

LFC Requester:

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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: February 25, 2025

Check all that apply:

Bill Number: HB 221

Original Correction
Amendment Substitute

Sponsor: Rep. Tara L. Lujan
Rep. Joseph L. Sanchez, and
Rep. Cynthia Borrego

Agency Name and Code Number: 305 – New Mexico
Department of Justice

Person Writing

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Short Title: Voice and Visual Likeness
Rights Act

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: N/A

Duplicates/Relates to Appropriation in the General Appropriation Act: N/A

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis: This new bill protects the voice and visual likeness rights of individuals from unauthorized use in digital replicas. Much of the language is taken from the Nurture Originals, Foster Art, and Keep Entertainment Safe Act of 2024, known as the NO FAKES Act, (S.4875). Various states have either passed or attempted to pass similar bills including California (AB 1836, passed), Tennessee (Ensuring Likeness, Voice, and Image Security (ELVIS) Act of 2024, passed), Illinois (SB 3325, failed), Kentucky (SB 317, engrossed), and Louisiana (SB 217, on calendar).

Section 1: Provides the short title.

Section 2: Provides various definitions for terms repeatedly referred to in the Act including “digital replica,” “online service,” and “right holder.” **In the substitution**, the term “digital replica” is redefined so that it is more easily understood. The terms “information service,” “interactive computer service” and “telecommunications service” are also added.

Section 3: Describes how one’s “voice or visual likeness” is a property right exclusive to that individual, and how one may license this right to others. Explains that “right holders” are also able to authorize the transfer in accordance with previously agreed upon licensing agreements. **The substitution** also adds that a right may be terminated “seventy years following the death of the individual.”

Section 4: Outlines specific rules for adults and emancipated youth, as well as minors. Adults can transfer their property right for up to 10 years, and representatives for minors can transfer a minor’s right for no more than five years, or until the minor turns 18.

Section 5: Describes the conditions under which a post-mortem transfer is valid. **The substitution** adds details as to what this transfer process shall look like.

Section 6: Sets forth the conditions under which a digital replica may be used in a manner consistent with the terms of the license after the expiration or termination of the license.

Section 7: Provides civil remedies for the use of unauthorized digital replica. States that one must have “actual knowledge” or “willfully avoid having knowledge” in order to be liable.

Lists multiple violation exceptions including use in “bona fide news,” “public affairs,” and documentaries or historical or biographical manners, especially when it concerns the public interest. **The substitution** provides that interactive computer services, telecommunications services, and information services shall not be liable for violating the provisions of the act.

Section 8: Explains that the proposed Act would fall under “intellectual property” pursuant to the Federal Comm. Act of 1934.

Section 9: Describes that if any part of the Act is declared invalid, it does not mean that the rest is automatically invalid.

Section 10: States that the Act is effective July 1, 2025.

FISCAL IMPLICATIONS: N/A

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES:

Section 2, Subsection D, of the bill defines the term “information service.” This definition is long and technical – not friendly to the lay-reader, or an individual who is not familiar with tech-language. The current definition reads: “*offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing or making available information via telecommunications and includes electronic publishing, but does not include the use of any such capability for the management, control or operation of a telecommunications service.*” Providing a non-exhaustive list of examples could be helpful in situating the reader.

Section 2, Subsection E, defines “interactive computer service” by citing the term “access software provider.” However, the latter term is not defined. Given the definition of this seems to be essential to understanding “interactive computer service,” it could be defined. Again, a non-exhaustive list of examples could be helpful here as the tech jargon is not necessarily friendly.

Section 2, Subsection H, defines a “right holder” as a “person that has acquired the right to authorize the use of an individual's voice.” This language is overly vague and may be the subject of future litigation as there are many ways that someone can acquire such a right. Relatedly, Section 3, Subsection A, states that an individual may “license the use of the individual's voice or visual likeness as often and to as many persons as the individual chooses.” This raises the issue of multiple, and possibly opposing, claimants.

Section 4, Subsection A, states that an adult may grant a license to another for no more than 10 years. However, there is nothing in the section that states a licensed user can't purposely create a digital replica with the intent of creating misinformation. Furthermore, 10 years is quite a long time, especially if the individual who granted the license did not understand the repercussions.

Section 5, Subsection A, describes the process by which a right holder can register a postmortem right with the State. For ease of reading, #3 (identity and contact information of the right holder) could be listed before #2 (a statement by the right holder).

In order to incur liability, Section 7, Subsection B, states that one must have “actual knowledge” or “willfully avoid having knowledge.” This definition is quite broad, and leaves open the possibility of a bad actor claiming that they lacked such knowledge.

Section 7, Subsection C, provides for violation exceptions to the act. These exceptions are not well-defined and can lead to debates regarding First Amendment concerns, specifically, the carve outs for “bona fide news, public affairs, or sports broadcast,” as well as documentary and historical or biographical uses. Additionally, Subsection C, Number 3, is equally vague in describing the public interest in a “bona fide commentary, criticism, scholarship, satire or parody. Number 4 could also expound on the meaning of a digital replica that is “fleeting or negligible.”

Section 7, Subsection E and F, state that “online services” will not be liable if they remove or disable access to unauthorized material “as soon as possible.” However, “as soon as possible” is not defined, which bad actors could use to their benefit. There needs to be more discussion regarding the responsibilities of “online services” to prevent this.

Section 7, Subsection G, states that “interactive computer services, telecommunications services and information services shall not be liable for violating the provisions of the Voice and Visual Likeness Rights Act for content provided by another person.” It is unclear who the “other person” is referring to in the second part of the sentence.

Section 7, Subsection H, Number 5, states that the label of a “recording artist” has the “exclusive use” of putting out said artist’s “digital replica.” However, it is unclear if the artist may also bring forth a claim for violation of their own rights.

Section 7, Subsection I, describes that an individual must bring a claim within three years of the date in which they “should have discovered the violation.” This “should have” language is vague and does not provide examples or context.

Section 7, Subsection K, the following terms are undefined/undifferentiated: “natural person,” and “person that is not an online service. It is unclear how a person could be an “online service.” Subsection K also establishes the levels of liability for violations of the Act, presumably based on the nature of the injured party (it is unclear in Paragraphs (1)-(3) whether the description of the party is referring to the injured party or the violator of the act). This subsection uses terms that differ from the terms in the definitions, which may introduce confusion as to who may bring a claim under the Act. Further, Paragraphs (1) and (3) of this Subsection address overlapping circumstances. Specifically, Paragraph (1) addresses “the case of a natural person,” while Paragraph (3) addresses “the case of a person that is not an online service.” Certainly, a “natural person” is also “a person that is not an online service.” However, the Paragraph (3) sets the liability five times higher than Paragraph (1) (i.e. \$5,000 in Paragraph (1) compared to \$25,000 in Paragraph (3)).

Section 7, Subsections N and O, describe the repercussions that online platforms may face as a result of hosting unauthorized digital replica. As the fine is up to one million dollars, there is a very real possibility that platforms may be overly cautious and over-remove content in order to prevent future litigation. This could lead to disgruntled platform users.

PERFORMANCE IMPLICATIONS: N/A

ADMINISTRATIVE IMPLICATIONS:

The NMDOJ may prosecute these cases.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP:

S.4875, Nurture Originals, Foster Art, and Keep Entertainment Safe Act of 2024, known as the NO FAKES Act. (See Synopsis in Bill Summary, above)

TECHNICAL ISSUES: N/A

OTHER SUBSTANTIVE ISSUES: N/A

ALTERNATIVES: N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL: Status quo

AMENDMENTS: N/A