

# HEINONLINE

Citation: 1999 632 1999



Content downloaded/printed from  
HeinOnline (<http://heinonline.org>)  
Tue Sep 8 16:45:58 2015

- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at <http://heinonline.org/HOL/License>
- The search text of this PDF is generated from uncorrected OCR text.

## CHAPTER 146

## S. B. 60

Passed March 1, 1999  
Approved March 18, 1999  
Effective May 3, 1999

**ABUSE OF PERSONAL  
IDENTITY AMENDMENTS**

Sponsor: Terry R. Spencer

**AN ACT RELATING TO ABUSE OF  
PERSONAL IDENTITY; PROVIDING  
DEFINITIONS; CREATING THE CRIME OF  
ABUSE OF PERSONAL IDENTITY;  
CLARIFYING CIRCUMSTANCES UNDER  
WHICH A PERSON'S CONSENT MAY NOT  
BE INFERRED; MAKING CONFORMING  
AMENDMENTS; AND PROVIDING FOR  
PUBLIC APOLOGY OR RETRACTION.**

This act affects sections of Utah Code Annotated  
1953 as follows:

**AMENDS:**

45-3-2, as enacted by Chapter 95, Laws of Utah  
1981

45-3-3, as enacted by Chapter 95, Laws of Utah  
1981

**ENACTS:**

76-9-407, Utah Code Annotated 1953

*Be it enacted by the Legislature of the state of Utah:*

**Section 1. Section 45-3-2 is amended to  
read:**

**45-3-2. Definitions.**

As used in this act:

(1) "Advertisement" means a notice designed to  
attract public attention or patronage and includes a  
list of supporters for a particular cause.

(2) "Cause the publication" means that a  
person prepares or requests another to prepare an  
advertisement of the type described in Subsection  
45-3-3(1), and that person submits or requests  
another to submit the advertisement to a publisher,  
and the advertisement has been published.

(3) (a) "Consent" means a person's voluntary  
agreement to the use of that person's name, title,  
picture, or portrait.

(b) "Consent" may not be inferred by the failure of  
the person to request that the person's name, title,  
picture, or portrait not be used or that the person's  
name be removed from a mailing or supporter list.

(4) (4) "Individual" means a natural person.

(5) (5) "Person" means any natural person, firm,  
partnership, association, corporation, joint  
venture, or any other form of business organization  
or arrangement, and the agents or representatives  
of such persons.

(6) (6) "Personal identity" means an individual's  
name, title, picture, or portrait.

(7) "Publish" means that a person provides  
the instrumentality through which an  
advertisement is communicated to the public at  
large or to a significant portion thereof.

**Section 2. Section 45-3-3 is amended to  
read:**

**45-3-3. Acts constituting abuse --  
Permitting prosecution.**

(1) Except for purposes of the criminal  
penalty in Section 45-3-3.5 [sic] (Section  
76-9-407), the personal identity of an individual is  
abused if:

(a) an advertisement is published in which  
the personal identity of that individual is used in a  
manner which expresses or implies that the  
individual approves, endorses, has endorsed, or will  
endorse the specific subject matter of the  
advertisement; and

(b) consent has not been obtained for such  
use from the individual, or if the individual is a  
minor, then consent of one of the minor's parents or  
consent of the minor's legally appointed guardian.

(2) Nothing in this part prohibits prosecution of  
abuse of personal identity under Section 76-9-407.

**Section 3. Section 76-9-407 is enacted to  
read:**

**76-9-407. Crime of abuse of personal  
Identity -- Penalty -- Defense --  
Permitting civil action.**

(1) The definitions in Section 45-3-2 apply to this  
section.

(2) Any person is guilty of a class B misdemeanor  
who knowingly or intentionally causes the  
publication of an advertisement in which the  
personal identity of an individual is used in a  
manner which expresses or implies that the  
individual approves, endorses, has endorsed, or will  
endorse the specific subject matter of the  
advertisement without the consent for such use by  
the individual.

(3) It is an affirmative defense that the person  
causing the publication of the advertisement  
reasonably believed that the person whose personal  
identity was to be used had consented to its use.

(4) Upon conviction of an offense under this  
section, unless waived by the victim, the court shall  
order that, within 30 days of the conviction, the  
person convicted shall issue a public apology or  
retraction to whomever received the  
advertisement. The apology or retraction shall be of  
similar size and placement as the original  
advertisement.

(5) Nothing in this section prohibits a civil action  
under Title 45, Chapter 3, Abuse of Personal  
Identity.