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HOUSE BILL NO. 2462

Offered January 13, 2025

Prefiled January 8, 2025

A BILL to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 58, consisting of sections numbered 59.1-607 through 59.1-612, relating to Digital Replication Right Act.

Patrons—Glass and Clark

Referred to Committee on Communications, Technology and Innovation

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 59.1 a chapter numbered 58, consisting of sections numbered 59.1-607 through 59.1-612, as follows:

CHAPTER 58.

DIGITAL REPLICATION RIGHT ACT.

§ 59.1-607. Definitions.

For purposes of this chapter, unless the context requires a different meaning:

"Digital replica" means a newly created, computer-generated, highly realistic electronic representation that is made for commercial use and is readily identifiable as the voice or visual likeness of an individual that (i) is embodied in a sound recording, image, audiovisual work, including an audiovisual work that does not have any accompanying sounds, or transmission (a) in which the actual individual did not actually perform or appear or (b) that is a version of a sound recording, image, or audiovisual work in which the actual individual did perform or appear or in which the fundamental character of the performance or appearance has been materially altered and (ii) is nearly indistinguishable from the actual voice or visual likeness of that individual such that a reasonable person would believe that the electronic representation is only of that particular, actual individual. "Digital replica" does not include the electronic reproduction, use of a sample of one sound recording or audiovisual work into another, remixing, mastering, or digital remastering of a sound recording or audiovisual work authorized by the right holder.

"Individual" means a natural person.

"Online service" means (i) any public-facing website, online service, online application, mobile application, virtual reality environment, or cloud service provider or (ii) a service engaged in the transmission of digital audio transmissions as defined in 17 U.S.C. 114(j)(5). "Online service" includes a social media service, social network, or application store. "Online service" does not include a service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to enabling the operation of the communications service of a provider of online services or network access or the operator of facilities for such service.

"Production" means the creation of a digital replica.

"Right holder" means the individual whose voice or visual likeness is at issue with respect to a digital replica and any other person that has acquired, through a license, the right to authorize the use of such voice or visual likeness in a digital replica.

"Sound recording artist" means an individual who creates or performs in sound recordings for economic gain or for the livelihood of the individual.

§ 59.1-608. Digital replication right.

Subject to the provisions of this chapter, each right holder shall have the right to authorize the use of the voice or visual likeness of the individual in a digital replica. Such right is a property right and is licensable, in whole or in part, exclusively or non-exclusively, by the right holder. Such right is not assignable. The right shall expire upon the death of the individual to whom the right applies. The right shall be exclusive to the individual to whom the right applies, subject to the licensing of the right during the lifetime of that individual.

§ 59.1-609. Licenses.

A. The right holder may in whole or in part, exclusively or non-exclusively, license the right described in § 59.1-608.

A license is valid only to the extent that the license duration does not exceed 10 years.

A license involving an individual to whom the right applies who is younger than 18 years of age is valid only to the extent that the license duration does not exceed five years. Any such license shall expire when the individual to whom the right applies reaches 18 years of age.

Any license shall expire upon the death of the individual to whom the right applies.

B. A license shall be valid only if the license agreement is (i) in writing and signed by the individual to whom the right applies or an authorized representative of such individual, (ii) includes a reasonably specific description of the intended uses of the digital replica, and (iii) such license agreement is notarized.

59 C. The provisions of subsections A and B shall not apply if the license is governed by a collective  
60 bargaining agreement that addresses digital replicas.

61 D. The provisions of subsections A and B shall not affect terms and conditions of a license or related  
62 contract other than those described in this section, and the expiration of such license shall not affect the  
63 remainder of the license or related contract.

64 E. A digital replica, the use of which is authorized pursuant to the terms of a license, may continue to be  
65 utilized in a manner consistent with the terms of that license after the expiration or termination of the license.

66 **§ 59.1-610. Prohibited activity.**

67 No person shall engage in the intentional production of a digital replica without the consent of the  
68 applicable right holder. No person shall engage in the intentional publication, reproduction, display,  
69 distribution, transmission, or otherwise making available to the public of an unauthorized digital replica if  
70 the person engaging in that activity has actual knowledge that the digital replica was not authorized by the  
71 applicable individual or right holder.

72 **§ 59.1-611. Exceptions.**

73 A. It shall not be a violation of this chapter if, regardless of the degree of fictionalization:

74 1. The applicable digital replica is produced for or used in a news, public affairs, or sports broadcast or  
75 account, provided that the digital replica is the subject of, or is materially relevant to the subject of, such  
76 broadcast or account;

77 2. The applicable digital replica is a representation of the applicable individual as the individual in a  
78 documentary, in a docudrama, or in a historical or biographical manner, including some degree of  
79 fictionalization;

80 3. The applicable digital replica is produced for or used in commentary, criticism, scholarship, satire, or  
81 parody or distributed via an online service with a primary purpose of commentary, criticism, scholarship,  
82 satire, or parody;

83 4. The use of the applicable digital replica is fleeting or negligible; or

84 5. The applicable digital replica is used in an advertisement or commercial announcement for a purpose  
85 described in any of subdivisions 1 through 4 and the applicable digital replica is relevant to the subject of the  
86 work so advertised or announced.

87 B. The exceptions in subsection A shall not apply where the applicable digital replica is used to depict  
88 sexually explicit conduct, as defined in 18 U.S.C. § 2256(2)(A).

89 C. No person shall be secondarily liable for a violation of this chapter for manufacturing, importing,  
90 offering to the public, providing, or otherwise distributing a product or service capable of producing digital  
91 replicas unless such person directed the production of the digital replica.

92 D. An online service shall not be liable for violating this chapter by referring or linking a user to an  
93 unauthorized digital replica if such online service removes or disables access to the material that is claimed  
94 to be an unauthorized digital replica as soon as is reasonable.

95 E. An online service shall not be liable for violating this chapter by storing or distributing third-party-  
96 provided material that resides on a system or network controlled or operated by or for the online service, if  
97 the online service (i) removes, or disables access to, all instances of the material or an activity using the  
98 material that is claimed to be an unauthorized digital replica as soon as is reasonable and (ii) takes  
99 reasonable steps to promptly notify the third party that provided the material that the online service has  
100 removed or disabled access to the material.

101 **§ 59.1-612. Enforcement.**

102 A. A civil action for a violation of the provisions of § 59.1-610 may be brought by (i) a right holder; (ii) if  
103 the individual to whom the right applies is younger than 18 years of age, a parent or guardian of the  
104 individual to whom the right applies; (iii) any other person that controls, including by virtue of a license, the  
105 right to authorize the use of the voice or visual likeness of the right holder; (iv) in the case of a digital replica  
106 involving a sound recording artist, any person that has, directly or indirectly, entered into a contract for the  
107 exclusive personal services of the sound recording artist as a sound recording artist or an exclusive license to  
108 distribute or transmit one or more works that capture the audio performance of the sound recording artist.

109 A civil action may not be brought under this subsection unless the action is commenced not later than  
110 three years after the date on which the party seeking to bring the civil action discovered, or with due  
111 diligence should have discovered, the applicable violation.

112 It shall not be a defense in a civil action brought under this section that the defendant displayed or  
113 otherwise communicated to the public a disclaimer stating that the applicable digital replica was  
114 unauthorized or disclosing that the digital replica was generated through the use of artificial intelligence or  
115 other technology.

116 B. In any civil action brought under this section, an individual or entity that engages in a prohibited  
117 activity pursuant to § 59.1-610 shall be liable to the injured party in an amount equal to the greater of:

118 1. \$5,000 per work embodying the applicable unauthorized digital replica; or

119 2. Any actual damages suffered by the injured party as a result of the prohibited activity.

120 C. The plaintiff may seek injunctive or other equitable relief. In the case of a willful violation in which the

121 *injured party has proven that the defendant acted with malice, fraud, or knowledge, the court may award to*  
122 *the injured party punitive damages. If the prevailing party is the party bringing the action, the court shall*  
123 *award reasonable attorney fees. If the prevailing party is the party defending the action, the court shall*  
124 *award reasonable attorney fees if the court determines that the action was not brought in good faith.*

125 *D. An online service that has a reasonable belief that material that is claimed to be an unauthorized*  
126 *digital replica does not qualify as a digital replica shall not be liable for statutory or actual damages*  
127 *exceeding \$1,000,000, regardless of whether the material is ultimately determined to be an unauthorized*  
128 *digital replica.*

129 *E. For purposes of this section, each display, copy, transmission, and instance of the unauthorized digital*  
130 *replica made available on an online service made in violation of the provisions of this chapter shall be*  
131 *considered a distinct violation of § 59.1-610, unless the online service has taken reasonable steps to remove*  
132 *or disable access to the unauthorized digital replica as soon as is reasonable.*

133 **2. That the provisions of this act shall become effective on July 1, 2026.**

INTRODUCED

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