

As Introduced

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H. B. No. 185

Representatives Mathews, A., Mathews, T.

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, 19
merchandise, goods, services, or other commercial activities not 20

expressly exempted under this chapter;	21
(2) For advertising or soliciting the purchase of products, merchandise, goods, services, or other commercial activities not expressly exempted under this chapter;	22 23 24
(3) For the purpose of promoting travel to a place;	25
(4) For the purpose of fundraising.	26
(C) "Name" means the actual, assumed, or clearly identifiable name of or reference to a living or deceased individual that identifies the individual.	27 28 29
(D) "Right of publicity" means the property right in an individual's persona to use the individual's persona for a commercial purpose.	30 31 32
(E) "Trier of fact" means the jury or, in a nonjury action, the court.	33 34
(F) "Written consent" includes written, electronic, digital, or any other verifiable means of authorization.	35 36
(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.	37 38 39 40 41 42 43 44 45
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 <u>or a modified facsimile of an</u>	46 47 48

<u>individual's persona wherein a reasonable trier of fact would</u>	49
<u>confuse the modified facsimile and the individual:</u>	50
(1) During the individual's lifetime;	51
(2) For a period of sixty years after the date of the individual's death; or	52 53
(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.	54 55 56
(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:	57 58 59 60 61 62 63
(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.	64 65 66 67
(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.	68 69 70
(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.	71 72 73 74 75 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	105

right of publicity, who is expressly authorized in writing to	106
grant consent by a person or persons specified in division (A)	107
(1) of this section.	108
(B) A person or persons specified in division (A) of this	109
section may do one or both of the following:	110
(1) Grant a person or persons consent to use all or part	111
of an individual's right of publicity for a commercial purpose;	112
(2) Limit, restrict, or place conditions on how a person	113
or persons to whom consent is granted pursuant to this section	114
may use an individual's right of publicity.	115
Sec. 2741.06. (A) The following persons may bring a civil	116
action to enforce the rights set forth in this chapter:	117
(1) A person or persons, including an individual whose	118
right of publicity is at issue, who collectively own all of an	119
individual's right of publicity, subject to any licenses	120
regarding that right of publicity;	121
(2) A person, including a licensee of an individual's	122
right of publicity, who is expressly authorized in writing by	123
the owner or owners of an individual's right of publicity to	124
bring a civil action;	125
(3) Except as otherwise expressly provided in an agreement	126
transferring an aspect of an individual's right of publicity and	127
subject to division (C) of this section, a person to whom	128
ownership or any portion of ownership of an individual's right	129
of publicity has been transferred.	130
(B) Before bringing a civil action under this section, a	131
person who owns less than all of an individual's right of	132
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 162

publicity is the subject of the proposed civil action, who 163
collectively own more than fifty per cent of the individual's 164
right of publicity object to the proposed civil action. 165

(D) A person, other than a licensee of an individual's 166
right of publicity, who owns less than all of an individual's 167
right of publicity and who brings a civil action under this 168
chapter shall account to any other person owning an interest in 169
that right of publicity to the extent of the other person's 170
interest with respect to any net recovery in a civil action less 171
the person's costs of collection and reasonable attorney's fees. 172

Sec. 2741.09. (A) This chapter does not apply to any of 173
the following: 174

(1) (a) A literary work, dramatic work, fictional work, 175
historical work, audiovisual work, or musical work regardless of 176
the media in which the work appears or is transmitted, other 177
than an advertisement or commercial announcement not exempt 178
under division (A) (1) (d) of this section or an audiovisual work 179
with a modified facsimile of an individual's persona wherein a 180
reasonable trier of fact would confuse the modified facsimile 181
and the individual; 182

(b) Material that has political or newsworthy value; 183

(c) Original works of fine art; 184

(d) An advertisement or commercial announcement for a use 185
permitted by division (A) (1) (a), (b), or (c) of this section. 186

(2) The use of an individual's name to truthfully identify 187
the individual as the author of or contributor to a written work 188
or the performer of a recorded performance under circumstances 189
in which the written work or the recorded performance is 190
otherwise lawfully reproduced, exhibited, or broadcast; 191

(3) The use of an aspect of an individual's persona in 192
connection with the broadcast or reporting of an event or topic 193
of general or public interest; 194

(4) The use of the persona of an individual solely in the 195
individual's role as a member of the public if the individual is 196
not named or otherwise singled out as an individual; 197

(5) A use of an individual's persona by an institution of 198
higher education if all of the following apply: 199

(a) The individual is or was a student at, or a member of 200
the faculty or staff of, the institution of higher education. 201

(b) The use of the individual's persona is for educational 202
purposes or for the promotion of the institution of higher 203
education and its educational or institutional objectives. 204

(6) A use of the persona of an individual that is 205
protected by the First Amendment to the United States 206
Constitution as long as the use does not convey or reasonably 207
suggest endorsement by the individual whose persona is at issue; 208

(7) A radio or television broadcasting station, including 209
a cable or satellite television operator, programmer, producer, 210
or streaming service, when the station receives consideration in 211
exchange for broadcasting, distributing, or exhibiting material 212
that would otherwise be prohibited by this chapter. 213

(B) This chapter does not affect rights or privileges 214
recognized under the Ohio Constitution or United States 215
Constitution. 216

Sec. 2742.01. As used in this chapter: 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

<u>the following apply:</u>	248
<u>(a) It is included in a conspicuous place on the material</u>	249
<u>or is contained or included within the media or recording.</u>	250
<u>(b) It states that the media or recording has been</u>	251
<u>materially altered in a manner that renders it fictionalized and</u>	252
<u>inauthentic.</u>	253
<u>(c) It identifies the name and contact information of the</u>	254
<u>entity that is responsible for creating or distributing the</u>	255
<u>media or recording.</u>	256
<u>(D) The exceptions provided in division (C) of this</u>	257
<u>section do not apply to a malicious deepfake recording that is</u>	258
<u>pornographic or that falsely depicts or records the speech or</u>	259
<u>conduct of an individual who is under seventeen years of age.</u>	260
<u>(E) Divisions (A) and (B) of this section do not apply to</u>	261
<u>a radio or television broadcasting station, including a cable or</u>	262
<u>satellite television operator, programmer, producer, or</u>	263
<u>streaming service, when the station receives consideration in</u>	264
<u>exchange for broadcasting, distributing, or exhibiting a</u>	265
<u>malicious deepfake recording.</u>	266
<u>Sec. 2742.03.</u> (A) <u>An individual injured by a violation of</u>	267
<u>division (A) or (B) of section 2742.02 of the Revised Code may</u>	268
<u>commence a civil action in a court of competent jurisdiction</u>	269
<u>against the person that violates that division for any of the</u>	270
<u>following:</u>	271
<u>(1) Either actual damages or, at the election of the</u>	272
<u>plaintiff, statutory damages in an amount of at least two</u>	273
<u>thousand five hundred dollars, and not more than ten thousand</u>	274
<u>dollars, as determined in the discretion of the trier of fact,</u>	275
<u>taking into account the willfulness of the violation, the harm</u>	276

<u>to the individual in question, and the ability of the defendant</u>	277
<u>to pay a civil damage award;</u>	278
<u>(2) Punitive or exemplary damages pursuant to section</u>	279
<u>2315.21 of the Revised Code, if applicable;</u>	280
<u>(3) Temporary or permanent injunctive relief.</u>	281
<u>(B) (1) In addition to the remedies described in division</u>	282
<u>(A) of this section, if the plaintiff establishes by a</u>	283
<u>preponderance of the evidence that the defendant violated</u>	284
<u>section 2905.11 of the Revised Code in relation to the violation</u>	285
<u>of division (A) or (B) of section 2742.02 of the Revised Code,</u>	286
<u>the court shall additionally award the plaintiff statutory</u>	287
<u>damages based on the amount the defendant extorts or attempts to</u>	288
<u>extort from the plaintiff whose voice, image, or likeness is</u>	289
<u>used in the deepfake recording. The amount of statutory damages</u>	290
<u>shall be determined subject to the following limitations:</u>	291
<u>(a) If the value of the thing of value or valuable benefit</u>	292
<u>involved in the violation of section 2905.11 of the Revised Code</u>	293
<u>is less than one thousand dollars, the amount of statutory</u>	294
<u>damages shall not exceed two thousand five hundred dollars.</u>	295
<u>(b) If the value of the thing of value or valuable benefit</u>	296
<u>involved in the violation of section 2905.11 of the Revised Code</u>	297
<u>is at least one thousand dollars, but less than seven thousand</u>	298
<u>five hundred dollars, the amount of statutory damages shall not</u>	299
<u>exceed five thousand dollars.</u>	300
<u>(c) If the value of the thing of value or valuable benefit</u>	301
<u>involved in the violation of section 2905.11 of the Revised Code</u>	302
<u>is at least seven thousand five hundred dollars, but less than</u>	303
<u>one hundred fifty thousand dollars, the amount of statutory</u>	304
<u>damages shall not exceed ten thousand dollars.</u>	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) As used in this section and section 343
2905.111 of the Revised Code: 344

(1) "Elderly person" and "disabled adult" have the same 345
meanings as in section 2913.01 of the Revised Code. 346

(2) "Information service" and "telecommunications service" 347
have the same meanings as in the "Telecommunications Act of 348
1996," 47 U.S.C. 153, as amended. 349

(3) "Interactive computer service" has the same meaning as 350
in the "Telecommunications Act of 1996," 47 U.S.C. 230, as 351
amended. 352

(4) "Nudity," "sexual activity," and "sexual excitement" 353
have the same meanings as in section 2907.01 of the Revised 354
Code. 355

(5) "Private images" means images of sexual activity, 356
masturbation, sexual excitement, nudity, bestiality, extreme or 357
bizarre violence, cruelty, or brutality, or human bodily 358
functions of elimination. 359

(6) "Threat" includes a direct threat and a threat by 360
innuendo. 361

(B) <u>(B) (1)</u> No person, with purpose to obtain any valuable thing or valuable benefit or to induce another to do an unlawful act, shall do any of the following:	362 363 364
(1) <u>(a)</u> Threaten to commit any felony;	365
(2) <u>(b)</u> Threaten to commit any offense of violence;	366
(3) <u>(c)</u> Violate section 2903.21 or 2903.22 of the Revised Code;	367 368
(4) <u>(d)</u> Utter or threaten any calumny against any person;	369
(5) <u>(e)</u> Expose or threaten to expose any matter tending to subject any person to hatred, contempt, or ridicule, or to damage any person's personal or business repute, or to impair any person's credit.	370 371 372 373
<u>(2) A person violates division (B) (1) (d) or (e) of this section by distributing, exhibiting, or exchanging a malicious deepfake recording that falsely depicts or records the speech or conduct of another individual, in violation of division (A) or (B) of section 2742.02 of the Revised Code, or by threatening to do so.</u>	374 375 376 377 378 379
(C) Whoever violates division (B) of this section is guilty of extortion, a felony of the third degree.	380 381
(D) No person, with purpose to do any of the following, shall threaten to release, exhibit, or distribute the private images of another:	382 383 384
(1) Compel or attempt to compel the other person, against the other person's will, to perform any act or refrain from performing any act;	385 386 387
(2) Induce the other person to commit an offense;	388

(3) Obtain additional private images from the other person;	389 390
(4) Obtain anything of value from the other person.	391
(E) Whoever violates division (D) of this section is guilty of sexual extortion. The penalty for the offense shall be determined as follows:	392 393 394
(1) Except as otherwise provided in division (E) (2) or (3) of this section, sexual extortion is a felony of the third degree.	395 396 397
(2) Except as otherwise provided in division (E) (3) of this section, if the offender previously has been convicted of or pleaded guilty to a violation of division (D) of this section or if the offense involves sexual extortion of a person under the age of eighteen, an elderly person, or a disabled adult, sexual extortion is a felony of the second degree.	398 399 400 401 402 403
(3) If the offender has previously been convicted of or pleaded guilty to two or more violations of division (D) of this section or if the offender has previously been convicted of or pleaded guilty to an offense involving sexual extortion of a person under the age of eighteen, an elderly person, or a disabled adult and the offender knows or has reason to know that the person is under the age of eighteen, an elderly person, or a disabled adult, sexual extortion is a felony of the first degree.	404 405 406 407 408 409 410 411 412
(F) A prosecution for a violation of division (D) of this section does not preclude a prosecution of a violation of division (B) of this section. One or more acts, a series of acts, or a course of behavior that can be prosecuted under division (D) of this section or division (B) of this section may	413 414 415 416 417

be prosecuted under division (D) of this section, division (B) 418
of this section, or both divisions. However, if an offender is 419
convicted of or pleads guilty to a violation of division (D) of 420
this section and also is convicted of or pleads guilty to a 421
violation of division (B) of this section based on the same 422
conduct involving the same victim that was the basis of the 423
violation of division (D) of this section, the two offenses are 424
allied offenses of similar import under section 2941.25 of the 425
Revised Code. 426

(G) (1) No person shall assert a cause of action in any 427
court of this state against any provider of an information 428
service, an interactive computer service, or a 429
telecommunications service, or against any agent, employee, or 430
officer of such provider, for any injury, death, or loss to 431
person or property that allegedly arises out of the provider's, 432
officer's, employee's, or agent's provision of information, 433
facilities, or assistance in accordance with the terms of a 434
court order that is issued in relation to the investigation or 435
prosecution of an alleged violation of division (D) of this 436
section. 437

(2) A provider of an information service, an interactive 438
computer service, or a telecommunications service, or any agent, 439
employee, or officer of such provider, is immune from any civil 440
or criminal liability for injury, death, or loss to person or 441
property that allegedly arises out of the provider's, officer's, 442
employee's, or agent's provision of information, facilities, or 443
assistance in accordance with the terms of a court order that is 444
issued in relation to the investigation or prosecution of an 445
alleged violation of division (D) of this section. 446

(H) (1) (a) A person shall not be considered to have 447

violated division (D) of this section solely for providing 448
access or connection to or from an electronic method of remotely 449
transferring information not under that person's control, 450
including having provided capabilities that are incidental to 451
providing access or connection to or from the electronic method 452
of remotely transferring the information and that do not include 453
the creation of the content of the material that is the subject 454
of the access or connection. 455

(b) Any person providing access or connection to or from 456
an electronic method of remotely transferring information not 457
under that person's control shall not be liable for any action 458
voluntarily taken in good faith to block the receipt or 459
transmission through its service of any information that the 460
person believes is, or will be, sent in violation of division 461
(D) of this section. 462

(2) Division (H)(1) of this section does not create an 463
affirmative duty for any person providing access or connection 464
to or from an electronic method of remotely transferring 465
information not under that person's control to block the receipt 466
or transmission through its service of any information that it 467
believes is, or will be sent, in violation of division (D) of 468
this section, except as otherwise provided by law. 469

(3) Division (H)(1) of this section does not apply to a 470
person who conspires with another person actively involved in 471
the creation or knowing distribution of material in violation of 472
division (D) of this section, or who knowingly advertises the 473
availability of material of that nature. 474

(4) (a) A provider or user of an interactive computer 475
service shall neither be treated as the publisher nor speaker of 476
any information provided by another information content 477

provider, nor shall such a person be held civilly or criminally 478
liable for the creation or development of information provided 479
by another information content provider. 480

(b) Nothing in division (H)(4)(a) of this section shall be 481
construed as protecting a person from liability to the extent 482
that the person developed or created any content in violation of 483
division (D) of this section. 484

Section 2. That existing sections 2741.01, 2741.02, 485
2741.05, 2741.06, 2741.09, and 2905.11 of the Revised Code are 486
hereby repealed. 487