

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1980

Session of
1999

INTRODUCED BY STAIRS, ARGALL, BAKER, BELARDI, BENNINGHOFF,
L. I. COHEN, COLAFELLA, CORRIGAN, DALEY, EGOLF, GEIST,
HALUSKA, HARHAI, HORSEY, LUCYK, MELIO, PISTELLA, SATHER,
SHANER, SOLOBAY, STABACK, E. Z. TAYLOR, TRELLO, WILT,
WOJNAROSKI, YOUNGBLOOD, STEELMAN AND FRANKEL,
OCTOBER 19, 1999

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF
REPRESENTATIVES, AS AMENDED, SEPTEMBER 26, 2000

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, providing for
3 unauthorized publication of name or likeness; and
4 establishing a right of action.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Title 42 of the Pennsylvania Consolidated
8 Statutes is amended by adding a section to read:

9 § 8313. Unauthorized publication of name or likeness.

10 (a) General rule.--No person shall publish, print, PRODUCE, <—
11 MANUFACTURE, display or otherwise publicly use for purposes of <—
12 trade or for any commercial or advertising purpose the name,
13 portrait, VOICE, photograph or other likeness of any natural <—
14 person without the express written or oral consent to such use <—
15 given by:

16 (1) such natural person;

1 (2) any other person, firm or corporation authorized in
2 writing by such natural person to license the commercial use
3 of such natural person's name or likeness; or

4 (3) if such natural person is deceased, any person, firm
5 or corporation authorized in writing to license the
6 commercial use of the decedent's name, PORTRAIT, VOICE, <—
7 PHOTOGRAPH or likeness, or if no person, firm or corporation
8 is so authorized, then by any one from among a class composed
9 of the decedent's surviving spouse and surviving children.

10 (b) Right of action.--In the event the consent required in
11 subsection (a) is not obtained, the natural person whose name,
12 portrait, ~~photograph~~, VOICE, PHOTOGRAPH or other likeness is so <—
13 used, or any person, firm or corporation authorized by such
14 natural person in writing to license the commercial use of such
15 natural person's name or likeness, or, if the natural person
16 whose likeness is used is deceased, any person, firm or
17 corporation having the right to give such consent, as provided
18 in subsection (a)(3), may bring an action to enjoin such
19 unauthorized publication, printing, PRODUCTION, MANUFACTURE, <—
20 display or other public use and to recover damages for any loss
21 or injury sustained by reason thereof, including an amount which
22 would have been a reasonable royalty and punitive or exemplary
23 damages.

24 (c) Applicability.--The provisions of this section shall not
25 apply to ANY OF THE FOLLOWING: <—

26 (1) the publication, printing, display or use of the
27 name, PORTRAIT, VOICE, PHOTOGRAPH or likeness of any natural <—
28 person in any newspaper, magazine, book, news broadcast or
29 telecast, or other news medium or publication as part of any
30 ~~bona fide news report or~~ NEWS REPORT OR NEWS presentation <—

1 having a current and legitimate public interest and where
2 such name or likeness is not used for advertising purposes;

3 ~~(2) the use of such name, portrait, photograph or other~~ <—
4 ~~likeness in connection with the resale or other distribution~~
5 ~~of literary, musical or artistic productions or other~~
6 ~~articles of merchandise or property where such natural person~~
7 ~~has consented to the use of such person's name, portrait,~~
8 ~~photograph or likeness on or in connection with the initial~~
9 ~~sale or distribution thereof; or~~

10 ~~(3) any photograph~~

11 (2) A PHOTOGRAPH, VIDEO OR AUDIO RECORDING of a natural <—
12 person solely as a member of the public and where such person
13 is not named or otherwise identified in or in connection with
14 the use of such photograph. PHOTOGRAPH; <—

15 (3) AN EXPRESSIVE WORK REGARDLESS OF THE MEDIA IN WHICH
16 THE WORK APPEARS OR IS TRANSMITTED, OTHER THAN WHEN USED OR
17 EMPLOYED FOR A COMMERCIAL OR ADVERTISING PURPOSE;

18 (4) MATERIAL THAT HAS POLITICAL OR NEWSWORTHY VALUE;

19 (5) AN ORIGINAL WORK OF FINE ART;

20 (6) AN ANNOUNCEMENT FOR A COMMERCIAL OR ADVERTISING
21 PURPOSE FOR A USE PERMITTED BY PARAGRAPHS (3), (4) OR (5); OR

22 (7) THE USE OF AN INDIVIDUAL'S NAME TO TRUTHFULLY
23 IDENTIFY THE INDIVIDUAL AS THE AUTHOR OF OR CONTRIBUTOR TO A
24 WRITTEN WORK OF THE PERFORMER OF A RECORDED PERFORMANCE UNDER
25 CIRCUMSTANCES IN WHICH THE WRITTEN WORK OR THE RECORDED
26 PERFORMANCE IS LAWFULLY PRODUCED, REPRODUCED, EXHIBITED OR
27 BROADCAST.

28 (8) THE USE OF THE NAME, PORTRAIT, VOICE, PHOTOGRAPH OR
29 OTHER LIKENESS OF A DECEASED NATURAL PERSON PURSUANT TO
30 SUBSECTION (A)(3), UNLESS SUCH DECEASED NATURAL PERSON WAS

1 DOMICILED WITHIN THIS COMMONWEALTH AT THE TIME OF THAT
2 PERSON'S DEATH.

3 (d) Time limitations.--No action shall be brought under this
4 section by reason of any publication, printing, display or other
5 public use of the name or likeness of a natural person occurring
6 after the expiration of 40 years from and after the death of
7 such natural person.

8 (e) Consent by minor.--~~Any~~ A consent provided for in <—
9 subsection (a) may only be given on behalf of a minor by the
10 guardian of the minor's person or by either parent.

11 (f) Other remedies.--The remedies provided for in this
12 section shall be in addition to and not in limitation of the
13 remedies and rights of any natural person under the common law
14 against the invasion of such person's privacy.

15 (G) LIABILITY OF OWNERS AND EMPLOYEES.--THE OWNERS OR <—
16 EMPLOYEES OF ANY MEDIUM USED FOR ADVERTISING OR COMMERCIAL
17 PURPOSES, INCLUDING, BUT NOT LIMITED TO, A NEWSPAPER, MAGAZINE,
18 RADIO OR TELEVISION NETWORK OR STATION, CABLE TELEVISION SYSTEM,
19 BILLBOARD, TRANSIT AD AND GLOBAL COMMUNICATIONS NETWORK, BY WHOM
20 ANY ADVERTISEMENT OR SOLICITATION IN VIOLATION OF THIS SECTION
21 IS PUBLISHED OR DISSEMINATED SHALL NOT BE LIABLE UNDER THIS
22 SECTION UNLESS IT IS ESTABLISHED THAT THOSE OWNERS OR EMPLOYEES
23 HAD KNOWLEDGE OF THE UNAUTHORIZED USE OF THE NAME, PORTRAIT,
24 VOICE, PHOTOGRAPH OR OTHER LIKENESS OF A NATURAL PERSON AS
25 PROHIBITED BY THIS SECTION.

26 ~~(g)~~ (H) Definitions.--As used in this section, the following <—
27 words and phrases shall have the meanings given to them in this
28 subsection:

29 "Children." A natural person's immediate offspring and any
30 children legally adopted by the person.

1 "COMMERCIAL OR ADVERTISING PURPOSE." A COMMUNICATION
2 DESIGNED TO INDUCE A PERSON TO USE, PURCHASE OR EMPLOY A
3 PARTICULAR PRODUCT OR SERVICE.

4 "EXPRESSIVE WORK." A LITERARY WORK, DRAMATIC WORK, FICTIONAL
5 WORK, HISTORICAL WORK, AUDIOVISUAL WORK OR MUSICAL WORK
6 REGARDLESS OF THE MEDIA IN WHICH IT APPEARS OR IS TRANSMITTED.

7 "Surviving spouse." The decedent's surviving spouse under
8 the law of the decedent's domicile at the time of the decedent's
9 death, whether or not the spouse has later remarried.

10 Section 2. This act shall take effect in 60 days.