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SENATE BILL NO. 771

Senate Amendments in [] — February 3, 1995

A *BILL to amend and reenact §§ 8.01-40 and 18.2 -216.1 of the Code of Virginia, relating to unauthorized use of name; penalty.*

Patron—Benedetti

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That §§ 8.01-40 and 18.2 -216.1 of the Code of Virginia are amended and reenacted as follows:**

§ 8.01-40. Unauthorized use of name or picture of any person; exemplary damages; statute of limitations.

A. Any person whose name, portrait, or picture is used *for advertising purposes or for the purposes of trade*, without having first obtained the written consent of such person, or if dead, of the surviving [~~consort~~ spouse] and if none, of the next of kin, or if a minor, the written consent of his or her parent or guardian, ~~for advertising purposes or for the purposes of trade~~, such persons may maintain a suit in equity against the person, firm, or corporation so using such person's name, portrait, or picture to prevent and restrain the use thereof; ~~and may. The person may~~ also sue and recover damages for any injuries sustained by reason of such use. ~~And, and~~ if the defendant ~~shall have~~ knowingly used such person's name, portrait or picture in such manner as is ~~forbidden or declared to be unlawful by this chapter~~, the jury, in its discretion, may award exemplary damages. *A prosecution may also be commenced pursuant to § 18.2-216.1.*

B. No action shall be commenced under this section more than twenty years after the death of such person.

§ 18.2-216.1. Unauthorized use of name or picture of any person; punishment.

A person, firm, or corporation that knowingly uses for advertising purposes, or for the purpose of trade, the name, portrait, or picture of any person resident in the Commonwealth, without having first obtained the written consent of such person, or if dead, of his surviving [~~consort~~ spouse], or if none, his next of kin, or, if a minor, of his or her parent or guardian, as well as that of such minor, shall be deemed guilty of a *Class 1* misdemeanor ~~and be fined not less than \$50 nor more than \$1,000.~~

A person who knowingly uses the name of any other person, without having first obtained the written consent of the other person, in order to obtain the delivery of personal property, the payment of cash, the making of a loan or credit, the extension of credit, the issuance of a credit card, the discount of an account receivable or the making, acceptance, discount, sale or endorsement of a bill of exchange or promissory note shall be guilty of a Class 6 felony if the value of the benefit obtained is \$200 or more or, if the value is less than \$200, a Class 1 misdemeanor.

2. That the provisions of this act may result in a net increase in periods of imprisonment in state correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0.

ENGROSSED

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