

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

A N A C T

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

Introduced By: Senators Euer, and DiPalma

Date Introduced: March 04, 2021

Referred To: Senate Judiciary

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 may
7 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 unlawful,
9 the court, in its discretion, may award the plaintiff treble the amount of the damages sustained by
10 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 about
15 his or her or its establishment specimens of the work of the person or establishment, unless the
16 exhibiting of any such specimen is continued after written notice objecting to it has been given by
17 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 used
6 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 company, 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 shall
13 have a right to privacy which shall be defined to include any of the following rights individually:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (4) The right to be secure from publicity that reasonably places another in a false light
33 before the public;

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

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

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

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

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

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

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

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

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

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

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, limited liability company, or any other legal entity at the request of the contracting
5 party.

6 This act would take effect upon passage.

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