

As Reported by the House Government Oversight Committee

135th General Assembly

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Am. H. B. No. 367

Representatives Mathews, Hillyer

A BILL

To amend sections 2741.01, 2741.02, 2741.05, 1
2741.06, 2741.09, and 2905.11 and to enact 2
sections 2742.01, 2742.02, 2742.03, and 2742.04 3
of the Revised Code to make changes to the law 4
relating to the unauthorized use of an 5
individual's persona and to prohibit certain 6
unauthorized deepfake recordings. 7

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 2741.01, 2741.02, 2741.05, 8
2741.06, 2741.09, and 2905.11 be amended and sections 2742.01, 9
2742.02, 2742.03, and 2742.04 of the Revised Code be enacted to 10
read as follows: 11

Sec. 2741.01. As used in this chapter: 12

(A) "Persona" means an individual's name, voice, 13
signature, photograph, image, likeness, or distinctive 14
appearance, ~~if any of these aspects have commercial value.~~ 15

(B) "Commercial purpose" means the use of or reference to 16
an aspect of an individual's persona in any of the following 17
manners: 18

(1) On or in connection with a place, product, merchandise, goods, services, or other commercial activities not expressly exempted under this chapter;

(2) For advertising or soliciting the purchase of products, merchandise, goods, services, or other commercial activities not expressly exempted under this chapter;

(3) For the purpose of promoting travel to a place;

(4) For the purpose of fundraising.

(C) "Name" means the actual, assumed, or clearly identifiable name of or reference to a living or deceased individual that identifies the individual.

(D) "Right of publicity" means the property right in an individual's persona to use the individual's persona ~~for a commercial purpose~~.

(E) "Trier of fact" means the jury or, in a nonjury action, the court.

(F) "Written consent" includes written, electronic, digital, or any other verifiable means of authorization.

(G) "Institution of higher education" means a state institution of higher education as defined in section 3345.011 of the Revised Code, a private nonprofit college or university located in this state that possesses a certificate of authorization issued by the Ohio board of regents pursuant to Chapter 1713. of the Revised Code, or a school located in this state that possesses a certificate of registration and one or more program authorizations issued by the state board of career colleges and schools under Chapter 3332. of the Revised Code.

Sec. 2741.02. (A) Except as otherwise provided in this

section, a person shall not use any aspect of an individual's
persona ~~for a commercial purpose~~ or a modified facsimile of an
individual's persona wherein a reasonable trier of fact would
confuse the modified facsimile and the individual:

(1) During the individual's lifetime;

(2) For a period of sixty years after the date of the
individual's death; or

(3) For a period of ten years after the date of death of a
deceased member of the Ohio national guard or the armed forces
of the United States.

(B) A person may use an individual's persona ~~for a~~
~~commercial purpose~~ during the individual's lifetime if the
person first obtains the written consent to use the individual's
persona from a person specified in section 2741.05 of the
Revised Code. If an individual whose persona is at issue has
died, a person may use the individual's persona ~~for a commercial~~
~~purpose~~ if either of the following applies:

(1) The person first obtains the written consent to use
the individual's persona from a person specified in section
2741.05 of the Revised Code who owns the individual's right of
publicity.

(2) The name of the individual whose persona is used was
the name of a business entity or a trade name at the time of the
individual's death.

(C) Subject to the terms of any agreement between a person
specified in section 2741.05 of the Revised Code and a person to
whom that person grants consent to use an individual's right of
publicity, a consent obtained before the death of an individual
whose persona is at issue remains valid after the individual's

death.	76
(D) For purposes of this section:	77
(1) A use of an aspect of an individual's persona in connection with any news, public affairs, sports broadcast, or account does not constitute a use for which consent is required under division (A) of this section.	78 79 80 81
(2) A use of an aspect of an individual's persona in connection with any political campaign and in compliance with Title XXXV of the Revised Code does not constitute a use for which consent is required under division (A) of this section.	82 83 84 85
(E) The owners or employees of any medium used for advertising, including but not limited to, a newspaper, magazine, radio or television network or station, cable television system, billboard, transit ad, and global communications network, by whom any advertisement or solicitation in violation of this section is published or disseminated are not liable under this section or section 2741.07 of the Revised Code unless it is established that those owners or employees had knowledge of the unauthorized use of the persona as prohibited by this section.	86 87 88 89 90 91 92 93 94 95
Sec. 2741.05. (A) Except as otherwise expressly provided in an agreement transferring an aspect of an individual's right of publicity, only the following persons may grant consent to use an individual's persona for a commercial purpose :	96 97 98 99
(1) A person or persons, including the individual whose right of publicity is at issue, who collectively own more than fifty per cent of the individual's right of publicity, subject to the terms of any other licenses regarding that right of publicity;	100 101 102 103 104

(2) A person, including a licensee of the individual's right of publicity, who is expressly authorized in writing to grant consent by a person or persons specified in division (A) (1) of this section.

(B) A person or persons specified in division (A) of this section may do one or both of the following:

(1) Grant a person or persons consent to use all or part of an individual's right of publicity for a commercial purpose;

(2) Limit, restrict, or place conditions on how a person or persons to whom consent is granted pursuant to this section may use an individual's right of publicity.

Sec. 2741.06. (A) The following persons may bring a civil action to enforce the rights set forth in this chapter:

(1) A person or persons, including an individual whose right of publicity is at issue, who collectively own all of an individual's right of publicity, subject to any licenses regarding that right of publicity;

(2) A person, including a licensee of an individual's right of publicity, who is expressly authorized in writing by the owner or owners of an individual's right of publicity to bring a civil action;

(3) Except as otherwise expressly provided in an agreement transferring an aspect of an individual's right of publicity and subject to division (C) of this section, a person to whom ownership or any portion of ownership of an individual's right of publicity has been transferred.

(B) Before bringing a civil action under this section, a person who owns less than all of an individual's right of

publicity shall notify the individual whose right of publicity 133
is the subject of the proposed action, if living, by electronic 134
mail or regular mail addressed to the last known address of that 135
individual. The person also shall notify any persons to whom the 136
individual's right of publicity has been transferred of the 137
proposed civil action by the following means: 138

(1) Regular mail addressed to the last known address of 139
each transferee; 140

(2) Electronic mail to each transferee; 141

(3) If the address or electronic mail address of the 142
transferee is not known, publication in a newspaper of general 143
circulation in the county in which the individual whose right of 144
publicity is the subject of the proposed civil action resides, 145
or, in the case of a deceased individual, in the county in which 146
the individual's estate has been or would have been admitted to 147
probate. 148

(C) The individual whose right of publicity is the subject 149
of the proposed civil action brought under this section, and any 150
person to whom ownership of that right of publicity has been 151
transferred, may object to the proposed civil action within 152
twenty days from the date of the mailing of the notice referred 153
to in division (B) of this section or sixty days from the date 154
of publication referred to in that division by giving written 155
notice of the objection to the person proposing the civil 156
action. If the individual or transferee does not object to the 157
civil action within the time period specified in this division, 158
the individual or transferee is forever barred from objecting to 159
that action. 160

A person may not bring a civil action under this section 161

if a person or persons, including the individual whose right of
publicity is the subject of the proposed civil action, who
collectively own more than fifty per cent of the individual's
right of publicity object to the proposed civil action.

(D) A person, other than a licensee of an individual's
right of publicity, who owns less than all of an individual's
right of publicity and who brings a civil action under this
chapter shall account to any other person owning an interest in
that right of publicity to the extent of the other person's
interest with respect to any net recovery in a civil action less
the person's costs of collection and reasonable attorney's fees.

Sec. 2741.09. (A) This chapter does not apply to any of
the following:

(1) (a) A literary work, dramatic work, fictional work,
historical work, audiovisual work, or musical work regardless of
the media in which the work appears or is transmitted, other
than an advertisement or commercial announcement not exempt
under division (A) (1) (d) of this section or an audiovisual work
with a modified facsimile of an individual's persona wherein a
reasonable trier of fact would confuse the modified facsimile
and the individual;

(b) Material that has political or newsworthy value;

(c) Original works of fine art;

(d) An advertisement or commercial announcement for a use
permitted by division (A) (1) (a), (b), or (c) of this section.

(2) The use of an individual's name to truthfully identify
the individual as the author of or contributor to a written work
or the performer of a recorded performance under circumstances
in which the written work or the recorded performance is

otherwise lawfully reproduced, exhibited, or broadcast;	191
(3) The use of an aspect of an individual's persona in connection with the broadcast or reporting of an event or topic of general or public interest;	192 193 194
(4) The use of the persona of an individual solely in the individual's role as a member of the public if the individual is not named or otherwise singled out as an individual;	195 196 197
(5) A use of an individual's persona by an institution of higher education if all of the following apply:	198 199
(a) The individual is or was a student at, or a member of the faculty or staff of, the institution of higher education.	200 201
(b) The use of the individual's persona is for educational purposes or for the promotion of the institution of higher education and its educational or institutional objectives.	202 203 204
(6) A use of the persona of an individual that is protected by the First Amendment to the United States Constitution as long as the use does not convey or reasonably suggest endorsement by the individual whose persona is at issue;	205 206 207 208
<u>(7) A radio or television broadcasting station, including a cable or satellite television operator, programmer, producer, or streaming service, when the station receives consideration in exchange for broadcasting, distributing, or exhibiting material that would otherwise be prohibited by this chapter.</u>	209 210 211 212 213
(B) This chapter does not affect rights or privileges recognized under the Ohio Constitution or United States Constitution.	214 215 216
<u>Sec. 2742.01. As used in this chapter:</u>	217

(A) "Deepfake recording" means any visual or audio media 218
in an electronic format, video recording, or sound recording 219
that is created or altered in a manner such that it falsely 220
appears to be an authentic record of the actual speech or 221
conduct of an individual depicted in the media or recording. 222

(B) "Malicious deepfake recording" means a deepfake 223
recording created or altered by, or on behalf of, a person that 224
intends to cause harm to another person due to the false nature 225
of the speech or conduct recorded or depicted therein. 226

(C) "Recording" means visual or audio media in an 227
electronic format, video recording, or sound recording. 228

Sec. 2742.02. (A) Except as otherwise provided in this 229
section, no person shall, without written consent of the 230
depicted individual, do either of the following: 231

(1) Prepare, produce, or develop any malicious deepfake 232
recording of an individual's voice, image, or likeness to 233
distribute to, exhibit to, or exchange with others; 234

(2) Offer to distribute, exhibit, or exchange with others 235
a malicious deepfake recording. 236

(B) No person shall recklessly distribute any malicious 237
deepfake recording. 238

(C) Divisions (A) and (B) of this section do not apply to 239
any malicious deepfake recording that meets either of the 240
following criteria: 241

(1) The material does not include a political or campaign 242
advertisement, and appears in a context that would cause a 243
reasonable person to believe that the material is inauthentic, 244
such as in a parody or fictionalized movie. 245

(2) The material, which may include a political or 246
campaign advertisement, includes a disclaimer to which all of 247
the following apply: 248

(a) It is included in a conspicuous place on the material 249
or is contained or included within the media or recording. 250

(b) It states that the media or recording has been 251
materially altered in a manner that renders it fictionalized and 252
inauthentic. 253

(c) It identifies the name and contact information of the 254
entity that is responsible for creating or distributing the 255
media or recording. 256

(D) The exceptions provided in division (C) of this 257
section do not apply to a malicious deepfake recording that is 258
pornographic or that falsely depicts or records the speech or 259
conduct of an individual who is under seventeen years of age. 260

(E) Divisions (A) and (B) of this section do not apply to 261
a radio or television broadcasting station, including a cable or 262
satellite television operator, programmer, producer, or 263
streaming service, when the station receives consideration in 264
exchange for broadcasting, distributing, or exhibiting a 265
malicious deepfake recording. 266

Sec. 2742.03. (A) An individual injured by a violation of 267
division (A) or (B) of section 2742.02 of the Revised Code may 268
commence a civil action in a court of competent jurisdiction 269
against the person that violates that division for any of the 270
following: 271

(1) Either actual damages or, at the election of the 272
plaintiff, statutory damages in an amount of at least two 273
thousand five hundred dollars, and not more than ten thousand 274

dollars, as determined in the discretion of the trier of fact, 275
taking into account the willfulness of the violation, the harm 276
to the individual in question, and the ability of the defendant 277
to pay a civil damage award; 278

(2) Punitive or exemplary damages pursuant to section 279
2315.21 of the Revised Code, if applicable; 280

(3) Temporary or permanent injunctive relief. 281

(B) (1) In addition to the remedies described in division 282
(A) of this section, if the plaintiff establishes by a 283
preponderance of the evidence that the defendant violated 284
section 2905.11 of the Revised Code in relation to the violation 285
of division (A) or (B) of section 2742.02 of the Revised Code, 286
the court shall additionally award the plaintiff statutory 287
damages based on the amount the defendant extorts or attempts to 288
extort from the plaintiff whose voice, image, or likeness is 289
used in the deepfake recording. The amount of statutory damages 290
shall be determined subject to the following limitations: 291

(a) If the value of the thing of value or valuable benefit 292
involved in the violation of section 2905.11 of the Revised Code 293
is less than one thousand dollars, the amount of statutory 294
damages shall not exceed two thousand five hundred dollars. 295

(b) If the value of the thing of value or valuable benefit 296
involved in the violation of section 2905.11 of the Revised Code 297
is at least one thousand dollars, but less than seven thousand 298
five hundred dollars, the amount of statutory damages shall not 299
exceed five thousand dollars. 300

(c) If the value of the thing of value or valuable benefit 301
involved in the violation of section 2905.11 of the Revised Code 302
is at least seven thousand five hundred dollars, but less than 303

one hundred fifty thousand dollars, the amount of statutory 304
damages shall not exceed ten thousand dollars. 305

(d) If the value of the thing of value or valuable benefit 306
involved in the violation of section 2905.11 of the Revised Code 307
is one hundred fifty thousand dollars or more, the amount of 308
statutory damages shall not exceed fifteen thousand dollars. 309

(2) A conviction of or plea of guilty to a violation of 310
section 2905.11 of the Revised Code is not required for an award 311
of statutory damages under division (B)(1) of this section. 312

(C) No action under this section shall be initiated more 313
than four years after the alleged violation of division (A) or 314
(B) of section 2742.02 of the Revised Code. 315

(D) The court in which an action under this section is 316
initiated may award the prevailing party reasonable attorney's 317
fees, court costs, and reasonable expenses associated with the 318
civil action. 319

(E) As part of a final judgment, a court may order the 320
destruction or other reasonable disposition of a malicious 321
deepfake recording, including by requiring the defendant to take 322
affirmative steps to cause others to take down the malicious 323
deepfake recording and by requiring the defendant to indemnify 324
the plaintiff for any past or future expenses associated with 325
the plaintiff's efforts to have the malicious deepfake recording 326
removed or destroyed. 327

(F) The trier of fact shall include any profits derived 328
from, and attributable to, a violation of division (A) or (B) of 329
section 2742.02 of the Revised Code in calculating the award of 330
actual damages under this section. 331

Sec. 2742.04. (A) The remedies provided for in this 332

chapter are in addition to any other remedies provided for by 333
state or federal statute or common law. 334

(B) Any person that purchases a deepfake recording, while 335
holding a good-faith belief that the recording is authentic, may 336
commence a civil action in a court of competent jurisdiction 337
against a person who violates division (A) or (B) of section 338
2742.02 of the Revised Code for either of the following: 339

(1) Treble the amount of the actual economic damages; 340

(2) At the direction of the plaintiff, statutory damages 341
in the amount of two hundred fifty dollars. 342

Sec. 2905.11. (A) No person, with purpose to obtain any 343
valuable thing or valuable benefit or to induce another to do an 344
unlawful act, shall do any of the following: 345

(1) Threaten to commit any felony; 346

(2) Threaten to commit any offense of violence; 347

(3) Violate section 2903.21 or 2903.22 of the Revised 348
Code; 349

(4) Utter or threaten any calumny against any person; 350

(5) Expose or threaten to expose any matter tending to 351
subject any person to hatred, contempt, or ridicule, or to 352
damage any person's personal or business repute, or to impair 353
any person's credit. 354

(B) Whoever violates this section is guilty of extortion, 355
a felony of the third degree. 356

(C) A person violates division (A) (4) or (5) of this 357
section by distributing, exhibiting, or exchanging a malicious 358
deepfake recording that falsely depicts or records the speech or 359

conduct of another individual, in violation of division (A) or 360
(B) of section 2742.02 of the Revised Code, or by threatening to 361
do so. 362

(D) As used in this section, "threat" includes a direct 363
threat and a threat by innuendo. 364

Section 2. That existing sections 2741.01, 2741.02, 365
2741.05, 2741.06, 2741.09, and 2905.11 of the Revised Code are 366
hereby repealed. 367