

THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# HOUSE BILL

## No. 235

Session of  
2001

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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

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AS AMENDED ON THIRD CONSIDERATION, IN SENATE, NOVEMBER 19, 2002

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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;~~

16 ~~(2) any other person, firm or corporation authorized in~~

~~writing by such natural person to license the commercial use  
of such natural person's name or likeness; or~~

~~(3) if such natural person is deceased, any person, firm  
or corporation authorized in writing to license the  
commercial use of the decedent's name, portrait, voice,  
photograph or likeness, or if no person, firm or corporation  
is so authorized, then by any one from among a class composed  
of the decedent's surviving spouse and surviving children.~~

~~(b) Right of action. In the event the consent required in  
subsection (a) is not obtained, the natural person whose name,  
portrait, voice, photograph or other likeness is so used, or any  
person, firm or corporation authorized by such natural person in  
writing to license the commercial use of such natural person's  
name or likeness, or, if the natural person whose likeness is  
used is deceased, any person, firm or corporation having the  
right to give such consent, as provided in subsection (a)(3),  
may bring an action to enjoin such unauthorized publication,  
printing, production, manufacture, display or other public use  
and to recover damages for any loss or injury sustained by  
reason thereof, including an amount which would have been a  
reasonable royalty and punitive or exemplary damages.~~

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

~~(1) the publication, printing, display or use of the  
name, portrait, voice, photograph or likeness of any natural  
person in any newspaper, magazine, book, news broadcast or  
telecast, or other news medium or publication COMMUNICATIONS  
MEDIUM as part of any news report or news presentation having  
public interest and where such name or likeness is not used  
for advertising purposes;~~

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

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

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

~~(5) an original work of fine art;~~

~~(6) an announcement for a commercial or advertising purpose for a use permitted by paragraphs (1), (3), (4) or (5); or~~

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

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

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

~~(e) Consent by minor. A consent provided for in subsection (a) may only be given on behalf of a minor by the guardian of~~

1 ~~the minor's person or by either parent.~~

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

6 ~~(g) Liability of owners and employees OR PERSONS ACTING ON~~ <—  
7 ~~THEIR BEHALF AND FOR WHOM THEY BEAR LEGAL RESPONSIBILITY. The~~  
8 ~~owners or employees, OR PERSONS ACTING ON THEIR BEHALF AND FOR~~ <—  
9 ~~WHOM THEY BEAR LEGAL RESPONSIBILITY, of a producer or~~  
10 ~~manufacturer of advertising or commercials or of any~~  
11 ~~COMMUNICATIONS medium used for advertising or commercial~~ <—  
12 ~~purposes, including, but not limited to, a newspaper, magazine,~~ <—  
13 ~~radio or television network or station, cable television system,~~  
14 ~~billboard, transit ad and global communications network, by whom~~  
15 ~~any advertisement or solicitation in violation of this section~~  
16 ~~is published or disseminated, shall not be liable under this~~ <—  
17 ~~section unless it is established that those owners or employees~~  
18 ~~had, OR PERSONS ACTING ON THEIR BEHALF AND FOR WHOM THEY BEAR~~ <—  
19 ~~LEGAL RESPONSIBILITY, HAD ACTUAL knowledge of the unauthorized~~  
20 ~~use of the name, portrait, voice, photograph or other likeness~~  
21 ~~of a natural person as prohibited by this section.~~

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

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

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

30 ~~"COMMUNICATIONS MEDIUM." INCLUDES, BUT IS NOT LIMITED TO, A~~ <—

~~NEWSPAPER, MAGAZINE, BOOK, NEWSLETTER, BILLBOARD, TELEPHONE,  
RADIO, TELEVISION, RECORDING, COMPUTER SOFTWARE, DIGITAL  
COMMUNICATIONS NETWORK, TRANSIT AD, MOTION PICTURE OR GLOBAL  
COMMUNICATIONS NETWORK.~~

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

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

§ 8316. UNAUTHORIZED USE OF NAME OR LIKENESS.

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(A) CAUSE OF ACTION ESTABLISHED.--ANY NATURAL PERSON WHOSE  
NAME OR LIKENESS, WHICH HAS COMMERCIAL VALUE, IS USED WITHOUT  
THE WRITTEN CONSENT OF SUCH NATURAL PERSON FOR ANY COMMERCIAL OR  
ADVERTISING PURPOSE, OR ANY OF THE PARTIES AUTHORIZED IN  
SUBSECTION (B), MAY BRING AN ACTION TO ENJOIN SUCH UNAUTHORIZED  
USE AND TO RECOVER DAMAGES FOR ANY LOSS OR INJURY SUSTAINED BY  
SUCH USE.

(B) PARTIES AUTHORIZED TO BRING ACTION.--SUCH ACTION MAY BE  
BROUGHT BY:

(1) THE NATURAL PERSON.

(2) A PARENT OR GUARDIAN OF A NATURAL PERSON, IF THE  
NATURAL PERSON IS A MINOR.

(3) IF SUCH NATURAL PERSON IS DECEASED, ANY PERSON, FIRM  
OR CORPORATION AUTHORIZED IN WRITING TO LICENSE THE  
COMMERCIAL OR ADVERTISING USE OF THE NATURAL PERSON'S NAME OR  
LIKENESS BY THE NATURAL PERSON DURING THE NATURAL PERSON'S  
LIFETIME OR BY WILL OR OTHER TESTAMENTARY DEVICE; AN EXECUTOR  
NAMED IN A WILL OR DESIGNATED BY A COURT OF COMPETENT  
JURISDICTION; OR WHERE THERE IS NO SUCH AUTHORIZATION, THEN

1 BY THE DECEASED PERSON'S SURVIVING SPOUSE AT THE TIME OF  
2 DEATH UNTIL THE SURVIVING SPOUSE'S DEATH, OR IN A CASE WHERE  
3 THERE IS NO SURVIVING SPOUSE, THEN ANY OTHER HEIR OR GROUP OF  
4 HEIRS HAVING AT LEAST A 50% INTEREST IN THE DECEASED PERSON'S  
5 ESTATE AS PROVIDED FOR UNDER LAW.

6 (4) ANY OTHER PERSON, FIRM OR CORPORATION AUTHORIZED IN  
7 WRITING BY SUCH NATURAL PERSON TO LICENSE THE COMMERCIAL OR  
8 ADVERTISING PURPOSES OF THE PERSON'S NAME OR LIKENESS.

9 (C) REPOSE.--NO ACTION SHALL BE COMMENCED UNDER THIS SECTION  
10 MORE THAN 30 YEARS AFTER THE DEATH OF SUCH NATURAL PERSON.

11 (D) IMMUNITY.--NO PERSON, FIRM OR CORPORATION, INCLUDING  
12 THEIR EMPLOYEES AND AGENTS, IN THE BUSINESS OF PRODUCING,  
13 MANUFACTURING, PUBLISHING OR DISSEMINATING MATERIAL FOR  
14 COMMERCIAL OR ADVERTISING PURPOSES, BY ANY COMMUNICATIONS  
15 MEDIUM, SHALL BE HELD LIABLE UNDER THIS SECTION UNLESS THEY HAD  
16 ACTUAL KNOWLEDGE OF THE UNAUTHORIZED USE OF THE NAME OR LIKENESS  
17 OF A NATURAL PERSON AS PROHIBITED BY THIS SECTION.

18 (E) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING  
19 WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS  
20 SUBSECTION:

21 "COMMERCIAL OR ADVERTISING PURPOSE."

22 (1) EXCEPT AS PROVIDED IN PARAGRAPH (2), THE TERM SHALL  
23 INCLUDE THE PUBLIC USE OR HOLDING OUT OF A NATURAL PERSON'S  
24 NAME OR LIKENESS:

25 (I) ON OR IN CONNECTION WITH THE OFFERING FOR SALE  
26 OR SALE OF A PRODUCT, MERCHANDISE, GOODS, SERVICES OR  
27 BUSINESSES;

28 (II) FOR THE PURPOSE OF ADVERTISING OR PROMOTING  
29 PRODUCTS, MERCHANDISE, GOODS OR SERVICES OF A BUSINESS;

30 OR

1           (III) FOR THE PURPOSE OF FUNDRAISING.

2           (2) THE TERM SHALL NOT INCLUDE THE PUBLIC USE OR HOLDING  
3           OUT OF A NATURAL PERSON'S NAME OR LIKENESS IN A  
4           COMMUNICATIONS MEDIUM WHEN:

5           (I) THE NATURAL PERSON APPEARS AS A MEMBER OF THE  
6           PUBLIC AND THE NATURAL PERSON IS NOT NAMED OR OTHERWISE  
7           IDENTIFIED;

8           (II) ASSOCIATED WITH A NEWS REPORT OR NEWS  
9           PRESENTATION HAVING PUBLIC INTEREST;

10          (III) IS AN EXPRESSIVE WORK;

11          (IV) IS AN ORIGINAL WORK OF FINE ART;

12          (V) ASSOCIATED WITH ANNOUNCEMENT FOR A COMMERCIAL OR  
13          ADVERTISING PURPOSE FOR A USE PERMITTED BY SUBPARAGRAPH  
14          (II), (III) OR (IV);

15          (VI) ASSOCIATED WITH THE IDENTIFICATION OF A NATURAL  
16          PERSON AS THE AUTHOR OF OR CONTRIBUTOR TO A WRITTEN WORK  
17          OR THE PERFORMER OF A RECORDED PERFORMANCE UNDER  
18          CIRCUMSTANCES IN WHICH THE WRITTEN WORK OR THE RECORDED  
19          PERFORMANCE IS LAWFULLY PRODUCED, REPRODUCED, EXHIBITED  
20          OR BROADCAST.

21          "COMMERCIAL VALUE." VALUABLE INTEREST IN A NATURAL PERSON'S  
22          NAME OR LIKENESS THAT IS DEVELOPED THROUGH THE INVESTMENT OF  
23          TIME, EFFORT AND MONEY.

24          "COMMUNICATION MEDIUM." INCLUDES, BUT IS NOT LIMITED TO, A  
25          NEWSPAPER, MAGAZINE, BOOK, NEWSLETTER, BILLBOARD, TELEPHONE,  
26          RADIO, TELEVISION, RECORDING, COMPUTER SOFTWARE, DIGITAL  
27          COMMUNICATIONS NETWORK, TRANSIT AD, AUDIOVISUAL WORK OR GLOBAL  
28          COMMUNICATIONS NETWORK.

29          "EXPRESSIVE WORK." A LITERARY, DRAMATIC, FICTIONAL,  
30          HISTORICAL, AUDIOVISUAL OR MUSICAL WORK REGARDLESS OF THE

1 COMMUNICATIONS MEDIUM BY WHICH IT IS EXHIBITED, DISPLAYED,  
2 PERFORMED OR TRANSMITTED, OTHER THAN WHEN USED OR EMPLOYED FOR A  
3 COMMERCIAL OR ADVERTISING PURPOSE.

4 "NAME" OR "LIKENESS." ANY ATTRIBUTE OF A NATURAL PERSON THAT  
5 SERVES TO IDENTIFY THAT NATURAL PERSON TO AN ORDINARY,  
6 REASONABLE VIEWER OR LISTENER, INCLUDING, BUT NOT LIMITED TO,  
7 NAME, SIGNATURE, PHOTOGRAPH, IMAGE, LIKENESS, VOICE OR A  
8 SUBSTANTIALLY SIMILAR IMITATION OF ONE OR MORE THEREOF.

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