 the contract on the ground of infancy or assert that the parent or guar-
56 dian lacked authority to make the contract. A contract modified, amended
57 S. 5959--B
58 § 7. Severability clause. If any clause, sentence, paragraph, subdivi-
59 sion, section or part of this act shall be adjudged by any court of
60 competent jurisdiction to be invalid, such judgment shall not affect,
61 impair, or invalidate the remainder thereof, but shall be confined in
62 its operation to the clause, sentence, paragraph, subdivision, section
63 or part thereof directly involved in the controversy in which such judg-
64 ment shall have been rendered. It is hereby declared to be the intent of
65 the legislature that this act would have been enacted even if such
66 invalid provisions had not been included herein.
67 § 8. This act shall take effect on the one hundred eightieth day after
68 it shall have become a law, and shall apply to all living individuals
69 and deceased individuals who died on or after such date.