
Conference Engrossed

State of Arizona
Senate
Forty-eighth
Legislature
First Regular Session
2007

CHAPTER 227

SENATE BILL 1014

AN ACT

AMENDING TITLE 12, CHAPTER 6, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 16;
AMENDING TITLE 13, CHAPTER 37, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-
3726; RELATING TO THE RIGHT OF PUBLICITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 12, chapter 6, Arizona Revised Statutes, is amended by adding article 16, to read:

ARTICLE 16. RIGHT OF PUBLICITY

12-761. Right of publicity; unauthorized use of the name, portrait or picture of a soldier; exception; definition

A. THE RIGHT TO CONTROL AND TO CHOOSE WHETHER AND HOW TO USE A SOLDIER'S NAME, PORTRAIT OR PICTURE FOR COMMERCIAL PURPOSES IS RECOGNIZED AS EACH SOLDIER'S RIGHT OF PUBLICITY.

B. A PERSON IS LIABLE FOR USING THE NAME, PORTRAIT OR PICTURE OF ANY SOLDIER WITHOUT HAVING OBTAINED PRIOR CONSENT TO THE USE BY THE SOLDIER OR BY THE SOLDIER'S SPOUSE, IMMEDIATE FAMILY MEMBER, TRUSTEE IF THE SOLDIER IS A MINOR OR LEGALLY DESIGNATED REPRESENTATIVE IF THE PERSON USES THE NAME, PORTRAIT OR PICTURE FOR ANY OF THE FOLLOWING PURPOSES:

1. ADVERTISING FOR THE SALE OF ANY GOODS, WARES OR MERCHANDISE.
2. SOLICITING PATRONAGE FOR ANY BUSINESS.
3. RECEIVING CONSIDERATION FOR THE SALE OF ANY GOODS, WARES OR MERCHANDISE.

C. A PERSON WHO USES THE NAME, PORTRAIT OR PICTURE OF A SOLDIER FOR A PROHIBITED PURPOSE WITHOUT PRIOR CONSENT FROM THE SOLDIER OR A PERSON WHO MAY ENFORCE THE SOLDIER'S RIGHTS AND REMEDIES IS SUBJECT TO THE FOLLOWING:

1. INJUNCTIVE RELIEF TO PREVENT OR RESTRAIN THE UNAUTHORIZED USE.
2. TREBLE DAMAGES.
3. PUNITIVE OR EXEMPLARY DAMAGES.
4. ATTORNEY FEES AND COSTS.

D. IN CALCULATING DAMAGES, ANY PROFITS FROM THE UNAUTHORIZED USE THAT ARE ATTRIBUTABLE TO THAT USE SHALL BE TAKEN INTO ACCOUNT.

E. THE RIGHTS AND REMEDIES PROVIDED IN THIS SECTION SUPPLEMENT ANY OTHER RIGHTS AND REMEDIES PROVIDED BY LAW, INCLUDING THE COMMON LAW RIGHT OF PRIVACY.

F. ANY CLAIM FOR RELIEF THAT IS REQUESTED PURSUANT TO THIS SECTION SHALL BE BROUGHT WITHIN FIVE YEARS AFTER THE UNAUTHORIZED PUBLICATION.

G. THE RIGHT OF PUBLICITY IS A PROPERTY RIGHT THAT SURVIVES A SOLDIER'S DEATH. ON THE SOLDIER'S DEATH, ONLY THE FOLLOWING INDIVIDUALS MAY ENFORCE THE SOLDIER'S RIGHTS AND REMEDIES IN THE FOLLOWING ORDER:

1. THE SOLDIER'S LEGALLY DESIGNATED REPRESENTATIVE.
2. THE SOLDIER'S SPOUSE.
3. THE SOLDIER'S PARENTS.
4. THE SOLDIER'S CHILDREN.
5. THE SOLDIER'S GRANDCHILDREN.

H. THIS SECTION DOES NOT APPLY TO THE FOLLOWING:

1. THE USE OF A SOLDIER'S NAME, PORTRAIT OR PICTURE IN AN ATTEMPT TO PORTRAY, DESCRIBE OR IMPERSONATE THAT SOLDIER IN A LIVE PERFORMANCE, A SINGLE AND ORIGINAL WORK OF FINE ART, A PLAY, BOOK, ARTICLE, MUSICAL WORK OR FILM OR ON RADIO, TELEVISION OR OTHER AUDIO OR AUDIOVISUAL WORK IF THE PERFORMANCE, MUSICAL WORK, PLAY, BOOK, ARTICLE OR FILM DOES NOT ITSELF CONSTITUTE A COMMERCIAL ADVERTISEMENT FOR ANY GOODS, WARES OR MERCHANDISE.
2. THE USE OF A SOLDIER'S NAME, PORTRAIT OR PICTURE FOR NONCOMMERCIAL PURPOSES, INCLUDING ANY NEWS, PUBLIC AFFAIRS OR SPORTS BROADCAST OR ACCOUNT.
3. THE USE OF A SOLDIER'S NAME IN TRUTHFULLY IDENTIFYING THE SOLDIER AS THE AUTHOR OF A PARTICULAR WORK OR PROGRAM OR AS THE PERFORMER IN A PARTICULAR PERFORMANCE.
4. ANY PROMOTIONAL MATERIALS, ADVERTISEMENTS OR COMMERCIAL ANNOUNCEMENTS FOR A USE DESCRIBED IN PARAGRAPH 1, 2 OR 3 OF THIS SUBSECTION.
5. THE USE OF PHOTOGRAPHS, VIDEO RECORDINGS AND IMAGES BY A PERSON, FIRM OR CORPORATION PRACTICING THE PROFESSION OF PHOTOGRAPHY TO EXHIBIT, IN OR ABOUT THE PROFESSIONAL PHOTOGRAPHER'S PLACE OF BUSINESS OR PORTFOLIO, SPECIMENS OF THE PROFESSIONAL PHOTOGRAPHER'S WORK, UNLESS THE EXHIBITION IS CONTINUED BY THE PROFESSIONAL PHOTOGRAPHER AFTER WRITTEN NOTICE OBJECTING TO THE EXHIBITION BY THE PORTRAYED SOLDIER OR A PERSON WHO MAY ENFORCE THE SOLDIER'S RIGHTS AND REMEDIES.
6. A SOLDIER'S PICTURE OR PORTRAIT THAT IS NOT FACIALLY IDENTIFIABLE.
7. A PHOTOGRAPH OF A MONUMENT OR A MEMORIAL THAT IS PLACED ON ANY GOODS, WARES OR MERCHANDISE.

I. FOR THE PURPOSES OF THIS SECTION, "SOLDIER" MEANS ANY ACTIVE DUTY MEMBER OR FORMER MEMBER OF THE ARMED FORCES OF THE UNITED STATES, INCLUDING ANY MEMBER WHO WAS KILLED IN THE LINE OF DUTY.

Sec. 2. Title 13, chapter 37, Arizona Revised Statutes, is amended by adding section 13-3726, to read:

13-3726. Unauthorized use of the name, portrait or picture of a deceased soldier; civil action; exceptions; violation; classification; definition

A. A PERSON SHALL NOT KNOWINGLY USE THE NAME, PORTRAIT OR PICTURE OF A DECEASED SOLDIER FOR THE PURPOSE OF ADVERTISING FOR THE SALE OF ANY GOODS, WARES OR MERCHANDISE OR FOR THE SOLICITATION OF PATRONAGE FOR ANY BUSINESS WITHOUT HAVING OBTAINED PRIOR CONSENT TO THE USE BY THE SOLDIER OR BY THE SOLDIER'S SPOUSE, IMMEDIATE FAMILY MEMBER, TRUSTEE IF THE SOLDIER IS A MINOR OR LEGALLY DESIGNATED REPRESENTATIVE.

B. ANY PERSON WHO IS INJURED BY THE USE OF THE NAME, PORTRAIT OR PICTURE OF A DECEASED SOLDIER IN VIOLATION OF SUBSECTION A OF THIS SECTION MAY BRING A CIVIL ACTION AGAINST THE PERSON WHO COMMITTED THE VIOLATION PURSUANT TO SECTION 12-761.

C. THIS SECTION DOES NOT APPLY TO THE FOLLOWING:

1. THE USE OF A SOLDIER'S NAME, PORTRAIT OR PICTURE IN AN ATTEMPT TO PORTRAY, DESCRIBE OR IMPERSONATE THAT SOLDIER IN A LIVE PERFORMANCE, A SINGLE AND ORIGINAL WORK OF FINE ART, A PLAY, BOOK, ARTICLE, MUSICAL WORK OR FILM OR ON RADIO, TELEVISION OR OTHER AUDIO OR AUDIOVISUAL WORK IF THE PERFORMANCE, MUSICAL WORK, PLAY, BOOK, ARTICLE OR FILM DOES NOT ITSELF CONSTITUTE A COMMERCIAL ADVERTISEMENT FOR ANY GOODS, WARES OR MERCHANDISE.
2. THE USE OF A SOLDIER'S NAME, PORTRAIT OR PICTURE FOR NONCOMMERCIAL PURPOSES, INCLUDING ANY NEWS, PUBLIC AFFAIRS OR SPORTS BROADCAST OR ACCOUNT.
3. THE USE OF A SOLDIER'S NAME IN TRUTHFULLY IDENTIFYING THE SOLDIER AS THE AUTHOR OF A PARTICULAR WORK OR PROGRAM OR AS THE PERFORMER IN A PARTICULAR PERFORMANCE.
4. ANY PROMOTIONAL MATERIALS, ADVERTISEMENTS OR COMMERCIAL ANNOUNCEMENTS FOR A USE DESCRIBED IN PARAGRAPH 1, 2 OR 3.
5. THE USE OF PHOTOGRAPHS, VIDEO RECORDINGS AND IMAGES BY A PERSON, FIRM OR CORPORATION PRACTICING THE PROFESSION OF PHOTOGRAPHY TO EXHIBIT, IN OR ABOUT THE PROFESSIONAL PHOTOGRAPHER'S PLACE OF BUSINESS OR PORTFOLIO, SPECIMENS OF THE PROFESSIONAL PHOTOGRAPHER'S WORK, UNLESS THE EXHIBITION IS CONTINUED BY THE PROFESSIONAL PHOTOGRAPHER AFTER WRITTEN NOTICE OBJECTING TO THE EXHIBITION BY THE PORTRAYED SOLDIER OR A PERSON WHO MAY ENFORCE THE SOLDIER'S RIGHTS AND REMEDIES.
6. A SOLDIER'S PICTURE OR PORTRAIT THAT IS NOT FACIALLY IDENTIFIABLE.
7. A PHOTOGRAPH OF A MONUMENT OR A MEMORIAL THAT IS PLACED ON ANY GOODS, WARES OR MERCHANDISE.

D. A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A CLASS 1 MISDEMEANOR.

E. FOR THE PURPOSES OF THIS SECTION, "SOLDIER" MEANS ANY ACTIVE DUTY MEMBER OR FORMER MEMBER OF THE ARMED FORCES OF THE UNITED STATES, INCLUDING ANY MEMBER WHO WAS KILLED IN THE LINE OF DUTY.

Sec. 3. Severability

If a provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Sec. 4. Emergency

This act is an emergency measure that is necessary to preserve the public peace, health or safety and is operative immediately as provided by law.

APPROVED BY THE GOVERNOR MAY 24, 2007.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 24, 2007.