

No. 2002-154

AN ACT

HB 235

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

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

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

§ 8316. *Unauthorized use of name or likeness.*

(a) *Cause of action established.*—Any natural person whose name or likeness has commercial value and is used for any commercial or advertising purpose without the written consent of such natural person or the written consent of 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 by the deceased person's surviving spouse at the time of death until the surviving spouse's death or, in a case where there is no surviving spouse, then any other heir or group of heirs having at least a 50% interest in the deceased person's estate as provided for under law.*

(4) *Any other person, firm or corporation authorized in writing by such natural person to license the commercial or advertising purposes of the person's name or likeness.*

(c) *Repose.*—No action shall be commenced under this section more than 30 years after the death of such natural person.

(d) *Immunity.*—No person, firm or corporation, including their employees and agents, in the business of producing, manufacturing, publishing or disseminating material for commercial or advertising purposes by any communications medium shall be held liable under this

section unless they had actual knowledge of the unauthorized use of the name or likeness of a natural person as prohibited by this section.

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

“Commercial or advertising purpose.”

(1) Except as provided in paragraph (2), the term shall include the public use or holding out of a natural person’s name or likeness:

(i) on or in connection with the offering for sale or sale of a product, merchandise, goods, services or businesses;

(ii) for the purpose of advertising or promoting products, merchandise, goods or services of a business; or

(iii) for the purpose of fundraising.

(2) The term shall not include the public use or holding out of a natural person’s name or likeness in a communications medium when:

(i) the natural person appears as a member of the public and the natural person is not named or otherwise identified;

(ii) it is associated with a news report or news presentation having public interest;

(iii) it is an expressive work;

(iv) it is an original work of fine art;

(v) it is associated with announcement for a commercial or advertising purpose for a use permitted by subparagraph (ii), (iii) or (iv); or

(vi) it is associated with the identification of a natural person 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.

“Commercial value.” Valuable interest in a natural person’s name or likeness that is developed through the investment of time, effort and money.

“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, audiovisual work or global communications network.

“Expressive work.” A literary, dramatic, fictional, historical, audiovisual or musical work regardless of the communications medium by which it is exhibited, displayed, performed or transmitted, other than when used or employed for a commercial or advertising purpose.

“Name” or “likeness.” Any attribute of a natural person that serves to identify that natural person to an ordinary, reasonable viewer or listener, including, but not limited to, name, signature, photograph, image, likeness, voice or a substantially similar imitation of one or more thereof.

“Natural person.” A living person or a deceased person who was domiciled within this Commonwealth at the time of such person’s death.

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

APPROVED—The 9th day of December, A.D. 2002.

MARK S. SCHWEIKER