

LEGISLATIVE BILL 394

Approved by the Governor May 1, 1979

Introduced by Landis, 46; DeCamp, 40

AN ACT relating to civil procedure; to establish rights of privacy as prescribed; to amend section 25-840.01, Reissue Revised Statutes of Nebraska, 1943; to harmonize provisions; and to repeal the original section.

Be it enacted by the people of the State of Nebraska,

Section 1. It is the intention of the Legislature to provide a right of privacy as described and limited by this act, and to give to any natural person a legal remedy in the event of violation of the right.

Sec. 2. Any person, firm, or corporation that exploits a natural person, name, picture, portrait, or personality for advertising or commercial purposes shall be liable for invasion of privacy. The provisions of this section shall not apply to:

(1) The publication, printing, display, or use of the name or likeness of any person in any printed, broadcast, telecast, or other news medium or publication as part of any bona fide news report or presentation or noncommercial advertisement having a current or historical public interest and when such name or likeness is not used for commercial advertising purposes;

(2) The use of such name, portrait, photograph, or other likeness in connection with the resale or other distribution of literary, musical, or artistic productions or other articles of merchandise or property when such person has consented to the use of his or her name, portrait, photograph, or likeness on or in connection with the initial sale or distribution thereof so long as such use does not differ materially in kind, extent, or duration from that authorized by the consent as fairly construed; or

(3) Any photograph of a person solely as a member of the public when such person is not named or otherwise identified in or in connection with the use of such photograph.

Sec. 3. Any person, firm, or corporation that trespasses or intrudes upon any natural person in his or her place of solitude or seclusion, if the intrusion would be highly offensive to a reasonable person, shall

be liable for invasion of privacy.

Sec. 4. Any person, firm, or corporation which gives publicity to a matter concerning a natural person that places that person before the public in a false light is subject to liability for invasion of privacy, if:

(1) The false light in which the other was placed would be highly offensive to a reasonable person; and

(2) The actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed.

Sec. 5. Any publication or intrusion otherwise actionable under section 2, 3, or 4 of this act shall be justified and not actionable under this act if the subject of such publication or intrusion expressly or by implication consents to the publicity or intrusion so long as such publication or intrusion does not differ materially in kind, extent, or duration from that implicitly or expressly authorized by the consent as fairly construed. If such person is a minor, such consent may be given by a parent or guardian. If the subject of the alleged invasion of privacy is deceased, such consent may be given by the surviving spouse, if any, or by the personal representative.

Sec. 6. In addition to any defenses and privileges created in this act, the statutory right of privacy created in this act shall be subject to the following defenses and privileges:

(1) All applicable federal and Nebraska statutory and constitutional defenses;

(2) As to communications alleged to constitute an invasion of privacy, the defense that the communication was made under circumstances that would give rise to an applicable qualified or absolute privilege according to the law of defamation; and

(3) All applicable, qualified, and absolute privileges and defenses in the common law of privacy in this state and other states.

Sec. 7. The action for invasion of privacy created by this act shall be personal to the subject of the invasion and shall in no case be assignable.

Sec. 8. The right of action for invasion of privacy created by this act, with the single exception of the action arising out of exploitation of a person's name or likeness in section 2 of this act, shall not be deemed to survive the death of the subject of any such invasion of privacy.

Sec. 9. No person shall have more than one cause of action for damages for libel or slander or invasion of privacy or any other tort founded upon any single publication, exhibition, or utterance, such as any one issue of a newspaper or book or magazine or any one presentation to an audience or any one broadcast over radio or television or any one exhibition of a motion picture. Recovery in any action shall include all damages for any such tort suffered by the plaintiff in all jurisdictions.

Sec. 10. A judgment in any jurisdiction for or against the plaintiff upon the substantive merits of any action for damages founded upon a single publication, exhibition, or utterance as described in section 9 of this act shall bar any other action for damages by the same plaintiff against the same defendant founded upon the same publication, exhibition, or utterance.

Sec. 11. An action for invasion of privacy must be brought within one year of the date the cause of action arose.

Sec. 12. That section 25-840.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-840.01. (1) In an action for damages for the publication of a libel or for invasion of privacy as provided by section 4 of this act by any medium, the plaintiff shall recover no more than special damages, unless correction was requested, as herein provided, and was not published. Within twenty days after knowledge of the publication, plaintiff shall have given each defendant a notice by registered mail specifying the statements claimed to be libelous or to have invaded privacy as provided by section 4 of this act and specifically requesting correction. Publication of a correction shall be made within three weeks after receipt of the request. It shall be made in substantially as conspicuous a manner as the original publication about which complaint was made. A correction, published prior to receipt of a request therefor, shall have the same force and effect as if published after such request. The term special damages, as used in this section, shall include only such damages as plaintiff alleges and proves

were suffered in respect to his or her property, business, trade, profession or occupation as the direct and proximate result of the defendant's publication.

(2) This section shall not apply if it is alleged and proved that the publication was prompted by actual malice, and actual malice shall not be inferred or presumed from the publication.

Sec. 13. That original section 25-840.01, Reissue Revised Statutes of Nebraska, 1943, is repealed.