

2020 -- H 7445

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

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A N A C T

RELATING TO COURTS AND CIVIL PROCEDURE -- PROCEDURE GENERALLY --
CAUSES OF ACTION

Introduced By: Representative Marvin L. Abney

Date Introduced: February 05, 2020

Referred To: House Corporations

(by request)

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 9-1-28 and 9-1-28.1 of the General Laws in Chapter 9-1 entitled
2 "Causes of Action" are hereby amended to read as follows:

3 **9-1-28. Action for unauthorized use of name, portrait, or picture.**

4 (a) Any person whose name, portrait, or picture is used within the state for commercial
5 purposes without his or her written consent may bring an action in the superior court against the
6 person so using his or her name, portrait, or picture to prevent and restrain the use thereof, and
7 may recover damages for any injuries sustained by reason of such use. If the defendant shall have
8 knowingly used the person's name, portrait, or picture in such manner as is prohibited or
9 unlawful, the court, in its discretion, may award the plaintiff treble the amount of the damages
10 sustained by him or her.

11 (b) Nothing in this section shall be so construed as to:

12 (1) Apply to the use of names, portraits, or pictures in political speech or on matters of
13 public concern;

14 (2) Prevent any person practicing the profession of photography from exhibiting in or
15 about his or her or its establishment specimens of the work of the person or establishment, unless
16 the exhibiting of any such specimen is continued after written notice objecting to it has been
17 given by the person portrayed; ~~or~~

18 (3) Prevent any person from using the name, portrait, or picture of any manufacturer or

1 dealer in connection with the goods, wares, and merchandise manufactured, produced, or dealt in
2 by the manufacturer or dealer which the person has sold or disposed of with the name, portrait, or
3 picture used in connection therewith, or from using the name, portrait, or picture of any author,
4 composer, or artist in connection with any literary, musical, or artistic production of the author,
5 composer, or artist which the person has sold or disposed of with the name, portrait, or picture
6 used in connection therewith- ; or

7 [\(4\) Apply to an independent third-party contractor, including, but not limited to, a web](#)
8 [designer, web developer, or a person performing a similar function, pursuant to a contract with a](#)
9 [business, corporation, partnership, limited liability corporation, or other legal entity, who uses the](#)
10 [name, portrait or picture of an individual at the request of the contracting party.](#)

11 **9-1-28.1. Right to privacy -- Action for deprivation of right.**

12 (a) Right to privacy created. It is the policy of this state that every person in this state
13 shall have a right to privacy which shall be defined to include any of the following rights
14 individually:

15 (1) The right to be secure from unreasonable intrusion upon one's physical solitude or
16 seclusion;

17 (i) In order to recover for violation of this right, it must be established that:

18 (A) It was an invasion of something that is entitled to be private or would be expected to
19 be private;

20 (B) The invasion was or is offensive or objectionable to a reasonable man; although,

21 (ii) The person who discloses the information need not benefit from the disclosure.

22 (2) The right to be secure from an appropriation of one's name or likeness;

23 (i) In order to recover for violation of this right, it must be established that:

24 (A) The act was done without permission of the claimant;

25 (B) The act is of a benefit to someone other than the claimant;

26 (ii) It need not be established that there was any publication.

27 (3) The right to be secure from unreasonable publicity given to one's private life;

28 (i) In order to recover for violation of this right, it must be established that:

29 (A) There has been some publication of a private fact;

30 (B) The fact which has been made public must be one which would be offensive or
31 objectionable to a reasonable man of ordinary sensibilities;

32 (ii) The fact which has been disclosed need not be of any benefit to the discloser of the
33 fact.

34 (4) The right to be secure from publicity that reasonably places another in a false light

1 before the public;

2 (i) In order to recover for violation of this right, it must be established that:

3 (A) There has been some publication of a false or fictitious fact which implies an
4 association which does not exist;

5 (B) The association which has been published or implied would be objectionable to the
6 ordinary reasonable man under the circumstances;

7 (ii) The fact which was disclosed need not be of any benefit to the discloser.

8 (b) Right of action. Every person who subjects or causes to be subjected any citizen of
9 this state or other person within the jurisdiction thereof to a deprivation and/or violation of his or
10 her right to privacy shall be liable to the party injured in an action at law, suit in equity, or any
11 other appropriate proceedings for redress in either the superior court or district court of this state.
12 The court having jurisdiction of an action brought pursuant to this section may award reasonable
13 attorneys' fees and court costs to the prevailing party.

14 (c) Right of access. Nothing in this section shall be construed to limit or abridge any
15 existing right of access at law or in equity of any party to the records kept by any agency of state
16 or municipal government.

17 (d) Exemption for independent third-party contractors. The provisions of this section
18 shall not apply to an independent third-party contractor, including, but not limited to, a web
19 designer, web developer, or a person performing a similar function, pursuant to a contract with a
20 business, corporation, partnership, limited liability corporation, or other legal entity, who uses the
21 name or likeness of an individual at the request of the contracting party in violation of subsection
22 (a)(2) of this section.

23 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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RELATING TO COURTS AND CIVIL PROCEDURE -- PROCEDURE GENERALLY --
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1 This act would exempt independent third-party contractors from liability for the
2 unauthorized use of the name, portrait or picture or the right of privacy of an individual from
3 appropriation of one's name or likeness pursuant to a contract with a business, corporation,
4 partnership or limited liability corporation or other legal entity at the request of the contracting
5 party.

6 This act would take effect upon passage.

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