

HB2880



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB2880

Introduced 2/19/2021, by Rep. Deanne M. Mazzochi

SYNOPSIS AS INTRODUCED:

815 ILCS 530/22 new

Amends the Personal Information Protection Act. Provides that individuals and entities have intellectual property rights in their digital identity assets. Provides for the payment of royalties to individuals and entities for access, for the purpose of commercial advertising, to their digital assets. Authorizes civil actions for actual damages and statutory damages. Limits liability of State and local government. Defines terms.

LRB102 13250 JLS 18594 b

A BILL FOR

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Personal Information Protection Act is
5 amended by adding Section 22 as follows:

6 (815 ILCS 530/22 new)

7 Sec. 22. Digital Identity Assets and Royalties.

8 (a) This Section may be referred to as the Digital
9 Identity Assets and Royalties Act or the DIARies Law.

10 (b) Findings.

11 (1) There is a considerable amount of information
12 about an individual that renders that individual unique.
13 This includes, but is not limited to, information
14 involving one's family, partner and social relationships,
15 education, medical history, personal tastes, preferences,
16 travel history, associations, and interests.

17 (2) In an earlier age, information about an individual
18 would have been known to a personal diary and to a
19 comparatively limited few relative to the rest of the
20 population. The information would have been recorded in
21 paper documents that could not readily be accessed without
22 the author's knowledge. The process of creating a
23 "picture" of someone's life, including for advertising

1 purposes, would have involved considerable time, laborious
2 efforts, and individual effort to cultivate this
3 information involving knowledge and networks.

4 (3) In the digital age, participation in modern life
5 and devices requires an individual to surrender, often
6 without the person's active, knowledgeable, and fully
7 willing consent, detailed information about an
8 individual's life. "Consent" is given in the form of
9 adhesion contracts, where the individual is powerless to
10 negotiate and take action to protect personal privacy
11 interests. Particularly where the party demanding consent
12 has its own disproportionate market power, such as online
13 search engines, social media companies, or payment
14 processors, to not participate is to itself deny
15 participation in modern life, or the public square. It
16 similarly provides disproportionate power to demand
17 adherence to their terms at risk of "deplatforming".

18 (4) Thus, access to a person's individualized digital
19 "footprint", in an age where data collection and storage
20 can be of virtually unlimited size, scope, and scale, by
21 use of computer algorithms and machine learning, and
22 digital computing technologies that allow advertisers to
23 record and track highly granular, individualized
24 information, has considerably changed the dynamics that
25 ordinarily worked to more generally protect an
26 individual's personal privacy from access, intrusion, or

1 abuse of informational power by unknown third parties.

2 (5) The General Assembly finds that, just as State
3 laws have been put in place to protect the value of
4 intangible assets such as goodwill, brand recognition,
5 trademarks, trade secrets, and the like, it is also
6 necessary for states to protect an individual's
7 intellectual property rights to their digital identity
8 assets.

9 (6) The General Assembly further finds that, in view
10 of the unrelenting ability of digital computing power to
11 gather, process, and store data and to target persons or
12 entities at will, individuals, even if efforts are made to
13 assemble them together in a class action lawsuit, will
14 have difficulty assembling the resources to combat
15 unwanted or unauthorized access to the details of each
16 individual's life and to protect their data and lived
17 experiences from intrusion.

18 (7) The General Assembly further finds that current
19 government efforts to ensure enforcement of abusive powers
20 through the public sector legal process is slow,
21 inefficient, and insufficient to provide individuals with
22 adequate relief.

23 (8) Thus, the General Assembly finds that both
24 statutory damages and a royalty system is necessary to
25 protect an individual's digital identity and assets.

26 (c) An individual or entity that is a lawful resident of

1 the State of Illinois for a period of at least 30 days is
2 covered by this Act.

3 (d) Individuals and entities have an intellectual property
4 right to exclusively make, use, or sell their digital assets.
5 "Digital assets" include, but are not limited to, information
6 accumulated regarding an individual's or entity's personal
7 information, which includes, but is not limited to, the
8 individual's or entity's family lists, friends lists,
9 associates lists, relationship histories, customer lists,
10 writings, photographs, personal interests, personal history,
11 educational history, employment history, medical history
12 (including RNA and DNA profiles and genetic history), purchase
13 history, voter history, and the like. The concept of a digital
14 asset exclusive to an individual or entity should be construed
15 broadly to encompass any information that could have
16 commercial value to a third-party data mining or advertising
17 company for purposes of creating a digital identity for that
18 individual or entity.

19 (e) After December 31, 2022, any access of an individual's
20 digital assets for purposes of commercial advertising to that
21 individual requires the digital search engine or advertising
22 platform that is accessing the individual's device to pay the
23 individual a royalty for access to that device. Unless the
24 individual sets a higher royalty threshold, which amount may
25 not to exceed \$1 per advertisement per day for passive
26 advertisements, for his or her device, the presumptive royalty

1 shall be \$0.01 per advertisement displayed. These amounts
2 shall be re-indexed and adjusted to account for inflation or
3 deflation on January 1, 2030, and every 10 years thereafter.

4 (f) Any access of an individual's or entity's digital
5 assets by a third party that is seeking to gather information
6 from the individual or entity for purposes of database
7 collection, without the express written consent of an
8 individual, is a presumptive infringement on an individual's
9 or entity's digital assets. In the event of such infringement:

10 (1) The affected individual or entity is entitled to
11 recover (A) the actual damages suffered by the individual
12 or entity as a result of the continued infringement of the
13 individual's or entity's intellectual property right and
14 any profits of the infringer that are attributable to the
15 infringement from the breach and (B) statutory damages in
16 the amount of \$3,000 per year per breach for a period of 5
17 years.

18 (2) The burden of proof is on the owner of the digital
19 assets to present evidence only of the infringer's gross
20 profits. The infringer is required to prove his or her
21 deductible expenses and elements of profit not
22 attributable to factors associated with the breach and
23 infringement of the digital assets or privacy rights.

24 (3) It is a separate act of unfair competition for a
25 third-party platform that has accessed digital assets of
26 an individual or entity to threaten to or actually

1 deplatform an individual or entity, absent notice and a
2 one-year period within which to transition to another
3 third-party platform site. If no other comparable
4 third-party platform sites are available, the third-party
5 platform shall continue to host the individual or entity
6 on the same terms offered to comparable individuals or
7 entities.

8 (4) If the perpetrator of an unauthorized acquisition
9 cannot be found, any entity holding or transmitting the
10 breached digital asset may be responsible for such
11 liability.

12 (5) Nothing in this Section may be construed as
13 imposing liability on a unit of State or local government
14 that is required or otherwise permitted by law to collect,
15 record, or access data of a personal nature in accordance
16 with carrying out its ordinary governmental functions,
17 unless such unit of State or local government
18 intentionally, or with gross negligence, allows its
19 databases holding information about individuals or
20 entities to be breached to the damage and harm of an
21 individual or entity.

22 (g) Interactive computer services civil action.

23 (1) As used in this Section:

24 (A) "Deplatform" means efforts by an interactive
25 computer servicer, or employees thereof, to restrict,
26 cancel, suppress, shadowban, modify computer

1 algorithms, or otherwise prohibit access to the
2 Internet, educational resources, or a social media
3 site.

4 (B) "Interactive computer service" means any
5 information service, system, or access software
6 provider that provides or enables computer access by
7 multiple users to a computer server, including a
8 computer server that provides access to the Internet,
9 or that is offered by libraries or educational
10 institutions, that has claimed immunity from civil
11 liability under federal law, that does not call itself
12 a publisher, or that has taken the position in the
13 public record that it is not a publisher, and has over
14 1,000,000 users.

15 (C) "Social media site" means a website through
16 which users are able to share and generate content and
17 find and connect with other users of common interests.

18 (2) If an interactive computer service seeks to
19 deplatform an individual or entity that is a legal
20 resident of this State at the time the deplatforming
21 activity occurs and had or held digital assets with the
22 interactive computer service or had or held digital assets
23 accessed by the interactive computer service, then the
24 individual or entity may bring an action for civil damages
25 in the circuit court in the county where the individual
26 being deplatformed resides or in a jurisdiction where an

1 individual who reasonably would have otherwise received
2 the writing, speech, or publication of the deplatformed
3 individual or entity resides. Attorney's fees shall be
4 awarded to a prevailing plaintiff.

5 (3) It is an affirmative defense by the interactive
6 computer service that the restricted access was reasonable
7 because:

8 (A) The deplatformed writing, speech, or
9 publication was due to a good faith, objectively
10 reasonable belief that the deplatformed material was
11 obscene, lewd, lascivious, filthy, or excessively
12 violent in violation of law; or, if permitted, would
13 have violated State or federal law.

14 (B) The interactive computer service is a
15 publisher.