



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB3248

Introduced 2/6/2024, by Sen. Dave Syverson

SYNOPSIS AS INTRODUCED:

New Act

Creates the No Artificial Intelligence Fake Replicas And Unauthorized Duplications Act of 2024 and may be referred to as the No AI FRAUD Act. Defines terms such as "personalized cloning service", "digital voice replica", "voice", "likeness", and digital technology". Provides that every individual has a property right in his or her own likeness and voice. Creates a private cause of action against any person or entity who, without consent of the individual whose voice or likeness rights are affected, does any of the following: (i) distributes or otherwise makes available to the public a personalized cloning service; (ii) publishes or otherwise makes available to the public a digital voice replica or digital depiction with knowledge that the digital voice replica or digital depiction was not authorized by the individual holding the voice or likeness rights so affected; or (iii) materially contributes to or otherwise facilitates any of the conduct proscribed in (i) or (ii) with knowledge that the individual holding the affected voice or likeness rights has not consented to the conduct. Provides remedies in the case of an unauthorized distribution of a personalized cloning service to include damages in an amount equal to the greater of \$50,000 per violation or the actual damages and any profits from the unauthorized use that are attributable to such use and are not taken into account in computing the actual damages. Provides that in the case of an unauthorized publication of a digital voice replica or digital depiction, \$5,000 per violation or the actual damages and any profits from the unauthorized use that are attributable to such use and are not taken into account in computing the actual damages. Provides that punitive damages and reasonable attorney's fees may also be awarded to the injured person. Provides that First Amendment protections shall constitute a defense to an alleged violation of this Act. In evaluating any such defense, the public interest in access to the use shall be balanced against the intellectual property interest in the voice or likeness. Provides that a person or entity who uses an individual's voice or likeness in a manner that violates this Act shall not be liable if the harm caused by such conduct is negligible. Provides that the Act is operative 180 days after it becomes law.

LRB103 37732 JRC 67859 b

A BILL FOR

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the No
5 Artificial Intelligence Fake Replicas And Unauthorized
6 Duplications Act. This Act may be referred to as the No AI
7 FRAUD Act.

8 Section 2. Findings. The General Assembly finds that
9 recent advancements in artificial intelligence (AI) technology
10 and the development of deepfake software have adversely
11 affected individuals' ability to protect their voice and
12 likeness from misappropriation, including:

13 (1) On or around April 4, 2023, AI technology was used
14 to create the song titled "Heart on My Sleeve," emulating
15 the voices of recording artists Drake and The Weeknd. It
16 reportedly received more than 11 million views.

17 (2) On or around October 1, 2023, AI technology was
18 used to create a false endorsement featuring Tom Hanks'
19 face in an advertisement for a dental plan.

20 (3) From October 16 to 20, 2023, AI technology was
21 used to create false, nonconsensual intimate images of
22 high school girls in Westfield, New Jersey.

23 (4) In fall 2023, AI technology was used to create the

1 song titled "Demo #5: nostalgia," manipulating the voices
2 of Justin Bieber, Daddy Yankee, and Bad Bunny. It
3 reportedly received 22 million views on Tik Tok and 1.2
4 million views on YouTube.

5 (5) A Department of Homeland Security report titled
6 the "Increasing Threat of Deepfake Identities" states that
7 as of October 2020, researchers had reported more than
8 100,000 computer-generated fake nude images of women
9 created without their consent or knowledge.

10 (6) According to Pew Research Center, approximately
11 63% of American say made-up or altered videos create
12 confusion about the basic facts of current issues.

13 Section 3. Likeness and voice rights.

14 (a) Definitions. In this Act:

15 (1) "Individual" means a human being, living or dead.

16 (2) "Digital depiction" means a replica, imitation, or
17 approximation of the likeness of an individual that is
18 created or altered in whole or in part using digital
19 technology.

20 (3) "Personalized cloning service" means an algorithm,
21 software, tool, or other technology, service, or device
22 the primary purpose or function of which is to produce one
23 or more digital voice replicas or digital depictions of
24 particular, identified individuals.

25 (4) "Digital voice replica" means an audio rendering

1 that is created or altered in whole or in part using
2 digital technology and is fixed in a sound recording or
3 audiovisual work which includes replications, imitations,
4 or approximations of an individual that the individual did
5 not actually perform.

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

14 (6) "Likeness" means the actual or simulated image or
15 likeness of an individual, regardless of the means of
16 creation, that is readily identifiable as the individual
17 by virtue of the individual's face, likeness, or other
18 distinguishing characteristic, or from other information
19 displayed in connection with the likeness.

20 (7) "Digital technology" means a technology or device
21 now known or hereafter created such as computer software,
22 artificial intelligence, machine learning, quantum
23 computing, or other similar technologies or devices.

24 (b) Property right in likeness and voice.

25 (1) In general. Every individual has a property right
26 in the individual's own likeness and voice.

1 (2) Extent. The rights provided for in paragraph (1)
2 constitute intellectual property rights and are freely
3 transferable and descendible, in whole or in part, and do
4 not expire upon the death of the individual, whether or
5 not such rights were commercially exploited by the
6 individual during the individual's lifetime.

7 (3) Transferability. The rights provided for in
8 paragraph (1) shall be exclusive to the individual,
9 subject to the transfer of such rights as provided in
10 paragraph (2), during such individual's lifetime and to
11 the executors, heirs, transferees, or devisees for a
12 period of ten years after the death of the individual, and
13 shall be terminated by:

14 (A) proof of the non-use of the likeness or voice
15 of any individual for commercial purposes by an
16 executor, transferee, heir, or devisee to such use for
17 a period of two years subsequent to the initial
18 ten-year period following the individual's death; or

19 (B) the death of all executors, transferees,
20 heirs, or devisees.

21 (4) Validity of use. An agreement authorizing the use
22 of a digital depiction or digital voice replica for a new
23 performance of the individual in an advertisement or
24 expressive work shall be valid only if:

25 (A) the applicable individual was:

26 (i) represented by counsel in the transaction and

1 the agreement was in writing; and

2 (ii) 18 years of age or older at the time of entry
3 into the agreement, or, if under 18 years of age at
4 that time, the agreement is approved by a court in
5 accordance with applicable State law; or

6 (B) the terms of the agreement are governed by a
7 collective bargaining agreement.

8 (c) Unauthorized simulation of voice or likeness.

9 (1) In general. Any person or entity who, in a manner
10 affecting interstate or foreign commerce (or using any
11 means or facility of interstate or foreign commerce), and
12 without consent of the individual holding the voice or
13 likeness rights affected thereby:

14 (A) distributes, transmits, or otherwise makes
15 available to the public a personalized cloning
16 service;

17 (B) publishes, performs, distributes, transmits,
18 or otherwise makes available to the public a digital
19 voice replica or digital depiction with knowledge that
20 the digital voice replica or digital depiction was not
21 authorized by the individual holding the voice or
22 likeness rights affected thereby; or

23 (C) materially contributes to, directs, or
24 otherwise facilitates any of the conduct proscribed in
25 subparagraph (A) or (B) with knowledge that the
26 individual holding the affected voice or likeness

1 rights has not consented to the conduct,
2 shall be liable for damages as set forth in paragraph (2).

3 (2) Remedies. In any action brought under this
4 Section, the following shall apply:

5 (A) The person or entity who violated the Section
6 shall be liable to the injured party or parties in an
7 amount equal to the greater of:

8 (i) in the case of an unauthorized
9 distribution, transmission, or other making
10 available of a personalized cloning service,
11 \$50,000 per violation or the actual damages
12 suffered by the injured party or parties as a
13 result of the unauthorized use, plus any profits
14 from the unauthorized use that are attributable to
15 such use and are not taken into account in
16 computing the actual damages; and

17 (ii) in the case of an unauthorized
18 publication, performance, distribution,
19 transmission, or other making available of a
20 digital voice replica or digital depiction, \$5,000
21 per violation or the actual damages suffered by
22 the injured party or parties as a result of the
23 unauthorized use, plus any profits from the
24 unauthorized use that are attributable to such use
25 and are not taken into account in computing the
26 actual damages.

1 (B) In establishing profits under this
2 subdivision, the injured party or parties shall be
3 required only to present proof of the gross revenue
4 attributable to the unauthorized use, and the person
5 or entity who violated this Section shall be required
6 to prove his or her expenses deductible therefrom.

7 (C) Punitive damages and reasonable attorney's
8 fees may also be awarded to the injured party or
9 parties.

10 (D) It shall not be a defense to an allegation of a
11 violation of paragraph (1) that the unauthorized user
12 displayed or otherwise communicated to the public a
13 disclaimer stating that the digital depiction, digital
14 voice replica, or personalized cloning service was
15 unauthorized or that the individual rights owner did
16 not participate in the creation, development,
17 distribution, or dissemination of the unauthorized
18 digital depiction, digital voice replica, or
19 personalized cloning service.

20 (E) An action to enforce this Section may be
21 brought by:

22 (i) the individual whose voice or likeness is
23 at issue;

24 (ii) any other person or entity to which the
25 individual has assigned or exclusively licensed
26 the individual's voice or likeness rights; or

1 (iii) in the case of an individual who
2 performs music as a profession, and has not
3 authorized the use at issue, by any person or
4 entity that has entered into a contract for the
5 individual's exclusive personal services as a
6 recording artist or an exclusive license to
7 distribute sound recordings that capture the
8 individual's audio performances.

9 (d) First Amendment defense. First Amendment
10 protections shall constitute a defense to an alleged
11 violation of subsection (c). In evaluating any such
12 defense, the public interest in access to the use shall be
13 balanced against the intellectual property interest in the
14 voice or likeness. Factors to be considered may include
15 whether:

16 (1) the use is commercial;

17 (2) the individual whose voice or likeness is at
18 issue is necessary for and relevant to the primary
19 expressive purpose of the work in which the use
20 appears; and

21 (3) the use competes with or otherwise adversely
22 affects the value of the work of the owner or licensee
23 of the voice or likeness rights at issue.

24 (e) Limitation.

25 (1) In general. A person or entity who uses an
26 individual's voice or likeness in a manner that violates

1 subsection (c) shall not be liable if the harm caused by
2 such conduct is negligible.

3 (2) Harm. For purposes of this Section, the term
4 "harm" includes:

5 (A) financial or physical injury, or an elevated
6 risk of such injury, to any person whose voice or
7 likeness rights are affected by the conduct at issue;

8 (B) severe emotional distress of any person whose
9 voice or likeness is used without consent; and

10 (C) a likelihood that the use deceives the public,
11 a court, or tribunal.

12 (3) Per se harm. Any digital depiction or digital
13 voice replica which includes child sexual abuse material,
14 is sexually explicit, or includes intimate images
15 constitutes harm.

16 (4) Balance of equities. Except when paragraph (3)
17 applies, alleged harms shall be weighed against:

18 (A) whether the individual whose voice or likeness
19 is at issue is necessary for and relevant to the
20 primary expressive purpose of the work in which the
21 use appears;

22 (B) whether the use is transformative; and

23 (C) whether the use constitutes constitutionally
24 protected commentary on a matter of public concern.

25 (f) Limitations period. No civil action shall be
26 maintained under the provisions of this Act unless it is

1 commenced within four years after the party seeking to bring
2 the claim discovered, or with due diligence should have
3 discovered, the violation.

4 (g) No preemption. Nothing in this Act shall be construed
5 to limit any rights an individual may have under any other law
6 providing protections against the unauthorized use of an
7 individual's name, voice, or likeness.

8 (h) Severability. If any provision of this Act, or the
9 application thereof, is held invalid, the validity of the
10 remainder of this Act and the application of such provision to
11 other persons and circumstances shall not be affected thereby.

12 (i) Construction. Nothing in this Act shall alter the
13 application by a court of First Amendment protections in the
14 event such a defense is asserted to subsection (c).

15 (j) Application. This Section shall be considered to be a
16 law pertaining to intellectual property for the purposes of
17 Section 230(e)(2) of the Communications Act of 1934 (47 U.S.C.
18 230(e)(2)).

19 Section 4. Operative date. This Act is operative 180 days
20 after it becomes law and applies regardless of whether the
21 individual has died before that date.