

Senate Bill 354

By: Senator Harrell of the 40th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 51 of the Official Code of Georgia Annotated, relating to torts, so as to
2 provide for a cause of action for appropriating an individual's indicia of identity; to provide
3 for a right to protection against the appropriation of an individual's indicia of identity; to
4 provide for assignment or licensing of such right; to provide for damages; to provide for
5 other remedies; to provide for exceptions; to provide for definitions; to provide for statutory
6 construction; to provide for related matters; to repeal conflicting laws; and for other
7 purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Title 51 of the Official Code of Georgia Annotated, relating to torts, is amended by enacting
11 a new chapter to read as follows:

12

"CHAPTER 1713 51-17-1.14 As used in this chapter, the term:15 (1) 'Appropriation' means and includes any unauthorized use of another's indicia of
16 identity for the user's own benefit, commercially or otherwise.17 (2) 'Indicia of identity' means and includes an individual's image, likeness, voice,
18 signature, or other unique identifying features, including one's face, mannerisms,
19 distinctive appearance, tattoos, visible body modifications, birthmarks, and distinctive
20 speech patterns, including speech and language disorders. The use of an individual's
21 name, without any other representation of the person, is not considered an indicia of
22 identity.23 (3) 'Likeness' means any photograph, photographic reproduction, digital image, or
24 artifact, still or moving, or any film, videotape, digital recording, or other similar
25 medium of any individual, so that the individual is readily identifiable.26 (4) 'Voice' means a sound in a medium that is readily identifiable and attributable to a
27 particular individual, regardless of whether the sound contains the actual voice or a
28 simulation of the voice of the individual.29 51-17-2.30 Every individual has a right to protection against the appropriation of such individual's
31 indicia of identity by another person without such individual's prior consent or, in the case
32 of a minor, the prior consent of such minor's parent or legal guardian, or, in the case of a
33 deceased individual, the consent of the executor or administrator, heirs, or devisees of such
34 deceased individual.

35 51-17-3.

36 (a) The protections provided for in Code Section 51-17-2 shall be deemed exclusive to the
37 individual, whether or not such rights were commercially exploited by such individual
38 during his or her lifetime, subject to the assignment or licensing of such rights during such
39 individual's lifetime, and to the executors, heirs, assigns, or devisees for a period of at least
40 ten years after the death of the individual.

41 (b)(1) For individuals who are not public figures, the exclusive right to the use of an
42 individual's indicia of identity is only terminated by the assignment or licensing of rights.

43 (2) Except as provided for in paragraph (3) of this subsection, for public figures, the
44 exclusive right to nonsexual use of an individual's indicia of identity is terminated by
45 proof of the nonuse of the indicia of identity of any individual for commercial purposes
46 by an executor, assignee, heir, or devisee for a period of two years subsequent to the
47 initial ten-year period following such public figure's death.

48 (3) The right to sexual use of an individual's indicia of identity shall be extinguished
49 upon such individual's death. Any heir of such deceased individual shall have a cause of
50 action against any person who begins or persists in the sexual use of an individual's
51 indicia of identity following such individual's death.

52 (c) As used in this Code section, the term 'use' shall include the public availability of a
53 sound recording or audiovisual work in which the individual's likeness or voice is readily
54 identifiable.

55 51-17-4.

56 A person shall be liable in a civil action for appropriation of indicia of identity if such
57 person:

58 (1) Uses or infringes upon the use of an individual's indicia of identity in any medium,
59 in any manner directed to any person other than such individual, for purposes of
60 advertising products, merchandise, goods, or services, or for purposes of fundraising,

61 solicitation of donations, purchases of products, merchandise, goods, or services, selling
62 such indicia of identity, or integrating indicia of identify into machine learning training
63 with knowledge that use of such indicia of identity was not authorized by the individual,
64 executor or administrator, heirs, or devisees, or in the case of a minor, the minor's parent
65 or legal guardian;

66 (2) Publishes, performs, distributes, transmits, sells, or otherwise makes available to the
67 public an individual's indicia of identity, with knowledge that use of such indicia of
68 identity was not authorized by the individual, executor or administrator, heirs, or
69 devisees, or in the case of a minor, the minor's parent or legal guardian; or

70 (3) Makes available an algorithm, software, tool, or other technology, service, or device,
71 where a purpose or function of such algorithm, software, tool, or other technology,
72 service, or device is the production of a particular, identifiable individual's voice or
73 likeness, with knowledge that distributing, transmitting, or otherwise making available
74 the voice or likeness was not authorized by the individual, executor or administrator,
75 heirs, or devisees, or in the case of a minor, the minor's parent or legal guardian.

76 51-17-5.

77 (a) In any cause of action pursuant to this chapter, an individual shall be entitled to recover
78 the greater of \$1,000.00 or actual damages suffered. Such individual shall also be entitled
79 to recover any profits that are attributable to such appropriation which are not taken into
80 account in computing the actual damages. Profit or lack thereof from the appropriation or
81 infringement of an individual's rights shall not be a criterion of determining liability.

82 (b) The court having jurisdiction for any action arising pursuant to this chapter may grant
83 injunctions on such terms as it may deem reasonable to prevent or restrain the
84 appropriation of an individual's indicia of identity.

85 51-17-6.

86 (a) The use of an individual's indicia of identity in a commercial medium shall not
87 automatically constitute unlawful appropriation solely because the material containing such
88 use is commercially sponsored or contains paid advertising. Any determination of whether
89 such use was for the purpose of advertising or solicitation shall consider whether or not the
90 use of the individual's indicia of identity was so directly connected with the commercial
91 sponsorship or with the paid advertising as to constitute a but-for cause of any such
92 advertising or sponsorship.

93 (b) Nothing in this chapter shall impose liability for the documentation of an individual's
94 presence in places where an individual does not have a reasonable expectation of privacy.

95 51-17-7.

96 (a) Nothing in this chapter shall apply to activities protected by the First Amendment to
97 the United States Constitution, including, but not limited to, satire, parody, works of artistic
98 expression, or works of journalism by bona fide news organizations.

99 (b) Nothing in this chapter shall apply to the owners or employees of any medium used for
100 advertising, including, but not limited to, newspapers, magazines, radio and television
101 stations, billboards, and transit advertisements, who have published or disseminated any
102 advertisement or solicitation in violation of this chapter, unless it is established that such
103 owners or employees had knowledge or reasonably should have known of the appropriation
104 of the individual's indicia of identity as prohibited by this chapter.

105 (c) Nothing in this chapter shall be construed to impose a duty upon a provider of an
106 interactive computer service, as defined in Section 230 of Title 47 of the United States
107 Code, to review or enforce compliance with this chapter by third-party content providers."

108 **SECTION 2.**

109 All laws and parts of laws in conflict with this Act are repealed.