

By: Hunter

H.B. No. 3950

A BILL TO BE ENTITLED

AN ACT

relating to digital replication rights in the voice and visual likeness of individuals; providing private causes of action; authorizing a fee.

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

SECTION 1. The Business & Commerce Code is amended by adding Title 14A to read as follows:

TITLE 14A. DIGITAL REPLICAS

SUBTITLE A. DIGITAL REPLICATION RIGHTS

CHAPTER 651. VOICE OR VISUAL LIKENESS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 651.001. DEFINITIONS. In this chapter:

(1) "Digital replica" means a newly created, computer-generated, highly realistic electronic representation that is readily identifiable as the voice or visual likeness of an individual that:

(A) is embodied in a sound recording, image, audiovisual work, including an audiovisual work that does not have any accompanying sounds, or transmission:

(i) in which the individual did not actually perform or appear; or

(ii) that is a version of a sound recording, image, or audiovisual work in which the individual did perform or appear, but in which the fundamental character of the performance

or appearance has been materially altered; and

(B) 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 copyright holder.

(2) "Digital replication right" means the right established under Subchapter B.

(3) "Eligible plaintiff" means a person authorized to bring an action under Section 651.201.

(4) "Individual" means a natural or deceased person.

(5) "Minor" means a person younger than 18 years of age who:

(A) has never been married; and

(B) has not had the disabilities of minority removed for general purposes.

(6) "Online service" means:

(A) any publicly accessible Internet website, online application, mobile application, or virtual reality environment, including a social media service, social media network, or online application store, that predominantly provides a community forum for user-generated content, including the sharing of videos, images, games, audio files, or other material; and

(B) a digital music provider, as defined by 17 U.S.C. Section 115(e).

(7) "Online service provider" means the owner of an online service.

1 (8) "Production" means the creation of a digital
2 replica.

3 (9) "Right holder" means:

4 (A) the individual whose voice or visual likeness
5 is simulated or otherwise copied in or as a digital replica; and

6 (B) if applicable, any other person other than
7 the individual described by Paragraph (A) that acquires, through a
8 license, inheritance, or otherwise, the right to authorize the use
9 of the individual's voice or visual likeness in a digital replica.

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

13 Sec. 651.002. APPLICABILITY. This chapter applies only to
14 an individual who:

15 (1) is a resident of this state; or

16 (2) was a resident of this state on the date the
17 individual died.

18 SUBCHAPTER B. DIGITAL REPLICATION RIGHTS

19 Sec. 651.051. DIGITAL REPLICATION RIGHTS; PROPERTY RIGHT
20 ESTABLISHED. An individual or other right holder has the right to
21 authorize the use of the voice or visual likeness of the individual
22 in a digital replica. The right is:

23 (1) a property right;

24 (2) licensable, wholly or partly, exclusively or
25 nonexclusively, by the right holder, subject to the terms of a
26 contract, including a licensing agreement, or testamentary
27 instrument conveying digital replication rights to a right holder;

1 and

2 (3) not assignable during the life of the individual.

3 Sec. 651.052. DIGITAL REPLICATION RIGHTS ON DEATH OF
4 INDIVIDUAL. (a) A digital replication right does not expire on the
5 death of an individual, regardless of whether the right is used
6 commercially by the individual during the individual's lifetime.

7 (b) Subject to Chapter 26, Property Code, and other
8 applicable law, on the death of an individual:

9 (1) the individual's digital replication right is
10 transferable and licensable, wholly or partly, by the executors,
11 heirs, assigns, licensees, or devisees of the individual; and

12 (2) ownership of the right may be transferred, wholly
13 or partly, by operation of law, will, or intestate succession.

14 (c) A digital replication right is exclusive to:

15 (1) the individual, subject to the licensing of the
16 right during the lifetime of the individual; and

17 (2) the right holder:

18 (A) for a period of 10 years after the death of
19 the individual; and

20 (B) subject to Section 651.151, if the right
21 holder demonstrates active and authorized public use of the voice
22 or visual likeness of the individual during the 2-year period
23 preceding the expiration of the 10-year period described in
24 Paragraph (A), for an additional 5-year period, subject to renewal
25 for additional 5-year periods, only if the right holder can
26 demonstrate authorized public use of the voice or visual likeness
27 of the individual during the 2-year period preceding the expiration

1 of each additional 5-year period.

2 (d) A digital replication right terminates on the earlier
3 of:

4 (1) the date on which the 10-year period or 5-year
5 period, as applicable, described by Subsection (c)(2) expires
6 without renewal; or

7 (2) the date that is 70 years after the death of the
8 individual.

9 (e) If a right holder died before September 1, 2025, the
10 right holder's digital replication rights vest in the executors,
11 heirs, assigns, or devisees of the right holder.

12 Sec. 651.053. UNAUTHORIZED USE OF DIGITAL REPLICA. Except
13 as provided by Section 651.054 and subject to Section 651.104, a
14 person may not:

15 (1) produce a digital replica without the written
16 consent of the right holder; or

17 (2) publish, reproduce, display, distribute,
18 transmit, or otherwise make available to the public a digital
19 replica without the written consent of the right holder.

20 Sec. 651.054. PERMITTED USES. (a) Except as provided by
21 Subsection (b), a person may use a digital replica without the right
22 holder's consent if the digital replica is:

23 (1) produced or used in a bona fide news, public
24 affairs, or sports broadcast or account, provided that the digital
25 replica is the subject of, or is materially relevant to, the subject
26 of the broadcast or account;

27 (2) a representation of the individual in a

documentary, biographical, or historical manner, including some degree of fictionalization, unless:

(A) the production or use of that digital replica creates the false impression that the digital replica is an authentic sound recording, image, transmission, or audiovisual work in which the individual participated; or

(B) the digital replica is embodied in a musical sound recording that is synchronized to accompany a motion picture or other audiovisual work, except to the extent that the use of that digital replica is protected by the First Amendment to the United States Constitution;

(3) produced or used consistent with the public interest in bona fide commentary, criticism, scholarship, satire, or parody;

(4) used in a fleeting or negligible manner; or

(5) used in an advertisement or commercial announcement for a purpose described by Subdivisions (1) through (4) and the digital replica is relevant to the subject of the advertisement or announcement.

(b) Subsection (a) does not apply to a digital replica used to depict sexual conduct, as defined by Section 21.16, Penal Code.

Sec. 651.055. AUTHORITY TO LICENSE DIGITAL REPLICATION RIGHT. Except as provided by Section 651.056 or 651.057, an individual may, during the individual's lifetime, license the individual's digital replication right. A license under this section is valid only:

(1) to the extent the duration of the license does not

extend beyond the 10th anniversary of the date the license agreement is entered into; and

(2) if the license agreement:

(A) is in writing and signed by the individual or an authorized representative of the individual; and

(B) includes a reasonably specific description of the intended uses of the digital replica.

Sec. 651.056. AUTHORITY TO LICENSE DIGITAL REPLICATION RIGHTS OF CERTAIN MINORS. Except as provided by Section 651.057, a license of the digital replication rights of a minor is valid only:

(1) to the extent the duration of the license does not extend beyond the earlier of:

(A) the fifth anniversary of the date the license agreement is entered into; or

(B) the minor's 18th birthday;

(2) if the license agreement:

(A) is in writing and signed by the minor's parents or legal guardians; and

(B) includes a reasonably specific description of the intended uses of the digital replica; and

(3) if the agreement is approved by a court in accordance with Subchapter B, Chapter 1356, Estates Code.

Sec. 651.057. COLLECTIVE BARGAINING AGREEMENTS. Sections 651.055 and 651.056 do not apply if the license is governed by a collective bargaining agreement that addresses digital replicas.

Sec. 651.058. REQUIREMENTS FOR POSTMORTEM TRANSFER. A postmortem transfer or license of a digital replication right is

1 valid only if the testamentary instrument transferring the right or
2 the license agreement is in writing and signed by the right holder
3 or an authorized representative of the right holder.

4 Sec. 651.059. CONTINUED USE BY FORMER LICENSEE OF DIGITAL
5 REPLICA. Unless expressly prohibited by the license agreement, a
6 digital replica that is embodied in a sound recording, image,
7 audiovisual work, including an audiovisual work that does not have
8 any accompanying sounds, or transmission, and the use of which is
9 authorized under the terms of a license agreement, may continue to
10 be used in a manner consistent with the terms of that license after
11 the expiration or termination of the license agreement.

12 Sec. 651.060. VESTING OF CERTAIN DIGITAL REPLICATION
13 RIGHTS. Subject to Section 651.052(d)(2) and to the terms of a
14 contract, including a license agreement, or testamentary
15 instrument entered into before September 1, 2025, if a right holder
16 died before September 1, 2025, the right holder's digital
17 replication rights vest in the executors, heirs, assigns, or
18 devisees of the right holder.

19 SUBCHAPTER C. ONLINE SERVICE PROVIDER DUTIES

20 Sec. 651.101. DESIGNATION OF ONLINE SERVICE AGENT FOR
21 REPORTING CERTAIN VIOLATIONS; NOTIFICATIONS. (a) An online
22 service provider shall designate an agent to receive notifications
23 of violations of Section 651.053 that are alleged to have occurred
24 on the online service. The online service provider shall post in a
25 conspicuous, publicly accessible location on the online service the
26 name, address, telephone number, and e-mail address of the
27 designated agent.

1 (b) A notification under Subsection (a) must:

2 (1) be in writing:

3 (2) be submitted by and include the physical or
4 electronic signature of:

5 (A) the right holder or other eligible plaintiff;
6 or

7 (B) a person authorized to act on behalf of the
8 right holder or other eligible plaintiff;

9 (3) identify the individual whose voice or visual
10 likeness is being used in the alleged unauthorized digital replica;

11 (4) identify the material containing the alleged
12 unauthorized digital replica, including information sufficient to
13 allow the online service provider to locate the replica;

14 (5) include contact information reasonably sufficient
15 to permit the online service provider to contact the notifying
16 party, such as an address, telephone number, or e-mail address;

17 (6) include a statement that the notifying person
18 believes in good faith that the material is an unauthorized use of a
19 digital replica;

20 (7) if the notifying party is not the right holder or
21 other eligible plaintiff, include a statement that the notifying
22 party has the authority to act on behalf of the right holder or
23 eligible plaintiff, as applicable; and

24 (8) for the purposes of Section 651.102, include
25 information reasonably sufficient to:

26 (A) identify the reference or link to the
27 material or activity claimed to be an unauthorized digital replica

1 that is to be removed or to which access is to be disabled; and

2 (B) permit the online service provider to locate
3 the reference or link described in Paragraph (A).

4 Sec. 651.102. REMOVAL OF DIGITAL REPLICA. On receiving a
5 notification under Section 651.101, the online service provider
6 shall:

7 (1) remove from or disable access to the material that
8 is claimed to be an unauthorized digital replica on the online
9 service as soon as is technically and practically feasible; and

10 (2) if the online service hosts or otherwise stores
11 third-party provided material on a system or network controlled or
12 operated by or for the online service:

13 (A) remove or disable access to all instances of
14 the material or an activity using the material that is claimed to
15 be an unauthorized digital replica as soon as is technically and
16 practically feasible for that online service; and

17 (B) take reasonable steps to promptly notify the
18 third party that provided the material that the online service
19 provider has removed or disabled access to the material.

20 Sec. 651.103. FALSE OR DECEPTIVE NOTICE PROHIBITED. A
21 person may not submit a notice under Section 651.101 that falsely or
22 deceptively states that:

23 (1) the material requested to be removed is or
24 embodies an unauthorized digital replica;

25 (2) the person is authorized to submit the notice
26 under Section 651.101(b)(2); or

27 (3) use of the digital replica is not authorized by the

1 right holder or by other law.

2 Sec. 651.104. PRODUCTS AND SERVICES CAPABLE OF PRODUCING
3 DIGITAL REPLICAS; EXCEPTIONS AND VIOLATIONS BY MANUFACTURERS AND
4 DISTRIBUTORS. A person does not violate Section 651.053 by
5 manufacturing, importing, offering to the public, providing, or
6 otherwise distributing a product or service unless the product or
7 service:

8 (1) is primarily designed to produce one or more
9 unauthorized digital replicas;

10 (2) has limited commercially significant purpose or
11 use other than to produce an unauthorized digital replica; or

12 (3) is marketed, advertised, or otherwise promoted for
13 use in producing an unauthorized digital replica by:

14 (A) that person; or

15 (B) another:

16 (i) acting in concert with that person; or

17 (ii) with that person's knowledge.

18 SUBCHAPTER D. REGISTRATION OF POSTMORTEM RIGHTS

19 Sec. 651.151. REGISTRATION OF POSTMORTEM RIGHTS. The
20 renewal of a right described by Section 651.052(c)(2) is only
21 effective if, before the two-year period described by that section,
22 the right holder files a notice with the secretary of state that
23 contains:

24 (1) the name of the deceased individual;

25 (2) a statement, under penalty of perjury, that the
26 right holder has engaged in active and authorized public use of the
27 voice or visual likeness during the applicable two-year period;

1 (3) the identity of and contact information for the
2 right holder; and

3 (4) any other information the secretary of state deems
4 necessary.

5 Sec. 651.152. POSTMORTEM DIGITAL REPLICATION RIGHTS
6 DIRECTORY. (a) The secretary of state shall maintain and make
7 available to the public a directory of postmortem digital
8 replication rights registered under Section 651.151.

9 (b) A right holder may voluntarily apply to the secretary of
10 state for inclusion on the directory described by this section by
11 filing a notice with the secretary of state that complies with the
12 form, content, and filing procedures prescribed by rule by the
13 secretary of state.

14 (c) The secretary of state may impose a filing fee on a right
15 holder for inclusion in the directory described by this section in
16 amounts necessary to cover the cost of administering the directory.

17 SUBCHAPTER E. ENFORCEMENT

18 Sec. 651.201. AUTHORITY TO BRING UNAUTHORIZED USE ACTION:
19 ELIGIBLE PLAINTIFF. An action under Section 651.202 or 651.203 may
20 be brought only by:

21 (1) a right holder;
22 (2) if the individual who is the subject of a digital
23 replica is a minor, the parent or guardian of the individual;

24 (3) any other person that controls, including through
25 a license, the right to authorize the use of the voice or visual
26 likeness of the right holder;

27 (4) any other person that owns or controls the right to

authorize the use of the voice or visual likeness of a deceased individual; or

(5) in the case of a digital replica of an individual who is a sound recording artist, any person that has, directly or indirectly, entered into:

(A) a contract for the exclusive personal services of the sound recording artist as a sound recording artist; or

(B) an exclusive license to distribute or transmit one or more works that capture the audio performance of the sound recording artist.

Sec. 651.202. INJUNCTIVE RELIEF FOR UNAUTHORIZED USE. An eligible plaintiff may bring a private cause of action against a person who violates or threatens to violate this chapter to obtain:

(1) injunctive relief; or

(2) other equitable relief.

Sec. 651.203. PRIVATE CAUSE OF ACTION FOR UNAUTHORIZED USE.

(a) In this section, "knowingly" means having actual knowledge of or acting with deliberate ignorance of the prohibition involved.

(b) An eligible plaintiff may bring a cause of action against another person who knowingly violates Section 651.053.

(c) For purposes of Subsection (a), a person may be presumed to have acted knowingly if the person:

(1) is an online service provider that received a notification under Section 651.101 and failed to remove or disable access to the material under Section 651.102; or

(2) wilfully avoided having knowledge that:

1 (A) the applicable material is a digital replica;
2 and

3 (B) the digital replica was not authorized by a
4 right holder.

5 (d) A person must bring a cause of action under this section
6 not later than the third anniversary after the date on which the
7 person discovered, or with due diligence should have discovered,
8 the violation.

9 (e) It is not a defense in a cause of action brought under
10 this section that the person alleged to have violated Section
11 651.053 displayed or otherwise communicated to the public a
12 disclaimer stating that the digital replica was unauthorized or
13 disclosing that the digital replica was generated through the use
14 of artificial intelligence or other technology.

15 (f) In a cause of action brought under this section, a
16 person that violates Section 651.053 is liable to the aggrieved
17 person for:

18 (1) subject to Subsection (g), the greater of:

19 (A) statutory damages in the amount of:

20 (i) \$5,000 per work embodying the
21 unauthorized digital replica, if the violator is an individual;

22 (ii) \$5,000 per violation, if the violator
23 is an online service provider; and

24 (iii) \$25,000 per work embodying the
25 unauthorized digital replica, if the violator is an entity other
26 than an online service provider; or

27 (B) the sum of actual damages and profits

1 attributable to the unauthorized use of the digital replica; and

2 (2) if a wilful violation is proven under which the
3 violator is found to have acted with malice, fraud, knowledge, or
4 wilful avoidance of knowledge that the conduct violated the law,
5 punitive damages.

6 (g) An online service provider that has an objectively
7 reasonable belief that material claimed to be an unauthorized
8 digital replica does not qualify as a digital replica may not be
9 liable for statutory or actual damages exceeding \$1 million
10 regardless of whether the material is ultimately determined to be
11 an unauthorized digital replica.

12 (h) The remedies available under this section and Section
13 26.013, Property Code, for a violation arising out of the same
14 conduct are mutually exclusive.

15 Sec. 651.204. ATTORNEY'S FEES. If the prevailing party is:

16 (1) the party bringing the action, the court shall
17 award reasonable attorney's fees; or

18 (2) the party defending the action, the court shall
19 award reasonable attorney's fees if the court determines that the
20 action was not brought in good faith.

21 Sec. 651.205. PRIVATE CAUSE OF ACTION FOR SUBMISSION OF
22 CERTAIN FALSE OR DECEPTIVE NOTICE. (a) Except as provided by
23 Subsection (b), a person who violates Section 651.103 is liable to
24 the online service provider, a third party described by Section
25 651.102, or another person aggrieved by the violation for an amount
26 equal to the greater of:

27 (1) \$5,000; or

1 (2) actual damages and court costs and reasonable
2 attorney's fees, including actual damages arising out of an online
3 service provider's reliance on the notice in removing or disabling
4 access to the material or activity claimed to be an unauthorized
5 digital replica.

6 (b) If a third party described by Section 651.102 files an
7 action under this section, the online service provider may,
8 provided the action is filed not later than the 14th day after the
9 date a third party receives notice under Section 651.102(2)(B),
10 restore the removed material to the online service without
11 incurring monetary liability to either the notifying party or the
12 third party.

13 SECTION 2. To the extent of a conflict between Chapter 651,
14 Business & Commerce Code, as added by this Act, and a provision of a
15 contract, including a license agreement, or testamentary
16 instrument entered into or executed before the effective date of
17 this Act, the provision of the contract or instrument prevails.

18 SECTION 3. Subchapter E, Chapter 651, Business & Commerce
19 Code, as added by this Act, applies only to conduct occurring on or
20 after the effective date of this Act.

21 SECTION 4. This Act takes effect September 1, 2025.