1	ABUSE OF PERSONAL IDENTITY
2	AMENDMENTS
3	1999 GENERAL SESSION
4	STATE OF UTAH
5	Sponsor: Terry R. Spencer
6	AN ACT RELATING TO ABUSE OF PERSONAL IDENTITY; PROVIDING DEFINITIONS;
7	CREATING THE CRIME OF ABUSE OF PERSONAL IDENTITY; CLARIFYING
8	CIRCUMSTANCES UNDER WHICH A PERSON'S CONSENT MAY NOT BE INFERRED;
9	MAKING CONFORMING AMENDMENTS; AND PROVIDING FOR PUBLIC APOLOGY OR
10	RETRACTION.
11	This act affects sections of Utah Code Annotated 1953 as follows:
12	AMENDS:
13	45-3-2, as enacted by Chapter 95, Laws of Utah 1981
14	45-3-3, as enacted by Chapter 95, Laws of Utah 1981
15	ENACTS:
16	<b>76-9-407</b> , Utah Code Annotated 1953
17	Be it enacted by the Legislature of the state of Utah:
18	Section 1. Section 45-3-2 is amended to read:
19	45-3-2. Definitions.
20	As used in this act:
21	(1) "Advertisement" means a notice designed to attract public attention or patronage and
22	includes a list of supporters for a particular cause.
23	[(4)] (2) "Cause the publication" means that a person prepares or requests another to
24	prepare an advertisement of the type described in Subsection 45-3-3(1), and that person submits
25	or requests another to submit the advertisement to a publisher, and the advertisement has been
26	published.
27	(3) (a) "Consent" means a person's voluntary agreement to the use of that person's name

28	title, picture, or portrait.
29	(b) "Consent" may not be inferred by the failure of the person to request that the person's
30	name, title, picture, or portrait not be used or that the person's name be removed from a mailing
31	or supporter list.
32	[ <del>(2)</del> ] <u>(4)</u> "Individual" means a natural person.
33	[(1)] (5) "Person" means any natural person, firm, partnership, association, corporation,
34	joint venture, or any other form of business organization or arrangement, and the agents or
35	representatives of such persons.
36	[(5)] (6) "Personal identity" means an individual's name, title, picture, or portrait.
37	[(3)] (7) "Publish" means that a person provides the instrumentality through which an
38	advertisement is communicated to the public at large or to a significant portion thereof.
39	Section 2. Section <b>45-3-3</b> is amended to read:
40	45-3-3. Acts constituting abuse Permitting prosecution.
41	[The] (1) Except for purposes of the criminal penalty in Section 45-3-3.5, the personal
42	identity of an individual is abused if:
43	[(1)] (a) an advertisement is published in which the personal identity of that individual is
44	used in a manner which expresses or implies that the individual approves, endorses, has endorsed,
45	or will endorse the specific subject matter of the advertisement; and
46	[(2)] (b) consent has not been obtained for such use from the individual, or if the
47	individual is a minor, then consent of one of the minor's parents or consent of the minor's legally
48	appointed guardian.
49	(2) Nothing in this part prohibits prosecution of abuse of personal identity under Section
50	<u>76-9-407.</u>
51	Section 3. Section <b>76-9-407</b> is enacted to read:
52	76-9-407. Crime of abuse of personal identity Penalty Defense Permitting civil
53	action.
54	(1) The definitions in Section 45-3-2 apply to this section.
55	(2) Any person is guilty of a class B misdemeanor who knowingly or intentionally causes
56	§ [to be published] THE PUBLICATION OF § an advertisement in which the personal identity of an
56a	individual is used in a
57	manner which expresses or implies that the individual approves, endorses, has endorsed, or will
58	endorse the specific subject matter of the advertisement without the consent for such use by the

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59	individual.
60	(3) It is an affirmative defense that the person causing § [to be published] THE
60a	PUBLICATION OF § the advertisement
61	reasonably believed that the person whose personal identity was to be used had consented to its
62	use.
63	(4) Upon conviction of an offense under this section, unless waived by the victim, the
64	court shall order that, within 30 days of the conviction, the person convicted shall issue a public
65	apology or retraction to whomever received the advertisement. The apology or retraction shall be
66	of similar size and placement as the original advertisement.
67	(5) Nothing in this section prohibits a civil action under Title 45, Chapter 3, Abuse of
68	Personal Identity.

## Legislative Review Note as of 2-5-99 10:52 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel