



Sen. Mary Edly-Allen

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10300HB4875sam002

LRB103 38718 JRC 73056 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. A service
16 provider shall only constitute a person under subsections (b)
17 and (d) of Section 30 of this Act if the service provider
18 created the unauthorized digital replica.

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

24 "Work of Fine Art" means (i) a visual rendition including,
25 but not limited to, a painting, drawing, sculpture, mosaic,
26 videotape, or photograph; (ii) a work of calligraphy; (iii) a

1 work of graphic art including, but not limited to, an etching,
2 lithograph, serigraph, or offset print; (iv) a craft work in
3 materials including, but not limited to, clay, textile, fiber,
4 wood, metal, plastic, or glass; or (v) a work in mixed media
5 including, but not limited to, a collage, assemblage, or work
6 consisting of any combination of items (i) through (iv).

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

8 (765 ILCS 1075/20)

9 Sec. 20. Enforcement of rights and remedies.

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

12 (1) an individual or his or her authorized
13 representative;

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

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

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

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

1 (2) a person who has entered into a contract for the
2 individual's exclusive personal services as a recording
3 artist or who has entered into a contract for an exclusive
4 license to distribute sound recordings that capture the
5 recording artist's audio performances.

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

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

11 (765 ILCS 1075/30)

12 Sec. 30. Limitations regarding use of an individual's
13 identity.

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

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

24 (c) If an individual's death occurs after the effective
25 date of this Act, a person may not use that individual's

1 identity or digital replica in violation of this Act ~~for~~
2 ~~commercial purposes~~ for 50 years after the date of the
3 individual's death without having obtained previous written
4 consent from the appropriate person or persons specified in
5 Section 20 of this Act.

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

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

25 (1) does not have actual knowledge that the material
26 or an activity using the material on the system or network

1 is unauthorized;

2 (2) in the absence of such actual knowledge, is not
3 aware of facts or circumstances from which unauthorized
4 activity is apparent; or

5 (3) upon obtaining actual knowledge, apparent
6 knowledge, or written notification of claimed unauthorized
7 activity, acts expeditiously to remove, or disable access
8 to, the material that is the subject of infringing
9 activity. As used in this subsection, "expeditiously" has
10 the same meaning as it does in 17 U.S.C. 512.

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

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

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

19 (765 ILCS 1075/35)

20 Sec. 35. Applicability.

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

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

25 (1) use of an individual's identity in an attempt to

1 portray, describe, or impersonate that individual in a
2 live performance, a single and original work of fine art,
3 play, book, article, musical work, film, radio,
4 television, or other audio, visual, or audio-visual work,
5 provided that the performance, work, play, book, article,
6 or film does not constitute in and of itself a commercial
7 advertisement for a product, merchandise, goods, or
8 services;

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

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

15 (4) promotional materials, advertisements, or
16 commercial announcements for a use described under
17 paragraph (1), (2), or (3) of this subsection; or

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

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

4 (1) news, public affairs, or a sports broadcast or
5 account, or any political campaign;

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

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

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

23 (5) promotional materials, advertisements, or
24 commercial announcements for a use described in paragraphs
25 (1), (2), (3), and (4) of this subsection.

26 (d) The provisions of this amendatory Act of the 103rd

1 General Assembly do not apply to any action filed before, nor
2 to any action pending on, its effective date.
3 (Source: P.A. 90-747, eff. 1-1-99.)"