

Introduced by Senator La Malfa
(Coauthor: Assembly Member Nielsen)

February 6, 2012

An act to amend Section 3344 of the Civil Code, relating to statute of limitations.

LEGISLATIVE COUNSEL'S DIGEST

SB 999, as introduced, La Malfa. Invasion of privacy: statute of limitations.

Under existing law, a person who knowingly uses another's name, voice, signature, photograph, or likeness, in any manner, on or in products, merchandise, or goods, or for the purposes of advertising or selling, or soliciting purchases of, products, merchandise, goods, or services, without that person's prior consent, or, in the case of a minor, the prior consent of his or her parent or legal guardian, shall be liable for any damages sustained by the person or persons injured as a result thereof and for the payment to the injured party of any profits attributable to that unauthorized use. An action for the unauthorized commercial use of a person's image or name must be brought within 2 years of its publication.

This bill would provide that a claim seeking damages, injunctive relief, or both for the unauthorized commercial use of a person's name, signature, photograph, or likeness on an Internet Web site may be brought at any time.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 3344 of the Civil Code is amended to read:

3344. (a) Any person who knowingly uses another's name, voice, signature, photograph, or likeness, in any manner, on or in products, merchandise, or goods, or for purposes of advertising or selling, or soliciting purchases of, products, merchandise, goods or services, without ~~such~~ *the* person's prior consent, or, in the case of a minor, the prior consent of his *or her* parent or legal guardian, shall be liable for any damages sustained by the person or persons injured as a result ~~thereof of that use~~. In addition, in any action brought under this section, the person who violated the section shall be liable to the injured party or parties in an amount equal to the greater of seven hundred fifty dollars (\$750) or the actual damages suffered by him or her as a result of the unauthorized use, and any profits from the unauthorized use that are attributable to the use and are not taken into account in computing the actual damages. In establishing ~~such~~ *profits attributable to unauthorized use*, the injured party or parties are required to present proof only of the gross revenue attributable to such use, and the person who violated this section is required to prove his or her deductible expenses. Punitive damages may also be awarded to the injured party or parties. The prevailing party in any action under this section shall also be entitled to attorney's fees and costs.

(b) As used in this section, "photograph" means any photograph or photographic reproduction, still or moving, or any videotape or live television transmission, of any person, such that the person is readily identifiable.

(1) A person shall be deemed to be readily identifiable from a photograph when one who views the photograph with the naked eye can reasonably determine that the person depicted in the photograph is the same person who is complaining of its unauthorized use.

(2) If the photograph includes more than one person so identifiable, then the person or persons complaining of the use shall be represented as individuals rather than solely as members of a definable group represented in the photograph. A definable group includes, but is not limited to, the following examples: a crowd at any sporting event, a crowd in any street or public

1 building, the audience at any theatrical or stage production, a glee
2 club, or a baseball team.

3 (3) A person or persons shall be considered to be represented
4 as members of a definable group if they are represented in the
5 photograph solely as a result of being present at the time the
6 photograph was taken and have not been singled out as individuals
7 in any manner.

8 (c) Where a photograph or likeness of an employee of the person
9 using the photograph or likeness appearing in the advertisement
10 or other publication prepared by or in behalf of the user is only
11 incidental, and not essential, to the purpose of the publication in
12 which it appears, there shall arise a rebuttable presumption
13 affecting the burden of producing evidence that the failure to obtain
14 the consent of the employee was not a knowing use of the
15 employee's photograph or likeness.

16 (d) For purposes of this section, a use of a name, voice,
17 signature, photograph, or likeness in connection with any news,
18 public affairs, or sports broadcast or account, or any political
19 campaign, shall not constitute a use for which consent is required
20 under subdivision (a).

21 (e) The use of a name, voice, signature, photograph, or likeness
22 in a commercial medium shall not constitute a use for which
23 consent is required under subdivision (a) solely because the
24 material ~~containing such use~~ *that uses the name, voice, signature,*
25 *photograph, or likeness* is commercially sponsored or contains
26 paid advertising. Rather it shall be a question of fact whether or
27 not the use of the person's name, voice, signature, photograph, or
28 likeness was so directly connected with the commercial sponsorship
29 or with the paid advertising as to constitute a use for which consent
30 is required under subdivision (a).

31 (f) Nothing in this section shall apply to the owners or
32 employees of any medium used for advertising, including, but not
33 limited to, newspapers, magazines, radio and television networks
34 and stations, cable television systems, billboards, and transit ads,
35 by whom any advertisement or solicitation in violation of this
36 section is published or disseminated, unless it is established that
37 ~~such~~ *those* owners or employees had knowledge of the
38 unauthorized use of the person's name, voice, signature,
39 photograph, or likeness as prohibited by this section.

1 (g) The remedies provided for in this section are cumulative
2 and shall be in addition to any others provided for by law.
3 (h) *A claim under this section that seeks damages, injunctive*
4 *relief, or both for the unauthorized use of another person’s name,*
5 *signature, photograph, or likeness on an Internet Web site may be*
6 *brought at any time.*

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9 CORRECTIONS:
10 **Heading—Coauthor—Line 2.**
11 _____