

As Introduced

**135th General Assembly
Regular Session
2023-2024**

H. B. No. 367

Representatives Mathews, Hillyer

A BILL

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, merchandise, goods, services, or other commercial activities not expressly exempted under this chapter;

(2) For advertising or soliciting the purchase of products, merchandise, goods, services, or other commercial activities not expressly exempted under this chapter;

(3) For the purpose of promoting travel to a place;

(4) For the purpose of fundraising.

(C) "Name" means the actual, assumed, or clearly identifiable name of or reference to a living or deceased individual that identifies the individual.

(D) "Right of publicity" means the property right in an individual's persona to use the individual's persona ~~for a commercial purpose.~~

(E) "Trier of fact" means the jury or, in a nonjury action, the court.

(F) "Written consent" includes written, electronic, digital, or any other verifiable means of authorization.

(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.

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~~ or a modified facsimile of an
individual's persona wherein a reasonable trier of fact would
confuse the modified facsimile and the individual:

(1) During the individual's lifetime;

(2) For a period of sixty years after the date of the
individual's death; or

(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.

(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:

(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.

(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.

(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.	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 right of publicity, who is expressly authorized in writing to grant consent by a person or persons specified in division (A) (1) of this section.

(B) A person or persons specified in division (A) of this section may do one or both of the following:

(1) Grant a person or persons consent to use all or part of an individual's right of publicity for a commercial purpose;

(2) Limit, restrict, or place conditions on how a person or persons to whom consent is granted pursuant to this section may use an individual's right of publicity.

Sec. 2741.06. (A) The following persons may bring a civil action to enforce the rights set forth in this chapter:

(1) A person or persons, including an individual whose right of publicity is at issue, who collectively own all of an individual's right of publicity, subject to any licenses regarding that right of publicity;

(2) A person, including a licensee of an individual's right of publicity, who is expressly authorized in writing by the owner or owners of an individual's right of publicity to bring a civil action;

(3) Except as otherwise expressly provided in an agreement transferring an aspect of an individual's right of publicity and subject to division (C) of this section, a person to whom ownership or any portion of ownership of an individual's right of publicity has been transferred.

(B) Before bringing a civil action under this section, a person who owns less than all of an individual's right of

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

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

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

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

(b) Material that has political or newsworthy value;

(c) Original works of fine art;

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

(2) The use of an individual's name to truthfully identify
the individual as the author of or contributor to a written work
or the performer of a recorded performance under circumstances
in which the written work or the recorded performance is

otherwise lawfully reproduced, exhibited, or broadcast;	191
(3) The use of an aspect of an individual's persona in connection with the broadcast or reporting of an event or topic of general or public interest;	192 193 194
(4) The use of the persona of an individual solely in the individual's role as a member of the public if the individual is not named or otherwise singled out as an individual;	195 196 197
(5) A use of an individual's persona by an institution of higher education if all of the following apply:	198 199
(a) The individual is or was a student at, or a member of the faculty or staff of, the institution of higher education.	200 201
(b) The use of the individual's persona is for educational purposes or for the promotion of the institution of higher education and its educational or institutional objectives.	202 203 204
(6) A use of the persona of an individual that is protected by the First Amendment to the United States Constitution as long as the use does not convey or reasonably suggest endorsement by the individual whose persona is at issue.	205 206 207 208
(B) This chapter does not affect rights or privileges recognized under the Ohio Constitution or United States Constitution.	209 210 211
<u>Sec. 2742.01. As used in this chapter:</u>	212
<u>(A) "Deepfake recording" means any visual or audio media in an electronic format, video recording, or sound recording that is created or altered in a manner such that it falsely appears to be an authentic record of the actual speech or conduct of an individual depicted in the media or recording.</u>	213 214 215 216 217

(B) "Malicious deepfake recording" means a deepfake recording created or altered by, or on behalf of, a person that intends to cause harm to another person due to the false nature of the speech or conduct recorded or depicted therein. 218
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(C) "Recording" means visual or audio media in an electronic format, video recording, or sound recording. 222
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Sec. 2742.02. (A) Except as otherwise provided in this section, no person shall, without written consent of the depicted individual, do either of the following: 224
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(1) Prepare, produce, or develop any malicious deepfake recording of an individual's voice, image, or likeness to distribute to, exhibit to, or exchange with others; 227
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(2) Offer to distribute, exhibit, or exchange with others a malicious deepfake recording. 230
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(B) No person shall recklessly distribute any malicious deepfake recording. 232
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(C) Divisions (A) and (B) of this section do not apply to any malicious deepfake recording that meets either of the following criteria: 234
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(1) The material does not include a political or campaign advertisement, and appears in a context that would cause a reasonable person to believe that the material is inauthentic, such as in a parody or fictionalized movie. 237
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(2) The material, which may include a political or campaign advertisement, includes a disclaimer to which all of the following apply: 241
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(a) It is included in a conspicuous place on the material or is contained or included within the media or recording. 244
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(b) It states that the media or recording has been 246
materially altered in a manner that renders it fictionalized and 247
inauthentic. 248

(c) It identifies the name and contact information of the 249
entity that is responsible for creating or distributing the 250
media or recording. 251

(D) The exceptions provided in division (C) of this 252
section do not apply to a malicious deepfake recording 253

that is pornographic 254

or that falsely depicts or records the speech or conduct 255
of an individual who is under seventeen years of age. 256

Sec. 2742.03. (A) An individual injured by a violation of 257
division (A) or (B) of section 2742.02 of the Revised Code may 258
commence a civil action in a court of competent jurisdiction 259
against the person that violates that division for any of the 260
following: 261

(1) Either actual damages or, at the election of the 262
plaintiff, statutory damages in an amount of at least two 263
thousand five hundred dollars, and not more than ten thousand 264
dollars, as determined in the discretion of the trier of fact, 265
taking into account the willfulness of the violation, the harm 266
to the individual in question, and the ability of the defendant 267
to pay a civil damage award; 268

(2) Punitive or exemplary damages pursuant to section 269
2315.21 of the Revised Code, if applicable; 270

(3) Temporary or permanent injunctive relief. 271

(B) (1) In addition to the remedies described in division 272
(A) of this section, if the plaintiff establishes by a 273

preponderance of the evidence that the defendant violated 274
section 2905.11 of the Revised Code in relation to the violation 275
of division (A) or (B) of section 2742.02 of the Revised Code, 276
the court shall additionally award the plaintiff statutory 277
damages based on the amount the defendant extorts or attempts to 278
extort from the plaintiff whose voice, image, or likeness is 279
used in the deepfake recording. The amount of statutory damages 280
shall be determined subject to the following limitations: 281

(a) If the value of the thing of value or valuable benefit 282
involved in the violation of section 2905.11 of the Revised Code 283
is less than one thousand dollars, the amount of statutory 284
damages shall not exceed two thousand five hundred dollars. 285

(b) If the value of the thing of value or valuable benefit 286
involved in the violation of section 2905.11 of the Revised Code 287
is at least one thousand dollars, but less than seven thousand 288
five hundred dollars, the amount of statutory damages shall not 289
exceed five thousand dollars. 290

(c) If the value of the thing of value or valuable benefit 291
involved in the violation of section 2905.11 of the Revised Code 292
is at least seven thousand five hundred dollars, but less than 293
one hundred fifty thousand dollars, the amount of statutory 294
damages shall not exceed ten thousand dollars. 295

(d) If the value of the thing of value or valuable benefit 296
involved in the violation of section 2905.11 of the Revised Code 297
is one hundred fifty thousand dollars or more, the amount of 298
statutory damages shall not exceed fifteen thousand dollars. 299

(2) A conviction of or plea of guilty to a violation of 300
section 2905.11 of the Revised Code is not required for an award 301
of statutory damages under division (B)(1) of this section. 302

(C) No action under this section shall be initiated more 303
than four years after the alleged violation of division (A) or 304
(B) of section 2742.02 of the Revised Code. 305

(D) The court in which an action under this section is 306
initiated may award the prevailing party reasonable attorney's 307
fees, court costs, and reasonable expenses associated with the 308
civil action. 309

(E) As part of a final judgment, a court may order the 310
destruction or other reasonable disposition of a malicious 311
deepfake recording, including by requiring the defendant to take 312
affirmative steps to cause others to take down the malicious 313
deepfake recording and by requiring the defendant to indemnify 314
the plaintiff for any past or future expenses associated with 315
the plaintiff's efforts to have the malicious deepfake recording 316
removed or destroyed. 317

(F) The trier of fact shall include any profits derived 318
from, and attributable to, a violation of division (A) or (B) of 319
section 2742.02 of the Revised Code in calculating the award of 320
actual damages under this section. 321

Sec. 2742.04. (A) The remedies provided for in this 322
chapter are in addition to any other remedies provided for by 323
state or federal statute or common law. 324

(B) Any person that purchases a deepfake recording, while 325
holding a good-faith belief that the recording is authentic, may 326
commence a civil action in a court of competent jurisdiction 327
against a person who violates division (A) or (B) of section 328
2742.02 of the Revised Code for either of the following: 329

(1) Treble the amount of the actual economic damages; 330

(2) At the direction of the plaintiff, statutory damages 331

in the amount of two hundred fifty dollars. 332

Sec. 2905.11. (A) No person, with purpose to obtain any 333
valuable thing or valuable benefit or to induce another to do an 334
unlawful act, shall do any of the following: 335

(1) Threaten to commit any felony; 336

(2) Threaten to commit any offense of violence; 337

(3) Violate section 2903.21 or 2903.22 of the Revised 338
Code; 339

(4) Utter or threaten any calumny against any person; 340

(5) Expose or threaten to expose any matter tending to 341
subject any person to hatred, contempt, or ridicule, or to 342
damage any person's personal or business repute, or to impair 343
any person's credit. 344

(B) Whoever violates this section is guilty of extortion, 345
a felony of the third degree. 346

(C) A person violates division (A) (4) or (5) of this 347
section by distributing, exhibiting, or exchanging a malicious 348
deepfake recording that falsely depicts or records the speech or 349
conduct of another individual, in violation of division (A) or 350
(B) of section 2742.02 of the Revised Code, or by threatening to 351
do so. 352

(D) As used in this section, "threat" includes a direct 353
threat and a threat by innuendo. 354

Section 2. That existing sections 2741.01, 2741.02, 355
2741.05, 2741.06, 2741.09, and 2905.11 of the Revised Code are 356
hereby repealed. 357