

---

THE GENERAL ASSEMBLY OF PENNSYLVANIA

---

# HOUSE BILL

## No. 235

Session of  
2001

---

INTRODUCED BY STAIRS, M. BAKER, BARD, BELARDI, BENNINGHOFF,  
BISHOP, CALTAGIRONE, CLARK, CLYMER, L. I. COHEN, CORRIGAN,  
FEESE, FICHTER, GEIST, GRUCELA, HARHAI, HENNESSEY, HERMAN,  
LAUGHLIN, R. MILLER, S. MILLER, READSHAW, SATHER, SCHULER,  
SHANER, SOLOBAY, STABACK, T. STEVENSON, E. Z. TAYLOR, TIGUE,  
WALKO, C. WILLIAMS, WILT, WOJNAROSKI, HORSEY, GANNON, WOGAN,  
SAINATO, MICHLOVIC, MUNDY AND SAYLOR, JANUARY 25, 2001

---

SENATOR GREENLEAF, JUDICIARY, IN SENATE, AS AMENDED,  
FEBRUARY 5, 2002

---

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 Statutes  
8 is amended by adding a section to read:

9 § ~~8313~~ 8315. Unauthorized publication of name or likeness. <—

10 (a) General rule.--No person shall publish, print, produce,  
11 manufacture, display or otherwise publicly use for any  
12 commercial or advertising purpose the name, portrait, voice,  
13 photograph or other likeness of any natural person without the  
14 express written consent to such use given by:

15 (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, voice, photograph or other likeness is so used, or any  
13      person, firm or corporation authorized by such natural person in  
14      writing to license the commercial use of such natural person's  
15      name or likeness, or, if the natural person whose likeness is  
16      used is deceased, any person, firm or corporation having the  
17      right to give such consent, as provided in subsection (a)(3),  
18      may bring an action to enjoin such unauthorized publication,  
19      printing, production, manufacture, display or other public use  
20      and to recover damages for any loss or injury sustained by  
21      reason thereof, including an amount which would have been a  
22      reasonable royalty and punitive or exemplary damages.

23      (c) Applicability.--The provisions of this section shall not  
24      apply to any of the following:

25      (1) the publication, printing, display or use of the  
26      name, portrait, voice, photograph or likeness of any natural  
27      person in any newspaper, magazine, book, news broadcast or <—  
28      telecast, or other news medium or publication COMMUNICATIONS <—  
29      MEDIUM as part of any news report or news presentation having  
30      public interest and where such name or likeness is not used <—

1 for advertising purposes;

2 (2) a photograph, video or audio recording of a natural  
3 person solely as a member of the public and where such person  
4 is not named or otherwise identified in or in connection with  
5 the use of such photograph;

6 (3) an expressive work regardless of the ~~media~~ MEDIUM in <—  
7 which the work appears or is transmitted, other than when  
8 used or employed for a commercial or advertising purpose;

9 (4) material that has political or newsworthy value;

10 (5) an original work of fine art;

11 (6) an announcement for a commercial or advertising  
12 purpose for a use permitted by paragraphs (1), (3), (4) or <—  
13 (5); or

14 (7) the use of an individual's name to truthfully  
15 identify the individual as the author of or contributor to a  
16 written work or the performer of a recorded performance under  
17 circumstances in which the written work or the recorded  
18 performance is lawfully produced, reproduced, exhibited or  
19 broadcast.

20 (8) The use of the name, portrait, voice, photograph or  
21 other likeness of a deceased natural person pursuant to  
22 subsection (a)(3), unless such deceased natural person was  
23 domiciled within this Commonwealth at the time of that  
24 person's death.

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

30 (e) Consent by minor.--A consent provided for in subsection

(a) may only be given on behalf of a minor by the guardian of the minor's person or by either parent.

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

(g) Liability of owners and employees OR PERSONS ACTING ON THEIR BEHALF AND FOR WHOM THEY BEAR LEGAL RESPONSIBILITY.--The

owners or employees, OR PERSONS ACTING ON THEIR BEHALF AND FOR WHOM THEY BEAR LEGAL RESPONSIBILITY, of a producer or

manufacturer of advertising or commercials or of any

COMMUNICATIONS medium used for advertising or commercial

purposes, including, but not limited to, a newspaper, magazine,

radio or television network or station, cable television system,

billboard, transit ad and global communications network, by whom

any advertisement or solicitation in violation of this section

is published or disseminated, shall not be liable under this

section unless it is established that those owners or employees

had, OR PERSONS ACTING ON THEIR BEHALF AND FOR WHOM THEY BEAR

LEGAL RESPONSIBILITY, HAD ACTUAL knowledge of the unauthorized

use of the name, portrait, voice, photograph or other likeness

of a natural person as prohibited by this section.

(h) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

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

"Commercial or advertising purpose." A communication designed to induce a person to use, purchase or employ a particular product or service.

1       "COMMUNICATIONS MEDIUM." INCLUDES, BUT IS NOT LIMITED TO, A     <—  
2       NEWSPAPER, MAGAZINE, BOOK, NEWSLETTER, BILLBOARD, TELEPHONE,  
3       RADIO, TELEVISION, RECORDING, COMPUTER SOFTWARE, DIGITAL  
4       COMMUNICATIONS NETWORK, TRANSIT AD, MOTION PICTURE OR GLOBAL  
5       COMMUNICATIONS NETWORK.

6       "Expressive work." A literary work, dramatic work, fictional  
7       work, historical work, audiovisual work or musical work  
8       regardless of the media in which it appears or is transmitted.

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

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