



Sen. Mary Edly-Allen

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10300HB4875sam003

LRB103 38718 LNS 73453 a

1 AMENDMENT TO HOUSE BILL 4875

2 AMENDMENT NO. _____. Amend House Bill 4875, AS AMENDED,
3 by replacing everything after the enacting clause with the
4 following:

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

7 (765 ILCS 1075/5)

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

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

15 "Commercial purpose" means the public use or holding out
16 of an individual's identity (i) on or in connection with the

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

5 "Application software provider" means a person providing a
6 digital distribution service for other software applications
7 and that allows users to search for and download such
8 applications.

9 "Cloud service provider" means a cloud service provider as
10 defined by 6 U.S.C. 650.

11 "Digital replica" means a newly created, electronic
12 representation of the voice, image, or likeness of an actual
13 individual created using a computer, algorithm, software,
14 tool, artificial intelligence, or other technology that is
15 fixed in a sound recording or audiovisual work in which that
16 individual did not actually perform or appear, and which a
17 reasonable person would believe is that particular
18 individual's voice, image, or likeness being imitated.

19 "Generative artificial intelligence" means an automated
20 computing system that, when prompted with human prompts,
21 descriptions, or queries, can produce outputs that simulate
22 human-produced content, including, but not limited to, the
23 following:

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

26 (2) image outputs, such as fine art, photographs,

1 conceptual art, diagrams, and other images;

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

5 (4) other content that would be otherwise produced by
6 human means.

7 "Identity" means any attribute of an individual that
8 serves to identify that individual to an ordinary, reasonable
9 viewer or listener, including but not limited to: (i) name,
10 (ii) signature, (iii) photograph, (iv) image, (v) likeness, or
11 (vi) voice.

12 "Individual" means a living or deceased natural person,
13 regardless of whether the identity of that individual has been
14 used for a commercial purpose during the individual's
15 lifetime.

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

19 "Name" means the actual name or other name by which an
20 individual is known that is intended to identify that
21 individual.

22 "Person" means a natural or juristic person. "Person" only
23 includes a service provider under subsections (b) and (d) of
24 Section 30 if the service provider created the unauthorized
25 digital replica. "Person" does not include a data center, as
26 defined by the Department of Commerce and Economic Opportunity

1 Law of the Civil Administrative Code of Illinois, under
2 subsections (b) and (d) of Section 30.

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

8 "Unauthorized digital replica" means the use of a digital
9 replica of an individual without the consent of the
10 appropriate person or persons identified in Section 20 or
11 their authorized representative.

12 "Work of Fine Art" means (i) a visual rendition including,
13 but not limited to, a painting, drawing, sculpture, mosaic,
14 videotape, or photograph; (ii) a work of calligraphy; (iii) a
15 work of graphic art including, but not limited to, an etching,
16 lithograph, serigraph, or offset print; (iv) a craft work in
17 materials including, but not limited to, clay, textile, fiber,
18 wood, metal, plastic, or glass; or (v) a work in mixed media
19 including, but not limited to, a collage, assemblage, or work
20 consisting of any combination of items (i) through (iv).

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

22 (765 ILCS 1075/20)

23 Sec. 20. Enforcement of rights and remedies.

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

1 (1) an individual or his or her authorized
2 representative;

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

6 (3) after the death of an individual who has not
7 transferred the recognized rights by written transfer
8 under this Act, any person or persons who possesses an
9 interest in those rights.

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

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

15 (2) a person who has entered into a contract for the
16 individual's exclusive personal services as a recording
17 artist or who has entered into a contract for an exclusive
18 license to distribute sound recordings that capture the
19 recording artist's audio performances.

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

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

1 Sec. 30. Limitations regarding use of an individual's
2 identity.

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

8 (b) A person may not knowingly distribute, transmit, or
9 make available to the general public a sound recording or
10 audiovisual work with actual knowledge that the work contains
11 an unauthorized digital replica.

12 (c) If an individual's death occurs after the effective
13 date of this Act, a person may not use that individual's
14 identity or digital replica in violation of this Act ~~for~~
15 ~~commercial purposes~~ for 50 years after the date of the
16 individual's death without having obtained previous written
17 consent from the appropriate person or persons specified in
18 Section 20 of this Act.

19 (d) Any person who materially contributes to, induces, or
20 otherwise facilitates a violation of subsection (b) by another
21 person after having obtained actual knowledge that the other
22 person is infringing upon an individual's rights under this
23 Section may be found liable for the violation.

24 (e) Subsection (d) does not apply to a person that solely
25 transmits, stores, or provides access to data or software,
26 including interactive entertainment software, application

1 software providers, or cloud service providers with respect to
2 any unauthorized digital replica stored or transmitted at the
3 direction of a user of material that resides on a system or
4 network, if the person:

5 (1) does not have actual knowledge that the material
6 or an activity using the material on the system or network
7 is unauthorized;

8 (2) in the absence of such actual knowledge, does not
9 willfully disregard facts or circumstances that would
10 create actual knowledge; or

11 (3) upon obtaining actual knowledge, facts or
12 circumstances that would create actual knowledge, or
13 written notification of claimed unauthorized activity,
14 acts expeditiously to remove or disable access to the
15 material that is the subject of infringing activity; if
16 the person does not personally have the ability to remove
17 or disable access to the material, the person acts
18 expeditiously to notify the person that has the ability to
19 remove or disable access to the material. As used in this
20 subsection, "expeditiously" has the same meaning as it
21 does in 17 U.S.C. 512.

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

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

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

4 (765 ILCS 1075/35)

5 Sec. 35. Applicability.

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

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

10 (1) use of an individual's identity in an attempt to
11 portray, describe, or impersonate that individual in a
12 live performance, a single and original work of fine art,
13 play, book, article, musical work, film, radio,
14 television, or other audio, visual, or audio-visual work,
15 provided that the performance, work, play, book, article,
16 or film does not constitute in and of itself a commercial
17 advertisement for a product, merchandise, goods, or
18 services;

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

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

25 (4) promotional materials, advertisements, or

1 commercial announcements for a use described under
2 paragraph (1), (2), or (3) of this subsection; or

3 (5) use of photographs, videotapes, and images by a
4 person, firm, or corporation practicing the profession of
5 photography ("professional photographer") to exhibit in or
6 about the professional photographer's place of business or
7 portfolio, specimens of the professional photographer's
8 work, unless the exhibition is continued by the
9 professional photographer after written notice objecting
10 to the exhibition has been given by the individual
11 portrayed.

12 (c) Subsections (b) and (c) of Section 30 do not apply to
13 the use of identity or digital replicas in the following:

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

16 (2) for a purpose that has political, public interest,
17 educational, or newsworthy value, unless use of the
18 audiovisual digital replica is intended to create, and
19 does create, the false impression to a reasonable viewer
20 or listener that the work is an authentic recording in
21 which the individual participated;

22 (3) use of a digital replica to depict the individual
23 in a documentary, docudrama, or historical or biographical
24 audiovisual work, or any other representation of the
25 individual as such individual, regardless of the degree of
26 fictionalization, unless the use of the audiovisual

1 digital replica creates the false impression to a
2 reasonable viewer or listener that the digital replica is
3 an authentic recording or that the individual participated
4 in the work, including, for example, in a live performance
5 of a musical work an individual did not participate in;

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

8 (5) promotional materials, advertisements, or
9 commercial announcements for a use described in paragraphs

10 (1), (2), (3), and (4).

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

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