

SENATE BILL NO. 164

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology

on _____)

(Patron Prior to Substitute--Senator Reeves)

A BILL to amend the Code of Virginia by adding a section numbered 59.1-200.2, relating to Virginia Consumer Protection Act; prohibited practices; personal rights.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 59.1-200.2 as follows:

§ 59.1-200.2. Prohibited practices; personal rights.

A. As used in this section:

"Definable group" means an assemblage of individuals existing or brought together with or without interrelation, orderly form, or arrangement, including a crowd at any sporting event, a crowd in any street or public building, or the audience at any theatrical or stage production.

"Individual" means a human being, living or dead.

"Likeness" means the use of an image of an individual for commercial purposes.

"Photograph" means any photograph or photographic reproduction, still or moving, or any videotape or live television transmission, of any individual, so that the individual is readily identifiable.

"Voice" means a sound in any medium that is readily identifiable and attributable to a particular individual, regardless of whether the sound contains the actual voice or a simulation of the voice of the individual.

B. 1. Every individual has a property right in the use of such individual's name, photograph, voice, or likeness in any medium in any manner. Such individual rights constitute property rights and are freely assignable and licensable and do not expire upon the death of the individual so protected, whether or not such rights were commercially exploited by the individual during the individual's lifetime, but shall be

26 descendible for a period of 10 years after the death of the individual to the executors, assignees, heirs, or
27 devisees of the individual.

28 2. Commercial exploitation of the property right by any executor, assignee, heir, or devisee if the
29 individual is deceased shall maintain the right as the exclusive property of the executor, assignee, heir, or
30 devisee until such right is terminated by proof of the non-use of the name, photograph, voice, or likeness
31 of any individual for commercial purposes by an executor, assignee, heir, or devisee for a period of two
32 years subsequent to the initial 10-year period following the individual's death.

33 C. 1. Any person who knowingly uses or infringes upon the use of another individual's name,
34 photograph, voice, or likeness in any medium, in any manner directed to any person other than such
35 individual, for purposes of advertising products, merchandise, goods, or services, or for purposes of
36 fundraising, solicitation of donations, purchases of products, merchandise, goods, or services, without
37 such individual's prior consent, or, in the case of a minor, the prior consent of such minor's parent or legal
38 guardian, or in the case of a deceased individual, the consent of the executors, assignees, heirs, or devisees
39 of such deceased individual, is liable to a civil action as provided by this chapter.

40 2. A person is liable to a civil action as provided by this chapter, if such person publishes, performs,
41 distributes, transmits, or otherwise makes available to the public an individual's photograph, voice, or
42 likeness, with knowledge that use of the voice or likeness was not authorized by the individual or, in the
43 case of a minor, such minor's parent or legal guardian, or in the case of a deceased individual, the consent
44 of the executors, assignees, heirs, or devisees of such deceased individual.

45 3. A person is liable to a civil action as provided by this chapter, if such person distributes,
46 transmits, or otherwise makes available an algorithm, software, tool, or other technology, service, or
47 device, the primary purpose or function of which is the production of a particular identified individual's
48 photograph, voice, or likeness without authorization from the individual or, in the case of a minor, the
49 minor's parent or legal guardian, or in the case of a deceased individual, the executors, assignees, heirs, or
50 devisees of such deceased individual.

51 D. Where a person has entered into a contract for an individual's exclusive personal services as a
52 recording artist or an exclusive license to distribute sound recordings that capture an individual's audio
53 performances, a civil action pursuant to subsection C may be brought by such person or the individual.

54 E. It is no defense to the unauthorized use defined in subsection C that the photograph includes
55 more than one individual so identifiable, provided that the individual or individuals complaining of the
56 use shall be represented as individuals rather than solely as members of a definable group represented in
57 the photograph.

58 F. If an unauthorized use as defined in subsection C is by means of products, merchandise, goods
59 or other tangible personal property, all such property, including all instrumentalities used in connection
60 with the unauthorized use by the person violating this section, is declared contraband and subject to seizure
61 by, and forfeiture to, the state.

62 G. Nothing in this section shall apply to the use of a name, photograph, voice, or likeness in
63 connection with any news, public affairs, or sports broadcast or account, to the extent such use is protected
64 by the First Amendment to the Constitution of the United States.

65 H. Nothing in this section shall apply to the owners or employees of any medium used for
66 advertising, including newspapers, magazines, radio and television stations, billboards, and transit ads,
67 who have published or disseminated any advertisement or solicitation in violation of this section, unless
68 it is established that such owners or employees knew or reasonably should have known of the unauthorized
69 use of the individual's name, photograph, voice, or likeness as prohibited by this section.

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