

26103196D

1 **HOUSE BILL NO. 581**

2 Offered January 14, 2026

3 Prefiled January 13, 2026

4 A BILL to amend and reenact § 8.01-40 of the Code of Virginia, relating to unauthorized use of name,  
5 portrait, voice, likeness, or picture of any person; digital replica; civil liability; statute of limitations.  
6

7 Patron—Glass

8 Committee Referral Pending  
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10 Be it enacted by the General Assembly of Virginia:

11 1. That § 8.01-40 of the Code of Virginia is amended and reenacted as follows:

12 § 8.01-40. Unauthorized use of name, portrait, voice, likeness, or picture of any person; punitive  
13 damages; unauthorized use of digital replica; statute of limitations.14 A. For purposes of this section, "digital replica" means a computer-generated, highly realistic electronic  
15 representation that is readily identifiable as the voice or visual likeness of an individual that is embodied in a  
16 sound recording, image, audiovisual work, or transmission in which the actual individual either did not  
17 actually perform or appear, or the actual individual did perform or appear, but the fundamental character of  
18 the performance or appearance has been materially altered. "Digital replica" does not include the electronic  
19 reproduction, use of a sample of one sound recording or audiovisual work into another, remixing, mastering,  
20 or digital remastering of a sound recording or audiovisual work authorized by the copyright holder.21 B. Any person whose name, portrait, voice, likeness, or picture is used without having first obtained the  
22 written consent of such person, or if dead, of the surviving consort and if none, of the next of kin, or if a  
23 minor, the written consent of his or her such minor's parent or guardian, for advertising purposes or for the  
24 purposes of trade, such persons may maintain a suit in equity against the person, firm, or corporation so using  
25 such person's name, portrait, voice, likeness, or picture to prevent and restrain the use thereof; and may also  
26 sue and recover damages for any injuries sustained by reason of such use. And if the defendant shall have  
27 knowingly used such person's name, portrait, voice, likeness, or picture in such manner as is forbidden or  
28 declared to be unlawful by this chapter, the jury, in its discretion, may award punitive damages.29 B. C. Notwithstanding the provisions of subsection B, a person or entity who (i) originates and distributes  
30 a digital replica of a person's voice or likeness in an expressive audiovisual work or sound recording without  
31 first obtaining the prior written consent required by subsection B or (ii) acts as a platform that hosts or  
32 facilitates the creation or distribution of such digital replica by a third party and, after receiving notice from  
33 the rights holder that such digital replica is unauthorized, fails to promptly remove or disable access to every  
34 instance of such unauthorized digital replica shall be liable to the individual or, if applicable, to the surviving  
35 consort and if none, to the next of kin, or if a minor, such minor's parent or guardian in an amount equal to  
36 the greater of \$1,000 or the actual damages suffered by the person, surviving consort, next of kin, parent, or  
37 guardian. For purposes of clause (i), each unauthorized digital replica that originates and is distributed in  
38 violation of this subsection shall be treated as a single instance of use, irrespective of the number of times  
39 such unauthorized digital replica is shared, copied, or otherwise disseminated; however, the extent of such  
40 dissemination may be considered by the court or jury when determining the amount of actual damages. For  
41 purposes of clause (ii), a platform that fails to promptly remove or disable access to every instance of an  
42 unauthorized digital replica upon receiving notice and having a reasonable opportunity to do so shall be  
43 liable for \$1,000 for each instance of such unauthorized digital replica that remains accessible.44 D. Nothing in this section shall be construed to impose liability on an internet service provider or its  
45 affiliate or subsidiary that solely provides access to or connection from a website or other online content, or  
46 a facility, system, or network not under that provider's control, including transmission, downloading, storage,  
47 or access, if the provider is not responsible for the creation of the content that constitutes an unauthorized  
48 digital replica.49 E. A digital replica of a person's voice or likeness in an expressive audiovisual work or sound recording  
50 may be used without first obtaining the prior written consent required by subsection B if the use of the digital  
51 replica meets any of the following criteria:52 1. The use is in connection with a bona fide news, public affairs, or sports broadcast or account, provided  
53 that the digital replica is the subject of, or is materially relevant to, the subject of such broadcast or account;54 2. The use is consistent with the public interest in bona fide commentary, criticism, scholarship, satire, or  
55 parody;56 3. The use represents the individual as the individual's self in a documentary or in a historical or  
57 biographical manner, including some degree of fictionalization, unless the use creates the false impression  
58 that the work is an authentic recording in which the individual participated or the digital replica is embodied

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59     *in a musical sound recording that is synchronized to accompany a motion picture or other audiovisual work,*  
60     *except to the extent that the use is protected by the First Amendment to the Constitution of the United States;*  
61         *4. The use is fleeting or incidental;*  
62         *5. The use is in an advertisement or commercial announcement for a work described in this subsection*  
63         *and is relevant to the subject of such work; or*  
64         *6. The use is otherwise protected under the Constitution of the United States.*  
65         *F. No action shall be commenced under this section more than 20 100 years after the death of such*  
66         *person.*

67     **2. That the provisions of this act shall not become effective unless reenacted by the 2027 Session of the**  
68     **General Assembly.**