



Sen. Mary Edly-Allen

**Filed: 5/1/2024**

10300HB4875sam001

LRB103 38718 JRC 72908 a

1 AMENDMENT TO HOUSE BILL 4875

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 4875 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Right of Publicity Act is amended by  
5 changing Sections 5, 20, 30, and 35 as follows:

6 (765 ILCS 1075/5)

7 Sec. 5. Definitions. As used in this Act:

8 "Artificial intelligence" means a machine-based system  
9 that, for explicit or implicit objectives, infers, from the  
10 input it receives, how to generate outputs such as  
11 predictions, content, recommendations, or decisions that can  
12 influence physical or virtual environments. "Artificial  
13 intelligence" includes generative artificial intelligence.

14 "Commercial purpose" means the public use or holding out  
15 of an individual's identity (i) on or in connection with the  
16 offering for sale or sale of a product, merchandise, goods, or

1 services; (ii) for purposes of advertising or promoting  
2 products, merchandise, goods, or services; or (iii) for the  
3 purpose of fundraising.

4 "Digital replica" means a newly created, electronic  
5 representation of the voice, image, or likeness of an actual  
6 individual created using a computer, algorithm, software,  
7 tool, artificial intelligence, or other technology that is  
8 fixed in a sound recording or audiovisual work in which that  
9 individual did not actually perform or appear, and which a  
10 reasonable person would believe is the individual's voice,  
11 image, or likeness being imitated.

12 "Generative artificial intelligence" means an automated  
13 computing system that, when prompted with human prompts,  
14 descriptions, or queries, can produce outputs that simulate  
15 human-produced content, including, but not limited to, the  
16 following:

17 (1) textual outputs, such as short answers, essays,  
18 poetry, or longer compositions or answers;

19 (2) image outputs, such as fine art, photographs,  
20 conceptual art, diagrams, and other images;

21 (3) multimedia outputs, such as audio or video in the  
22 form of compositions, songs, or short-form or long-form  
23 audio or video; and

24 (4) other content that would be otherwise produced by  
25 human means.

26 "Identity" means any attribute of an individual that

1 serves to identify that individual to an ordinary, reasonable  
2 viewer or listener, including but not limited to: (i) name,  
3 (ii) signature, (iii) photograph, (iv) image, (v) likeness, or  
4 (vi) voice.

5 "Individual" means a living or deceased natural person,  
6 regardless of whether the identity of that individual has been  
7 used for a commercial purpose during the individual's  
8 lifetime.

9 "Juristic person" means a partnership, trust, estate,  
10 corporation, unincorporated association, or other organization  
11 capable of suing and being sued in a court of law.

12 "Name" means the actual name or other name by which an  
13 individual is known that is intended to identify that  
14 individual.

15 "Person" means a natural or juristic person.

16 "Service provider" means any entity offering broadband  
17 service as that term is used in Section 10 of the Broadband  
18 Advisory Council Act, a wireless carrier as defined by 47  
19 U.S.C. 615b(4), or a telecommunication carrier as that term is  
20 used in Section 13-202 of the Public Utilities Act.

21 "Work of Fine Art" means (i) a visual rendition including,  
22 but not limited to, a painting, drawing, sculpture, mosaic,  
23 videotape, or photograph; (ii) a work of calligraphy; (iii) a  
24 work of graphic art including, but not limited to, an etching,  
25 lithograph, serigraph, or offset print; (iv) a craft work in  
26 materials including, but not limited to, clay, textile, fiber,

1 wood, metal, plastic, or glass; or (v) a work in mixed media  
2 including, but not limited to, a collage, assemblage, or work  
3 consisting of any combination of items (i) through (iv).

4 (Source: P.A. 90-747, eff. 1-1-99.)

5 (765 ILCS 1075/20)

6 Sec. 20. Enforcement of rights and remedies.

7 (a) The rights and remedies set forth in this Act may be  
8 exercised and enforced by:

9 (1) an individual or his or her authorized  
10 representative;

11 (2) a person to whom the recognized rights have been  
12 transferred by written transfer under Section 15 of this  
13 Act; or

14 (3) after the death of an individual who has not  
15 transferred the recognized rights by written transfer  
16 under this Act, any person or persons who possesses an  
17 interest in those rights.

18 (a-5) In addition to the enforcement of rights and  
19 remedies in subsection (a), the rights and remedies set forth  
20 in this Act may, in the case of an individual who is a  
21 recording artist, be enforced by:

22 (1) the individual who is the recording artist; or

23 (2) a person who has entered into a contract for the  
24 individual's exclusive personal services as a recording  
25 artist or who has entered into a contract for an exclusive

1       license to distribute sound recordings that capture the  
2       recording artist's audio performances.

3       (b) Each person described in paragraph (3) of subsection  
4       (a) shall make a proportional accounting to, and shall act at  
5       all times in good faith with respect to, any other person in  
6       whom the rights being enforced have vested.

7       (Source: P.A. 90-747, eff. 1-1-99.)

8       (765 ILCS 1075/30)

9       Sec. 30. Limitations regarding use of an individual's  
10      identity.

11      (a) A person may not use an individual's identity for  
12      commercial purposes during the individual's lifetime without  
13      having obtained previous written consent from the appropriate  
14      person or persons specified in Section 20 of this Act or their  
15      authorized representative.

16      (b) A person may not distribute, transmit, or make  
17      available to the general public a sound recording or  
18      audiovisual work that contains a digital replica of an  
19      individual with actual knowledge that use of the digital  
20      replica was not authorized by the individual.

21      (c) If an individual's death occurs after the effective  
22      date of this Act, a person may not use that individual's  
23      identity or digital replica in violation of this Act ~~for~~  
24      ~~commercial purposes~~ for 50 years after the date of the  
25      individual's death without having obtained previous written

1 consent from the appropriate person or persons specified in  
2 Section 20 of this Act.

3 (d) Any person who materially contributes to, induces, or  
4 otherwise facilitates a violation of subsection (b) of this  
5 Section by another person after having obtained actual  
6 knowledge that the other person is infringing upon an  
7 individual's rights under this Section may be found liable for  
8 the violation. This subsection (d) includes distributing,  
9 transmitting, or otherwise making available to the general  
10 public an algorithm, software, tool, or other technology  
11 service or device the primary purpose or function of which is  
12 to produce the identity of particular, identified individuals  
13 with actual knowledge that distributing, transmitting, or  
14 otherwise making available to the general public that identity  
15 was not authorized by the individual.

16 (e) Subsection (d) does not apply to a person that solely  
17 transmits or stores data or software, including any service  
18 provider or interactive entertainment software, with respect  
19 to any unauthorized digital replica stored or transmitted at  
20 the direction of a user of material that resides on a system or  
21 network, if the person:

22 (1) does not have actual knowledge that the material  
23 or an activity using the material on the system or network  
24 is unauthorized;

25 (2) in the absence of such actual knowledge, is not  
26 aware of facts or circumstances from which unauthorized

1 activity is apparent; or

2 (3) unless the person is a service provider, upon  
3 obtaining actual knowledge, awareness or notification of  
4 claimed unauthorized activity, acts expeditiously to  
5 remove, or disable access to, the material that is the  
6 subject of infringing activity.

7 (f) Subject to the limitations in subsection (e), all of  
8 the elements of 17 U.S.C. 512 shall be incorporated mutatis  
9 mutandis with respect to claims relating to unauthorized  
10 digital replicas. This exemption shall apply without regard to  
11 whether the unauthorized version infringes copyright.

12 (g) Nothing in this Act may be construed in a manner  
13 inconsistent with 47 U.S.C. 230 or any other federal law.

14 (Source: P.A. 90-747, eff. 1-1-99.)

15 (765 ILCS 1075/35)

16 Sec. 35. Applicability.

17 (a) This Act applies to acts or events that take place  
18 after the effective date of this Act.

19 (b) Subsections (a) and (c) of Section 30 of this ~~This~~ Act  
20 do ~~does~~ not apply to the following:

21 (1) use of an individual's identity in an attempt to  
22 portray, describe, or impersonate that individual in a  
23 live performance, a single and original work of fine art,  
24 play, book, article, musical work, film, radio,  
25 television, or other audio, visual, or audio-visual work,

1 provided that the performance, work, play, book, article,  
2 or film does not constitute in and of itself a commercial  
3 advertisement for a product, merchandise, goods, or  
4 services;

5 (2) use of an individual's identity for non-commercial  
6 purposes, including any news, public affairs, or sports  
7 broadcast or account, or any political campaign;

8 (3) use of an individual's name in truthfully  
9 identifying the person as the author of a particular work  
10 or program or the performer in a particular performance;

11 (4) promotional materials, advertisements, or  
12 commercial announcements for a use described under  
13 paragraph (1), (2), or (3) of this subsection; or

14 (5) use of photographs, videotapes, and images by a  
15 person, firm, or corporation practicing the profession of  
16 photography ("professional photographer") to exhibit in or  
17 about the professional photographer's place of business or  
18 portfolio, specimens of the professional photographer's  
19 work, unless the exhibition is continued by the  
20 professional photographer after written notice objecting  
21 to the exhibition has been given by the individual  
22 portrayed.

23 (c) Subsections (b) and (c) of Section 30 of this Act do  
24 not apply to the use of identity or digital replicas in the  
25 following:

26 (1) news, public affairs, or a sports broadcast or



1 account, or any political campaign;

2 (2) for a purpose that has political, public interest,  
3 educational, or newsworthy value, unless use of the  
4 audiovisual digital replica is intended to create, and  
5 does create, the false impression that the work is an  
6 authentic recording in which the individual participated;

7 (3) use of a digital replica to depict the individual  
8 in a documentary, docudrama, or historical or biographical  
9 audiovisual work, or any other representation of the  
10 individual as such individual, regardless of the degree of  
11 fictionalization, unless the use of the audiovisual  
12 digital replica creates the false impression to a  
13 reasonable viewer or listener that the digital replica is  
14 an authentic recording or that the individual participated  
15 in the work, including, for example, in a live performance  
16 of a musical work an individual did not participate in;

17 (4) use of digital replica for the purposes of  
18 comment, criticism, scholarship, satire, or parody; or

19 (5) promotional materials, advertisements, or  
20 commercial announcements for a use described in paragraphs  
21 (1), (2), (3) and (4) of this subsection.

22 (d) The provisions of this amendatory Act of the 103rd  
23 General Assembly do not apply to any action filed before, nor  
24 to any action pending on, its effective date.

25 (Source: P.A. 90-747, eff. 1-1-99.)".