

1 HOUSE BILL NO. 513
 2 INTRODUCED BY J. COHENOUR, J. SECKINGER, T. SHARP, C. COCHRAN, T. MILLETT, D. ZOLNIKOV, R.
 3 MINER, K. ZOLNIKOV, L. BREWSTER, T. FRANCE, B. MITCHELL, M. ROMANO, K. SULLIVAN, P. TUSS, M.
 4 MARLER, K. BOGNER, S. ESSMANN, V. MOORE

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 6 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO THE NAME, VOICE, AND
 7 LIKENESS OF INDIVIDUALS; PROVIDING RIGHTS IN THE USE OF A NAME, VOICE, OR LIKENESS;
 8 PROVIDING PENALTIES; AND PROVIDING DEFINITIONS."

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 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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 12 NEW SECTION. **Section 1. Property right in use of names, voices, and likenesses -- penalties**

13 **for unauthorized use.** (1) Each individual must have property rights in their name, voice, and likeness.

14 Whether or not an individual commercially benefits during their lifetime, their rights:

- 15 (a) must be freely transferable and descendible, in whole or in part;
- 16 (b) may not expire on the death of the individual; and
- 17 (c) must be exclusive to the individual during their lifetime, subject to the transfer of rights as
- 18 provided in subsection (1)(a), and to the executors, heirs, transferees, or devisees for a period of 10 years after
- 19 the death of the individual unless:

- 20 (i) the name, voice, or likeness of an individual remains in use for commercial purposes by all
- 21 executors, heirs, transferees, or devisees; or

- 22 (ii) all executors, heirs, transferees, or devisees of the individual exercising the individual's
- 23 property rights are deceased.

24 (2) A person must be liable for damages as set forth in subsection (3) or (4) if the person, without

25 consent of the individual exercising the individual's property rights or the holder of the individual's property

26 rights:

- 27 (a) distributes, transmits, or otherwise makes available to the public an algorithm, software, tool, or
- 28 other technology, service, or device of which the primary purpose or function is to produce one or more digital

1 voice replicas or digital depictions of the particular, identified individual;

2 (b) publishes, performs, distributes, transmits, or makes available to the public a digital voice
3 replica or digital depiction with knowledge that the digital voice replica or digital depiction is not authorized by
4 the individual or the holder of the individual's property rights; or

5 (c) materially contributes to, directs, or facilitates any of the conduct set forth in subsections (2)(a)
6 or (2)(b) with knowledge that the individual or the holder of the individual's property rights has not consented to
7 the conduct.

8 (3) A person who violates subsection (2)(a) shall be liable to the injured person for \$50,000 for
9 each violation for each person or the actual damages suffered by the person, whichever is greater, plus any
10 profits from the unauthorized use of the individual's name, voice, or likeness.

11 (4) A person who violates subsection (2)(b) or (2)(c) shall be liable to the injured person for \$5,000
12 for each violation for each person or the actual damages suffered by the person, whichever is greater, plus any
13 profits from the unauthorized use of the individual's name, voice, or likeness.

14 (5) (a) In establishing profits under subsection (3) or (4), the injured party must be required only to
15 present proof of the gross revenue being either directly or indirectly attributable to the unauthorized use.

16 (b) The person who violates this section must be required to prove the person's expenses are
17 deductible from this violation.

18 (c) Punitive damages and reasonable attorney fees may also be awarded to the injured party.

19 (6) A defense to an allegation of a violation of subsection (2) may not be that the unauthorized
20 user displays or otherwise communicates to the public a disclaimer stating that use is unauthorized or that the
21 individual or owner of the individual's rights did not participate in the creation, development, distribution, or
22 dissemination of the unauthorized digital voice replica or digital depiction.

23 (7) An action to enforce this section may be brought by:

24 (a) the individual whose name, voice, or likeness is at issue; or

25 (b) any other person to which the individual has assigned, bequeathed, transferred, or exclusively
26 licensed their name, voice, or likeness rights.

27 (8) To the extent the use is protected by the first amendment to the United States constitution, it
28 may not be a violation if the use is:

- 1 (a) by a news-gathering organization;
- 2 (b) in connection with a news report, public affairs report, sports broadcast, or account;
- 3 (c) for the purposes of comment, criticism, scholarship, satire, or parody;
- 4 (d) a representation of an individual as themselves in audiovisual works as defined in 17 U.S.C. 101,
- 5 unless the work containing the use is intended to create, and does create, the false impression that the work is
- 6 an authentic recording in which the individual participated;
- 7 (e) fleeting or negligible; or
- 8 (f) in an advertisement or commercial announcement for a work described in this subsection (7).
- 9 (9) No civil action may be maintained under the provisions of this section unless it is commenced
- 10 within 4 years after the party seeking to bring the claim discovered, or should have reasonably discovered, the
- 11 violation.
- 12 (10) For the purposes of this section, the following definitions apply:
- 13 (a) "Digital depiction" means a replica, imitation, or approximation of the likeness of an individual
- 14 that is created or altered in whole or in part using digital technology in a way that the individual is depicted in a
- 15 manner in which the individual did not actually appear.
- 16 (b) "Digital voice replica" means an audio rendering that is created or altered in whole or in part
- 17 using digital technology and is fixed in a sound recording or audiovisual work that includes replications,
- 18 imitations, or approximations of the voice of an individual engaging in expression that the individual did not
- 19 actually perform.
- 20 (c) "Individual" means a natural person, living or dead, and includes the estate of an incompetent
- 21 or deceased individual.
- 22 (d) "Likeness" means an actual or simulated physical depiction or representation, digital depiction
- 23 or representation, or other form of depiction or representation of an individual, regardless of the means of
- 24 creation, that is readily identifiable as the individual by virtue of the individual's face, outward appearance, or
- 25 other distinguishing characteristic, or other information displayed in connection with the readily identifiable
- 26 characteristics of the individual.
- 27 (e) "Person" means an individual, firm, association, partnership, corporation, joint stock company,
- 28 syndicate, receiver, common law trust, conservator, statutory trust, or any other concern by whatever name

1 known or however organized, formed, or created, and includes not-for-profit corporations, associations,
2 educational and religious institutions, political parties, and community, civic, and other organizations.

3 (f) "Voice" means sounds in any medium containing the actual voice or a simulation of the voice of
4 an individual, whether recorded or generated by computer, artificial intelligence, algorithm, or other digital
5 technology, service, or device, to the extent that the individual depicted or simulated is readily identifiable from
6 the sound of the voice depicted or simulated, or from other information displayed in connection with the voice or
7 simulation of the voice.

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9 NEW SECTION. Section 2. Codification instruction. [Section 1] is intended to be codified as an
10 integral part of Title 30, chapter 14, and the provisions of Title 30, chapter 14, apply to [section 1].

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