

**Second Regular Session
Seventy-fifth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 26-0261.01 Owen Hatch x2698

HOUSE BILL 26-1049

HOUSE SPONSORSHIP

Bottoms,

SENATE SPONSORSHIP

Baisley,

House Committees

State, Civic, Military, & Veterans Affairs

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING PROHIBITING THE USE OF ANOTHER INDIVIDUAL'S**
102 **PERSONALLY IDENTIFYING FEATURE WITHOUT PERMISSION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill criminalizes the use of an individual's fingerprint, voiceprint, retina, iris, or facial map (personally identifying feature) in an advertisement, deepfake, image, video, voice recording, or other digital depiction, without the individual's permission (unlawful use of a personally identifying feature). Unlawful use of a personally identifying feature is a class 5 felony, and unlawful use of a personally identifying

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

feature with the intent to harm the individual or another individual is a class 4 felony.

An individual harmed by an unlawful use of a personally identifying feature may bring a civil cause of action and collect damages and reasonable attorney fees.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** 18-5-906 as follows:

18-5-906. Unlawful use of personally identifying features - civil action - exceptions - definitions.

(1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "HARM" MEANS A PHYSICAL, EMOTIONAL, OR FINANCIAL HARM.

(b) "PERSONALLY IDENTIFYING FEATURE" MEANS AN INDIVIDUAL'S:

(I) FINGERPRINT;

(II) VOICEPRINT;

(III) SCAN OR RECORD OF THEIR EYE RETINA OR IRIS; AND

(IV) FACIAL MAP, FACIAL GEOMETRY, OR FACIAL TEMPLATE.

(c) "USE" MEANS TO TAKE, CAPTURE, CREATE, INCLUDE IN, OR BE A PART OF:

(I) AN ADVERTISEMENT;

(II) A DEEPFAKE, AS DEFINED IN SECTION 1-46-102;

(III) AN IMAGE;

(IV) A VIDEO;

(V) A VOICE RECORDING; OR

(VI) ANY OTHER DIGITAL DEPICTION.

(2) A PERSON COMMITS UNLAWFUL USE OF A PERSONALLY IDENTIFYING FEATURE IF THE PERSON:

1 (a) USES A PERSONALLY IDENTIFYING FEATURE OF AN INDIVIDUAL
2 WITHOUT PERMISSION; OR

3 (b) USES A PERSONALLY IDENTIFYING FEATURE OF AN INDIVIDUAL
4 WITHOUT PERMISSION TO INTENTIONALLY HARM THE INDIVIDUAL WHOSE
5 PERSONALLY IDENTIFYING FEATURE IS UNLAWFULLY USED.

6 (3) (a) UNLAWFUL USE OF A PERSONALLY IDENTIFYING FEATURE
7 IN VIOLATION OF SUBSECTION (2)(a) OF THIS SECTION IS A CLASS 5 FELONY.

8 (b) UNLAWFUL USE OF A PERSONALLY IDENTIFYING FEATURE IN
9 VIOLATION OF SUBSECTION (2)(b) OF THIS SECTION IS A CLASS 4 FELONY.

10 (4) AN INDIVIDUAL HARMED IN VIOLATION OF THIS SECTION MAY
11 BRING A CIVIL ACTION FOR DAMAGES AND REASONABLE ATTORNEY FEES.
12 UNLAWFUL USE PURSUANT TO SUBSECTION (2)(a) OF THIS SECTION IS A
13 LEGALLY COGNIZABLE HARM. AN INDIVIDUAL MAY INCLUDE IN THEIR
14 CIVIL ACTION A CLAIM FOR ANY AMOUNT OF DAMAGES.

15 (5) (a) THIS SECTION DOES NOT APPLY TO AN IMAGE, VIDEO, VOICE
16 RECORDING, OR OTHER DIGITAL DEPICTION DISTRIBUTED TO THE PUBLIC IN
17 CONNECTION WITH A CRIMINAL INVESTIGATION OR TAKEN BY A PERSON IN
18 THE ACT OF REPORTING OR DOCUMENTING CRIMINAL CONDUCT.

19 (b) THIS SECTION DOES NOT APPLY TO A CITY, COUNTY, CITY AND
20 COUNTY, OR STATE GOVERNMENT, OR AN EMPLOYEE THEREOF, IN
21 CONNECTION WITH AN OFFICIAL ACT OF THE CITY, COUNTY, CITY AND
22 COUNTY, OR STATE GOVERNMENT, OR AN EMPLOYEE THEREOF IN THE
23 PERFORMANCE OF THEIR OFFICIAL DUTIES.

24 (c) THIS SECTION DOES NOT APPLY:

25 (I) IN CONNECTION WITH ANY NEWS, PUBLIC AFFAIRS, OR SPORTS
26 BROADCAST OR ACCOUNT;

27 (II) FOR THE PURPOSES OF COMMENT, CRITICISM, SCHOLARSHIP,

1 SATIRE, OR PARODY;

2 (III) TO A REPRESENTATION OF THE INDIVIDUAL WHOSE
3 PERSONALLY IDENTIFYING FEATURE IS BEING USED AS THE INDIVIDUAL'S
4 SELF IN AN AUDIOVISUAL WORK, AS DEFINED PURSUANT TO 17 U.S.C. SEC.
5 101, UNLESS THE AUDIOVISUAL WORK CONTAINING THE USE IS INTENDED
6 TO CREATE, AND DOES CREATE, THE FALSE IMPRESSION THAT THE WORK IS
7 AN AUTHENTIC RECORDING IN WHICH THE INDIVIDUAL PARTICIPATED;

8 (IV) TO A FLEETING OR INCIDENTAL USE OF A PERSONALLY
9 IDENTIFYING FEATURE;

10 (V) TO AN ADVERTISEMENT OR COMMERCIAL ANNOUNCEMENT FOR
11 AN AUDIOVISUAL WORK DESCRIBED IN THIS SUBSECTION (5)(c); AND

12 (VI) TO ANY OTHER ACTIVITY PROTECTED PURSUANT TO THE FIRST
13 AMENDMENT TO THE UNITED STATES CONSTITUTION.

14 **SECTION 2. Applicability.** This act applies to offenses
15 committed on or after the effective date of this act.

16 **SECTION 3. Safety clause.** The general assembly finds,
17 determines, and declares that this act is necessary for the immediate
18 preservation of the public peace, health, or safety or for appropriations for
19 the support and maintenance of the departments of the state and state
20 institutions.