



## 103RD GENERAL ASSEMBLY

### State of Illinois

2023 and 2024

HB5594

Introduced 2/9/2024, by Rep. Hoan Huynh

#### SYNOPSIS AS INTRODUCED:

New Act

Creates the Nurture Originals, Foster Art, and Keep Entertainment Safe Act, which may be referred to as the NO FAKES Act. Creates a civil action for a violation of specified provisions may be brought by (i) an individual, the image, voice, or visual likeness of whom is used in the digital replica that is the subject of the action; or (ii) any other person that owns or controls, including by virtue of an exclusive license, the rights to the image, voice, or visual likeness of this individual; or (iii) in the case involving a sound recording artist, any person that has entered into a contract for the exclusive personal services of the sound recording artist as a sound recording artist. Provides that "digital replica" means a newly created, computer-generated, electronic representation of the image, voice, or visual likeness of an individual that (i) is nearly indistinguishable from the actual image, voice, or visual likeness of that individual; and (ii) is fixed in a sound recording or audiovisual work in which that individual did not actually perform or appear. Requires that the civil action must be brought within 3 years after the date on which the aggrieved party discovered, or with due diligence should have discovered, the violation. Provides that the amounts that may be recovered include: (i) an amount equal to the greater of \$5,000 per violation or any damages suffered by the injured party as a result of the violation; (ii) punitive damages in the case of a willful violation in which the injured party has proven that the defendant acted with malice, fraud, or oppression; and (iii) reasonable attorney's fees.

LRB103 38945 JRC 69082 b

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  
5 Nurture Originals, Foster Art, and Keep Entertainment Safe  
6 Act. This Act may be referred to as the NO FAKES Act.

7 Section 5. Image, voice, and visual likeness rights.

8 (a) Definitions. In this Section:

9 (1) "Digital replica" means a newly created,  
10 computer-generated, electronic representation of the  
11 image, voice, or visual likeness of an individual that:

12 (A) is nearly indistinguishable from the actual  
13 image, voice, or visual likeness of that individual;  
14 and

15 (B) is fixed in a sound recording or audiovisual  
16 work in which that individual did not actually perform  
17 or appear.

18 (2) "Individual" means a human being, living or dead.

19 (3) "Sound recording artist" means an individual who  
20 creates or performs in sound recordings for economic gain  
21 or for the livelihood of the individual.

22 (4) "Visual likeness" means the actual visual image or  
23 likeness of an individual, without regard to the means of

1 creation, that is readily identifiable as the visual image  
2 or likeness of the individual:

3 (A) because of a depiction of the face, image,  
4 likeness, or other visually identifiable  
5 characteristic of the individual; or

6 (B) from information displayed in connection with  
7 the face, image, likeness, or other visually  
8 identifiable characteristic of the individual.

9 (b) Digital Replication Right.

10 (1) Subject to the other provisions of this Section,  
11 each individual and, in the case of an individual who is  
12 dead, any executor, heir, assign, or devisee of the  
13 individual has the right to authorize the use of the  
14 image, voice, or visual likeness of the individual in a  
15 digital replica.

16 (2) The right described in paragraph (1) shall have  
17 the following characteristics:

18 (A) is a property right; and

19 (B) descendible and licensable in whole or in  
20 part, by the individual to whom the right applies.

21 (3) The right shall not expire upon the death of the  
22 individual to whom the right applies, without regard to  
23 whether the right is commercially exploited by that  
24 individual during the lifetime of the individual.

25 (4) The right shall be exclusive to:

26 (A) the applicable individual, subject to the

1           licensing of those rights, as provided in this  
2           paragraph, during the lifetime of that individual; and

3                   (B) the executors, heirs, assigns, or devisees of  
4           the applicable individual for a period of 70 years  
5           after the death of the individual.

6           (5) A license described in subparagraph (A) of  
7           subsection (4) shall be valid only if:

8                   (A) the applicable individual was represented by  
9           counsel in the transaction and the assignment  
10          agreement was in writing; or

11                   (B) the licensing of the right covered by the  
12          assignment is governed by a collective bargaining  
13          agreement.

14          (c) Liability.

15                   (1) Any person that, in a manner affecting interstate  
16          or foreign commerce (or using any means or facility of  
17          interstate or foreign commerce), engages in an activity  
18          described in paragraph (2) shall be liable in a civil  
19          action brought under subsection (d) for any damages  
20          sustained by the individual or rights holder injured as a  
21          result of that activity.

22                   (2) An activity described in this paragraph is either  
23          of the following:

24                           (A) The production of a digital replica without  
25          consent of the applicable individual or rights holder.

26                           (B) The publication, distribution, or transmission

1 of, or otherwise making available to the public, an  
2 unauthorized digital replica, if the person engaging  
3 in that activity has knowledge that the digital  
4 replica was not authorized by the applicable  
5 individual or rights holder.

6 (3) It shall not be a violation of paragraph (1) if,  
7 regardless of the degree of dramatization:

8 (A) the applicable digital replica is used as part  
9 of a news, public affairs, or sports broadcast or  
10 report;

11 (B) the applicable digital replica:

12 (i) is used part of a documentary, docudrama,  
13 or historical or biographical work; and

14 (ii) uses a representation of the applicable  
15 individual as that individual;

16 (C) the applicable digital replica is used for  
17 purposes of comment, criticism, scholarship, satire,  
18 or parody;

19 (D) the applicable digital replica is used in an  
20 advertisement or commercial announcement for a purpose  
21 described in subparagraph (A), (B), or (C); or

22 (E) the use of the applicable digital replica is  
23 de minimis or incidental.

24 (d) Civil action.

25 (1) A civil action for a violation of subsection (c)  
26 may be brought by:

1           (A) an individual, the image, voice, or visual  
2 likeness of whom is used in the digital replica that is  
3 the subject of the action;

4           (B) any other person that owns or controls,  
5 including by virtue of an exclusive license, the  
6 rights to the image, voice, or visual likeness of the  
7 individual described in subparagraph (A); or

8           (C) in the case of a digital replica involving a  
9 sound recording artist, any person that has entered  
10 into a contract for the exclusive personal services of  
11 the sound recording artist as a sound recording  
12 artist.

13           (2) A civil action may not be brought under this  
14 subsection unless the action is commenced not later than 3  
15 years after the date on which the party seeking to bring  
16 the civil action discovered, or with due diligence should  
17 have discovered, the applicable violation.

18           (3) It shall not be a defense in a civil action brought  
19 under this subsection that the defendant:

20           (A) displayed or otherwise communicated to the  
21 public a disclaimer stating that the applicable  
22 digital replica was unauthorized; or

23           (B) did not participate in the creation,  
24 development, distribution, or dissemination of the  
25 applicable digital replica.

26           (4) In any civil action brought under this subsection:

1 (A) the person committing a violation of  
2 subsection (c) shall be liable to the injured party in  
3 an amount equal to the greater of:

4 (i) \$5,000 per violation; or

5 (ii) any damages suffered by the injured party  
6 as a result of the violation;

7 (B) in the case of a willful violation where the  
8 injured party has proven that the defendant acted with  
9 malice, fraud, or oppression, the court may award to  
10 the injured party punitive damages; and

11 (C) the court may award to the prevailing party  
12 reasonable attorney's fees.

13 (e) Preemption. Nothing in this Section may be construed  
14 to limit any right an individual may have under any other law  
15 that provides protection against the unauthorized use of the  
16 image, voice, or visual likeness of the individual.

17 (f) Rule of construction. This Section shall be considered  
18 to be a law pertaining to intellectual property for the  
19 purposes of section 230(e)(2) of the Communications Act of  
20 1934 (47 U.S.C. 230(e)(2)).

21 Section 90. Application. This Section shall apply only to  
22 conduct occurring after the effective date of this Act.

23 Section 97. Severability. If any provision of this  
24 Section, or the application of a provision of this Section, is

1 held to be invalid, the validity of the remainder of this  
2 Section, and the application of that provision to other  
3 persons and circumstances, shall not be affected by that  
4 holding.