



Rep. Jennifer Gong-Gershowitz

Filed: 4/5/2024

10300HB4875ham002

LRB103 38718 JRC 71891 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; or (iv) for the purposes of
5 distributing, transmitting, or otherwise making available a
6 sound recording or audiovisual work that contains a digital
7 replica of an individual's identity with knowledge that use of
8 the identity was not authorized by the individual.

9 "Digital replica" means a newly created, electronic
10 representation of the identity of an actual individual created
11 using a computer, algorithm, software, tool, artificial
12 intelligence, or other technology that is fixed in a sound
13 recording or audiovisual work in which that individual did not
14 actually perform or appear.

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

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

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

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

1 (4) other content that would be otherwise produced by
2 human means.

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

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

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

15 "Name" means the actual name or other name by which an
16 individual is known that is intended to identify that
17 individual.

18 "Person" means a natural or juristic person.

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

1 consisting of any combination of items (i) through (iv).

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

3 (765 ILCS 1075/20)

4 Sec. 20. Enforcement of rights and remedies.

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

7 (1) an individual or his or her authorized
8 representative;

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

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

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

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

21 (2) a person who has entered into a contract for the
22 individual's exclusive personal services as a recording
23 artist or who has entered into a contract for an exclusive
24 license to distribute sound recordings that capture the
25 recording artist's audio performances.

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

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

6 (765 ILCS 1075/30)

7 Sec. 30. Limitations regarding use of an individual's
8 identity.

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

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

20 (c) Any person who materially contributes to, induces, or
21 otherwise facilitates a violation of this Section by another
22 person after having obtained knowledge that the other person
23 is infringing upon an individual's rights under this Section
24 may be found liable for the violation. This subsection (c)
25 includes distributing, transmitting or otherwise making

1 available an algorithm, software, tool, or other technology
2 service or device the primary purpose or function of which is
3 to produce the identity of particular, identified individuals
4 with the knowledge that distributing, transmitting, or
5 otherwise making available that identity was not authorized by
6 the individual.

7 (d) Subsection (c) shall not apply to a person that solely
8 transmits or stores data or software, including any service
9 provider, with respect to any unauthorized digital replica by
10 reason of the storage at the direction of a user of material
11 that resides on a system or network, if the person:

12 (1) (A) does not have actual knowledge that the
13 material or an activity using the material on the system
14 or network is unauthorized;

15 (B) in the absence of such actual knowledge, is not
16 aware of facts or circumstances from which unauthorized
17 activity is apparent; or

18 (C) upon obtaining such knowledge or awareness, acts
19 expeditiously to remove, or disable access to, the
20 material; and

21 (2) does not receive a financial benefit directly
22 attributable to the unauthorized activity, in a case in
23 which the person has the right and ability to control such
24 activity; and

25 (3) upon notification of claimed unauthorized
26 activity, responds expeditiously to remove, or disable

1 access to, the material that is claimed to be infringing
2 or to be the subject of infringing activity.

3 All of the elements of 17 U.S.C. 512 shall be incorporated
4 mutatis mutandis with respect to claims relating to
5 unauthorized digital replicas. This exemption shall apply
6 without regard to whether the unauthorized version infringes
7 copyright.

8 (e) Nothing in this Act shall be construed in a manner
9 inconsistent with 47 U.S.C. 230 or any other federal law.

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

11 (765 ILCS 1075/35)

12 Sec. 35. Applicability.

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

15 (b) This Act does not apply to the following:

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

25 (2) use of an individual's identity for non-commercial

1 purposes, including any news, public affairs, or sports
2 broadcast or account, or any political campaign;

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

6 (4) promotional materials, advertisements, or
7 commercial announcements for a use described under
8 paragraph (1), (2), or (3) of this subsection; or

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

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