

HOUSE BILL NO. 513

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO THE NAME, VOICE, AND VISUAL  
LIKENESS OF INDIVIDUALS; PROVIDING RIGHTS IN THE USE OF A NAME, VOICE, OR VISUAL  
LIKENESS; PROVIDING PENALTIES; ~~AND PROVIDING DEFINITIONS; AND PROVIDING A DELAYED~~  
EFFECTIVE DATE."

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

NEW SECTION. Section 1. Property right in use of names, voices, and visual likenesses --  
**penalties for unauthorized use.** (1) ~~Each individual must have~~ AN INDIVIDUAL HAS property rights in their name,  
voice, and VISUAL likeness, IF THE INDIVIDUAL IS:

(A) A RESIDENT OF THIS STATE; OR

(B) DOMICILED IN THIS STATE AT THE TIME OF THEIR DEATH.

(2) Whether or not an individual commercially benefits during their lifetime, their rights:

(a) ~~must be~~ ARE freely transferable, LICENSABLE, and descendible, in whole or in part;

(b) ~~may~~ DO not expire on the death of the individual TO WHOM THE RIGHT APPLIES; and

(c) ~~must be~~ ARE exclusive to the individual TO WHOM THE RIGHT APPLIES during their lifetime, subject  
to the transfer of rights as provided in subsection (1)(a) (2)(A), and to the RIGHTS HOLDER'S executors, heirs,  
transferees, or devisees for a period of ~~40~~ 20 years after the death of the individual, unless:

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

(ii) ~~all executors, heirs, transferees, or devisees of the individual exercising the individual's~~  
property rights are deceased; AND

(D) TERMINATE 20 YEARS AFTER THE DATE OF THE INDIVIDUAL'S DEATH IF NO LEGAL ACTION HAS BEEN

1 ~~TAKEN TO TRANSFER OR LICENSE THE RIGHT.~~

2           ~~(2)(3)~~ A person ~~must be~~ is liable for damages as set forth in subsection ~~(3) or (4) or (5)~~ if the person,  
3 without consent of the individual exercising the individual's property rights or the holder of the individual's  
4 property rights:

5           (a) distributes, transmits, or otherwise makes available to the public an algorithm, software, tool, or  
6 other technology, service, or device WITH ACTUAL AND SPECIFIC KNOWLEDGE THAT ~~of which~~ the primary purpose ~~or~~  
7 ~~function~~ OF THAT ALGORITHM, SOFTWARE, TOOL, OR OTHER TECHNOLOGY, SERVICE, OR DEVICE is to produce one or  
8 more UNAUTHORIZED digital voice ~~replicas~~ DEPICTIONS or digital VISUAL depictions of the particular, identified  
9 individual FOR COMMERCIAL USE; OR

10           (b) INTENTIONALLY publishes, performs, distributes, transmits, or makes available to the public a  
11 digital voice ~~replica~~ DEPICTION or digital VISUAL depiction FOR COMMERCIAL USE with ACTUAL AND SPECIFIC  
12 knowledge that the DEPICTION IS A digital voice ~~replica~~ DEPICTION or digital VISUAL depiction OF THE INDIVIDUAL AND  
13 THAT THE DEPICTION is not authorized by the individual or the holder of the individual's property rights; ~~or~~

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

17           ~~(3)(4)~~ A person who violates subsection ~~(2)(a) (3)(A) or (3)(B)~~ shall ~~be~~ is liable to the injured person  
18 for \$50,000 ~~for each violation for each person or the actual damages suffered by the person, whichever is~~  
19 ~~greater, plus any profits from the unauthorized use of the individual's name, voice, or~~ VISUAL likeness.

20           ~~(4)(5)~~ A person who violates subsection ~~(2)(b) or (2)(c) (3)(B)~~ shall ~~be~~ is liable to the injured person  
21 for \$5,000 ~~for each violation for each person or the actual damages suffered by the person, whichever is~~  
22 ~~greater, plus any profits from the unauthorized use of the individual's name, voice, or~~ VISUAL likeness.

23           ~~(6)(5)~~ IF A PERSON WHO VIOLATED SUBSECTION (3)(B) HAD AN OBJECTIVELY REASONABLE BELIEF THAT  
24 MATERIAL THAT IS CLAIMED TO BE AN UNAUTHORIZED DIGITAL VOICE DEPICTION OR DIGITAL VISUAL DEPICTION DID NOT  
25 QUALIFY AS A AN UNAUTHORIZED DIGITAL VOICE DEPICTION OR DIGITAL VISUAL DEPICTION, THE PERSON IS NOT LIABLE  
26 FOR STATUTORY OR ACTUAL DAMAGES REGARDLESS OF WHETHER THE MATERIAL IS ULTIMATELY DETERMINED TO BE AN  
27 UNAUTHORIZED DIGITAL VOICE DEPICTION OR DIGITAL VISUAL DEPICTION.

28           ~~(5)(7)(6)~~ (a) In establishing profits under subsection ~~(3) or (4) or (5)~~, the injured party must be

1 required only to present proof of the gross revenue being either directly or indirectly attributable to the  
2 unauthorized use.

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

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

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

10 ~~(7)(8)(7)~~ An action to enforce this section may be brought by:

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

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

14 ~~(8)(9)(8)~~ ~~To the extent the use is protected by the first amendment to the United States~~  
15 ~~constitution, it~~ IT may not be TO THE EXTENT THE USE IS PROTECTED BY THE FIRST AMENDMENT TO THE UNITED  
16 STATES CONSTITUTION AND ARTICLE II, SECTION 7, OF THE MONTANA CONSTITUTION, IT IS NOT a violation if the use  
17 is:

18 (a) by a news-gathering organization;

19 (b) in connection with a news report, public affairs report, sports broadcast, or account;

20 (c) for the purposes of comment, criticism, scholarship, satire, or parody;

21 (d) a representation of an individual as themselves in audiovisual works as defined in 17 U.S.C. 101,  
22 unless the work containing the use is intended to create, and does create, the false impression that the work is  
23 an authentic recording in which the individual participated;

24 (e) fleeting or negligible; or

25 (f) in an advertisement or commercial announcement for a work described in this subsection ~~(7)~~

26 ~~(9) (8).~~

27 ~~(9)(10)(9)~~ No civil action may be maintained under the provisions of this section unless it is  
28 commenced within 4 years after the party seeking to bring the claim discovered, or should have reasonably

1 discovered, the violation.

2 ~~(10)(11)~~ (10) For the purposes of this section, the following definitions apply:

3 (A) "BROADBAND INTERNET ACCESS SERVICE" MEANS A MASS-MARKET RETAIL SERVICE BY WIRE OR RADIO  
4 THAT PROVIDES THE CAPABILITY TO TRANSMIT DATA TO AND RECEIVE DATA FROM ALL OR SUBSTANTIALLY ALL INTERNET  
5 ENDPOINTS. THE TERM INCLUDES CAPABILITIES THAT ARE INCIDENTAL TO AND ENABLE THE OPERATION OF THE  
6 COMMUNICATIONS SERVICE. THE TERM DOES NOT INCLUDE DIAL-UP INTERNET ACCESS SERVICE.

7 ~~(a)(B)~~ "Digital visual depiction" means a replica, imitation, or approximation of the likeness of an  
8 individual that is created or altered in whole or in part using digital technology in a way that the individual is  
9 depicted in a manner in which the individual did not actually appear NEWLY CREATED, COMPUTER-GENERATED,  
10 AND HIGHLY REALISTIC DEPICTION MADE FOR COMMERCIAL USE OF THE VISUAL LIKENESS OF AN A PARTICULAR  
11 INDIVIDUAL THAT IS CREATED OR ALTERED IN WHOLE OR IN PART USING DIGITAL TECHNOLOGY IN A WAY THAT THE  
12 DEPICTION IS NEARLY INDISTINGUISHABLE FROM AN ACTUAL DEPICTION OF THE PARTICULAR INDIVIDUAL. A THE  
13 DEPICTION IS SUCH THAT A REASONABLE PERSON MAY BELIEVE BELIEVES THE DEPICTION IS GENUINE BUT AND:

14 (i) IT DEPICTS THE PARTICULAR INDIVIDUAL IN A MANNER THAT THE PARTICULAR INDIVIDUAL DID NOT  
15 ACTUALLY PERFORM OR APPEAR; ; OR,

16 (ii) IF THE PARTICULAR INDIVIDUAL DID PERFORM OR APPEAR, THE DEPICTION WAS MATERIALLY ALTERED  
17 FROM THE FUNDAMENTAL CHARACTER OF THE PERFORMANCE OR APPEARANCE.

18 ~~(b)(C)~~ "Digital voice replica DEPICTION" means an-A NEWLY CREATED, COMPUTER-GENERATED, AND  
19 HIGHLY REALISTIC audio rendering OF AN-A PARTICULAR INDIVIDUAL'S VOICE that is created or altered in whole or in  
20 part using digital technology and is fixed in a sound recording or audiovisual work that includes replications,  
21 imitations, or approximations of the voice of an individual engaging in expression that the individual did not  
22 actually perform IS NEARLY INDISTINGUISHABLE FROM THE PARTICULAR INDIVIDUAL'S ACTUAL VOICE. A THE DEPICTION  
23 IS SUCH THAT A REASONABLE PERSON MAY BELIEVE BELIEVES THE RENDERING DEPICTION IS GENUINE AND:

24 (i) IN A MATTER IT DEPICTS THE PARTICULAR INDIVIDUAL IN A MANNER THAT THE PARTICULAR INDIVIDUAL  
25 DID NOT ACTUALLY PERFORM OR APPEAR; OR

26 (ii) IF THE PARTICULAR INDIVIDUAL DID PERFORM, THE FUNDAMENTAL CHARACTER OF THE PERFORMANCE  
27 AND THE RENDERING DEPICTION WERE MATERIALLY ALTERED FROM THE FUNDAMENTAL CHARACTER OF THE  
28 PERFORMANCE OR APPEARANCE.

