FISCAL IMPACT REPORT

SPONSOR Lujan/Sanchez **LAST UPDATED** **ORIGINAL DATE** 02/11/2025

SHORT TITLE Voice & Visual Likeness Rights Act **BILL NUMBER** House Bill 221

ANALYST Chilton

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency Analysis Received From
New Mexico Attorney General (NMAG)
Department of Public Safety (DPS)
Administrative Office of the Courts (AOC)

Agency Analysis was Solicited but Not Received From
Department of Information Technology (DoIT)

SUMMARY

Synopsis of House Bill 221

House Bill 221 would create the Voice and Visual Likeness Rights Act and establish that one's visual likeness and voice are personal property and would establish methods of protecting those personal attributes and of licensing those features for other uses, chiefly advertising. It also establishes occasions in which unauthorized use is not actionable, as well as establishing penalties when unauthorized use is not legal.

Under the bill, people may license their voice or visual likeness as many times as they wish. Property rights do not terminate at the death of the individual, and the use of the voice or visual likeness may be used if authorized by the person to whom the property right had been bequeathed. Rights of use of this property would be terminated either by non-use within 10 years or by the death of all "executors, transferees, heirs or devisees of the individual."

Licensing would be limited to no more than five years in the case of a child up to age 18 and 10 years in the case of an adult. The license must be in writing and signed by the individual or, in

the case of a child, by a parent or guardian.

Use of an unauthorized digital replica would be subject to civil penalties. The bill states that one must have "actual knowledge" or must "willfully avoid having knowledge" in order to be liable. Exceptions to the use restrictions include use in news items or when the use is in the public interest and if the image is used fleetingly, is not sexually revealing, or if an online service removes an image or recording promptly upon being notified of unauthorized use. Civil actions for unauthorized use can be brought by the right holder or, if the right holder is a minor, by a parent or guardian. Use of artificial intelligence would not be a usable defense.

The bill establishes a three-year statute of limitations for actions of this type and monetary penalties for unauthorized use, including punitive penalties for malicious or fraudulent use, for individuals, and for online services.

HB221 states the act would fall under "intellectual property" pursuant to the Federal Communications Act of 1934. Section 9.

The bill includes a severability clause that states that, if any part of the act is declared invalid, it does not mean that the rest is automatically invalid.

The effective date of this bill is July 1, 2025.

FISCAL IMPLICATIONS

None of the responding agencies indicate a fiscal impact, although passage of this bill might result in an increase in litigation.

SIGNIFICANT ISSUES

In an article on property rights to voice and likeness, the Authors Alliance states,

> In the past, the right of publicity has been described as "name, image, and likeness" rights. What is interesting about AI-generated content and the right of publicity is that a person's likeness can be used in a more complete way than ever before. In some cases, both their appearance and voice are imitated, associated with their name, and combined in a way that makes the imitation more convincing. What is different about this iteration of right of publicity questions is the *actors* behind the production of the soundalikes and imitations, and, to a lesser extent, the harms that might flow from these uses. A recent use of a different celebrity's likeness in connection with an advertisement is instructive on this point. Earlier this year, advertisements emerged on various platforms featuring an AI-generated Taylor Swift participating in a Le Creuset cookware giveaway.

As at least California and New York have done before, this bill would firmly establish a right to one's own visual likeness and voice. A federal Nurture Originals, Foster Art and Keep Entertainment Safe (NOFAKES) Act (118th Congress, H.R. 9551) has not passed but has served as a template for action in various states, including this bill in New Mexico.

Liability for unauthorized use of one's visual or sound likeness has been described by some as an

affront to the First Amendment rights of free speech and might result in content not being available, especially online, to those who would access it. AOC notes that the American Bar Association (ABA) recently adopted a resolution calling for legislation to prevent unauthorized use of image or voice. The ABA noted in discussion that women are disproportionally harmed by unauthorized use of [often sexualized] versions of their voice or image.

TECHNICAL ISSUES

NMAG lists a number of suggestions for technical fixes:

Section 2, Subsection F, of the bill 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.

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, 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 H, 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 J 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, 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 M and N 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.

OTHER SUBSTANTIVE ISSUES

DPS points out:

A civil action for private enforcement of the provisions of the Voice and Visual Likeness Rights Act may be brought within three years after the date on which the party bringing the civil action discovered or with due diligence should have discovered the violation. It would protect minors more if that three-year statute of limitations were extended until after the minor reaches age 18 by a period of time not exceeding three years.

AOC notes:

It is curious that in an act seeking to protect an individual's property rights, that immediate removal or disabling is not required, rather than removal or disabling "as soon as is practicable." Perhaps this is an attempt to balance the rights of an individual with the potential chilling effect the law could have on a platform's fair use of material.

LAC/hj/hg