Establishes the right of publicity for both living and deceased individuals; provides that an individual's name, voice, signature and likeness is the personal property of the individual and is freely transferable and descendible; provides for the registration with the department of state of such rights of a deceased individual; and establishes a 1 year statute of limitations for commencing a cause of action for the violation of such right.
AN ACT to amend the civil rights law, in relation to 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:

1. 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 and fifty-one of this article, the following terms shall have the following meanings:

1. "Characteristic" means a distinctive appearance, gesture or mannerism recognized as an identifying attribute of an individual.

2. "Deceased individual" means any individual, including his or her name, signature or likeness, regardless of the individual's place of domicile, residence or citizenship at the time of death or otherwise, who has died.

3. "Secretary" means the secretary of state.

4. "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.

5. "Individual" means a natural person, living or dead.

6. "Likeness" means an image, photograph, painting, sketching, model, diagram, or other recognizable representation of an individual's face or body, and includes a characteristic.

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

8. "Person" means any natural person, firm, association, partnership, corporation, company, syndicate, receiver, common law trust, conserva-

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [ ] is old law to be omitted.
A. 8155                             2
tor, statutory trust, or any other entity by whatever name known or
however organized, formed or created, and includes not-for-profit corpo-
relations, associations, educational and religious institutions, political
parties, and community, civic or other organizations.
d still or moving, or any videotape, online or live television trans-
mision, of any individual, in which the individual is readily identifi-
able.
9. “Photograph” means any photograph or photographic reproduction,
10. “Registration to establish a claim of right” means a registration
by a person claiming to be a successor in interest in the right of
publicity of a deceased individual with the department of state.
11. “Signature” means a handwritten or otherwise legally binding form
of an individual’s name, written or authorized by that individual, that
distinguishes the individual from all other individuals.
§ 2. Section 50-f of the civil rights law, as relettered by section
one of this act, is amended to read as follows:
§ 50-f. Right of [privacy] publicity for living and deceased individ-
uals. [A person, firm or corporation that uses for advertising purposes,
or for the purposes of trade, the name, portrait or picture of any
living person without having first obtained the written consent of such
person, or, if a minor of his or her parent or guardian, is guilty of a
misdemeanor.] A living or deceased individual’s name, voice, signature
and likeness, individually and collectively known as his or her right of
publicity, 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 was
entered into or executed before or after the effective date of the chap-
ter of the laws of two thousand seventeen which amended this section.
Such right of publicity shall not be used without obtaining the written
consent of the individual, his or her successors or assigns as provided
for in the provisions of this article pertaining to the right of public-
ity or, in the case of a minor, of his or her parent or guardian.
§ 3. The civil rights law is amended by adding two new sections 50-g
and 50-h to read as follows:
§ 50-g. Duration of an individual’s right of publicity. Every individ-
ual’s right of publicity shall continue to exist for forty years after
his or her death, and does not expire upon the death of the individual,
regardless of whether the law of the domicile, residence or citizenship
of the individual at the time of death or otherwise recognizes a similar
or identical property right.
§ 50-h. Methods of transfer and conveyance. 1. The rights recognized
under the provisions of this article pertaining to the right of public-
ity are freely transferable and descendible, in whole or in part, by the
following:
(a) contract;
(b) license;
(c) gift;
(d) trust;
(e) testamentary document. The rights shall vest in the persons enti-
tied 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 absence of an express transfer in a testamentary instrument of
the deceased individual’s right of publicity, a provision in the testa-
mentary 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

(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 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 descendible 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 associated with the deceased individual’s right of publicity shall terminate.

4. Any person claiming to be a successor in interest to the right of publicity of a deceased individual 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 fifty dollars. The form shall include the name and date of death of the deceased individual, 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 deems 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 unless the claim is registered and posted on the secretary’s public internet website within forty years of such individual’s death.

8. If there is a right of publicity registration for a deceased individual, any person seeking to license right of publicity for the individual shall have the right to rely upon such registration and posting
A. 8155                             4

and thereby presume that the person who has registered and posted his or
er claim on the secretary's public internet website has the right to
assign or license the deceased individual's right of publicity. The
registration and 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 who 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 years after the death of the individual whose right of publicity
has been registered therein. The secretary shall remove any document
registered and posted upon the public internet website upon showing of a
court order from a court of competent jurisdiction that a person claim-
ing to be a successor in interest to a deceased individual's right of
publicity has no property rights in the right of publicity of the
deceased.

11. Nothing contained in 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.

§ 4. Section 51 of the civil rights law, as amended by chapter 674 of
the laws of 1995, 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 apply to an
act or event that occurs within New York, regardless of a deceased indi-
vidual's domicile, residence or citizenship. Furthermore, the rights
recognized under the provisions of this article pertaining to the right
of publicity shall be deemed to exist at the time of death regardless
of the domicile, residence or citizenship of any deceased individual.

2. Exceptions. Consent for use of another individual's right of
publicity as provided in the provisions of this article pertaining to
the right of publicity shall not be required when used in connection
with the following:

(a) 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;
(b) a work of political, public interest or newsworthy value includ-
ing 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
described in paragraph (a) of this subdivision or this paragraph; or
(c) 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.
3. Limited immunity. 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 ads, by whom any use of an individual's right of publicity for commercial purposes in violation of that individual's right of publicity is published or disseminated, shall not be liable under the provisions of this article pertaining to the right of publicity unless it is established that the owners or employees had knowledge of the unauthorized use as prohibited by the provisions of this article pertaining to the right of publicity.

4. Action for injunction and for damages. Any individual, either living or deceased whose name, portrait, picture or voice right of publicity is used within this state for advertising purposes, or for the purposes of trade or for purposes of fund-raising or solicitation of donations, without the written consent first obtained as above provided may in the provisions of this article pertaining to the right of publicity is entitled to maintain an equitable action for violation of the individual's right of publicity in the supreme court of this state against the person, firm or corporation so using his name, portrait, picture or voice or her right of publicity, 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 right of publicity in such manner as is forbidden or declared to be unlawful by the provisions of this article relating to the right of publicity, the jury finder of fact, in its discretion, may award exemplary damages. But nothing contained in this article shall be so construed as to prevent any person, firm or corporation practicing the profession of photography, from exhibiting in or about his or its establishment specimens of the work of such photographer, unless the same is continued by such person after written notice objecting thereto has been given by the individual portrayed; and 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 of any manufacturer or dealer in connection with the goods, wares and merchandise manufactured, produced or dealt in by him the manufacturer which he has been sold or disposed of with such name, portrait, picture or voice right of publicity used in connection with the goods, wares and merchandise manufactured, produced or dealt in by him.
therewith; or from using the [name, portrait, picture or voice] right of publicity 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] right of publicity used in connection therewith.

9. Copyright owners of a sound recording. Nothing contained in this section shall be construed to prohibit the copyright owner of a sound recording from disposing of, dealing in, licensing or selling that sound recording to any party, if the right to dispose of, deal in, license or sell such sound recording has been conferred by contract or other written document by such living person or the holder of such right. Nothing contained in the foregoing sentence shall be deemed to abrogate or otherwise limit any rights or remedies otherwise conferred by federal law or state law.

10. 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 a deceased individual’s right of publicity that occurred prior to the effective date of the chapter of the laws of two thousand seventeen which amended this section.

11. Statute of Limitations. Actions brought under the provisions of this article pertaining to the right of publicity shall be commenced within one year of the date of discovery of the injury to the plaintiff or from the date through the exercise of due diligence such injury should have been discovered by the plaintiff, whichever is earlier.

§ 5. The section heading and subdivision 3 of section 215 of the civil practice law and rules are amended to read as follows:

3. an action to recover damages for assault, battery, false imprisonment, malicious prosecution, libel or slander; for violation of right of [privacy] publicity; for penalty given to informer; on arbitration award.

§ 6. This act shall take effect on the one hundred eightieth day after it shall have become a law, and shall apply to deceased individuals who died on or after such date.