

The House Committee on Creative Arts and Entertainment offers the following substitute to HB 566:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to selling
2 and other trade practices, so as to enact the "NO FAKES Act of 2026"; to protect intellectual
3 property rights in the voice and visual likeness of individuals; to provide for the
4 characteristics of a right to use the voice or visual likeness in a digital replica; to provide for
5 licensing and transferability of a right; to provide for protection of post-mortem intellectual
6 property rights; to provide for violations and civil action; to provide for exceptions; to
7 provide for requirements of licensing voice or visual likeness for minors; to require actual
8 knowledge of violation for violators; to provide notification; to provide for civil liability for
9 false notifications by an individual claiming a violation; to provide subpoena; to require the
10 Secretary of State to maintain a directory of certain post-mortem digital replication rights and
11 a directory of designated agents; to authorize the Secretary of State to make interpretations
12 and resolve ambiguities in carrying out provisions of this article; to provide for rules and
13 regulations; to provide for civil liability for the unauthorized use of a digital replica; to
14 provide for penalties; to provide for exceptions; to provide for statute of limitations; to
15 provide for jurisdiction; to provide for construction; to provide for definitions; to provide for
16 related matters; to provide for severability; to repeal conflicting laws; and for other purposes.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

H. B. 566 (SUB)

- 1 -

18 **SECTION 1.**

19 This Act shall be known and may be cited as the "Nurture Originals, Foster Art, and Keep
20 Entertainment Safe Act of 2026" or the "NO FAKES Act of 2026."

21 **SECTION 2.**

22 Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to selling and other
23 trade practices, is amended by enacting a new article to read as follows:

24 "ARTICLE 38

25 10-1-970.

26 As used in this article, the term:

27 (1) 'Digital fingerprint' means an electronic label or identifier created by a cryptographic
28 hash function, or similar function, or any other digital process, tool, or technique selected
29 by the provider of an online service, that is unique to a specific piece of material such that
30 it is effectively certain that such piece of material will not be misidentified as a match for
31 a different piece of material.

32 (2) 'Digital replica' means a newly created, computer generated, highly realistic
33 electronic representation that is readily identifiable as the voice or visual likeness of an
34 individual that:

35 (A) Is embodied in a sound recording, image, audiovisual work, including an
36 audiovisual work that does not have any accompanying sounds, or transmission:

37 (i) In which the actual individual did not actually perform or appear; or

38 (ii) That is a version of a sound recording, image, or audiovisual work, in which the
39 actual individual did perform or appear, where the fundamental character of the
40 performance or appearance has been materially altered; and

41 (B) Does not include the electronic reproduction, use of a sample of one sound
42 recording or audiovisual work into another, remixing, mastering, or digital remastering
43 of a sound recording or audiovisual work authorized by the copyright holder.

44 (3) 'Individual' means a human being, living or dead.

45 (4) 'Interactive computer service' means any information service, system, or access
46 software provider that provides or enables computer access by multiple users to a
47 computer server, which specifically includes:

48 (A) A service or system that provides access to the internet; and

49 (B) Such systems operated, or services offered, by libraries or educational institutions.

50 (5) 'Online service' means:

51 (A)(i) Any website, online application, mobile application, or virtual reality
52 environment that predominantly provides public access to user uploaded material.

53 (ii) Any digital music provider, as defined in 17 U.S.C. Section 115(e) that provides
54 public access to user uploaded material if such digital music provider is not covered
55 under division (i) of this subparagraph.

56 (iii) Any online application; mobile application; virtual reality environment;
57 application store; search engine, including any feature that provides web search
58 results; advertising service or network; online shopping service or platform; electronic
59 commerce provider; mapping service; cloud storage service; web hosting service; or
60 any other interactive computer service that is not listed in division (i) of this
61 subparagraph, which provides public access to user uploaded material and has a
62 designated agent pursuant to subsection (l) of Code Section 10-1-975; and

63 (B) Such term does not include any service listed in this paragraph that predominantly
64 provides public access to user uploaded products or services, the primary function of
65 which is to distribute, import, transmit, or otherwise make available to the public a
66 product or service described in paragraph (3) of subsection (b) of Code
67 Section 10-1-975.

68 (6) 'Right holder' means the individual whose voice or visual likeness is at issue with
69 respect to a digital replica or a product or service described in paragraph (3) of
70 subsection (b) of Code Section 10-1-975 and any other individual or entity that has
71 acquired, through a license, inheritance, or otherwise, the right to authorize the use of
72 such voice or visual likeness in a digital replica.

73 (7) 'Sound recording artist' means an individual who creates or performs in sound
74 recordings for economic gain or for the livelihood of the individual.

75 (8) 'User uploaded material' means material, such as a video, image, game, audio file, or
76 other material that is placed on a service directly by or at the direction of an end user of
77 a service. For purposes of this paragraph, the term 'end user,' with respect to an online
78 service, shall not include a third-party commercial provider of sound recordings to a
79 digital music provider, or an employee or agent of the online service acting on behalf of
80 the provider of the online service.

81 10-1-971.

82 (a) Subject to the other provisions of this Code section, each individual or right holder
83 shall have the right to authorize the use of the voice or visual likeness of such individual
84 in:

85 (1) A digital replica; or

86 (2) In connection with a product or service for which authorization of the individual or
87 right holder is required to avoid liability with respect to an activity described in
88 paragraph (3) of subsection (b) of Code Section 10-1-975.

89 (b) The right described in subsection (a) of this Code section shall have the following
90 characteristics:

91 (1) The right is:

92 (A) A property right;

93 (B) Not assignable during the life of the individual; and

- 94 (C) Licensable, in whole or in part, exclusively or non-exclusively, by the right holder;
95 (2) The right shall not expire upon the death of the individual, without regard to whether
96 such right is commercially exploited by the individual during the individual's lifetime;
97 (3) Upon the death of the individual:
98 (A) The right is transferable, licensable, in whole or in part, by the executors, heirs,
99 assignees, licensees, or devisees of the individual; and
100 (B) Ownership of the right may be:
101 (i) Transferred, in whole or in part, by any means of conveyance or by operation of
102 law; and
103 (ii) Bequeathed by will or passed as personal property by the applicable laws of
104 intestate succession;
105 (4) The right shall be exclusive to:
106 (A) The individual, subject to the licensing of the right during the lifetime of such
107 individual under subsection (a) of Code Section 10-1-972; and
108 (B) The right holder:
109 (i) For a period of ten years after the death of the individual; and
110 (ii) If the right holder demonstrates active and authorized public use of the voice or
111 visual likeness of the individual during the two-year period preceding the expiration
112 of the ten-year period described in division (i) of this subparagraph, for an additional
113 five-year period, subject to renewal for additional five-year periods, provided that the
114 right holder can demonstrate authorized public use of the voice or visual likeness of
115 the individual during the two-year period preceding the expiration of each additional
116 five-year period; and
117 (5) The right shall terminate on the date that is the earlier of:
118 (A) The date on which the ten-year period or five-year period described in
119 subparagraph (b)(4)(B) of this Code section terminates without renewal; or
120 (B) The date that is 70 years after the death of the individual.

121 10-1-972.

122 (a) A license described in subparagraph (b)(1)(C) of Code Section 10-1-971:

123 (1) Is valid, while the individual is living, only to the extent that the license duration does
124 not exceed ten years; and

125 (2) Shall be valid only if the license agreement:

126 (A) Is in writing and signed by the individual or an authorized representative of the
127 individual; and

128 (B) Includes a reasonably specific description of the intended uses of the digital
129 replica.

130 (b) A license as described in subparagraph (b)(1)(C) of Code Section 10-1-971 involving
131 a living individual who is younger than 18 years of age:

132 (1) Is valid only to the extent that the license duration does not exceed five years, but in
133 any case terminates when the individual reaches 18 years of age; and

134 (2) Shall be valid only if the license agreement:

135 (A) Is in writing and signed by the individual or an authorized representative of the
136 individual;

137 (B) Includes a reasonably specific description of the intended uses of the digital
138 replica; and

139 (C) Is approved by a court in accordance with the law of this state.

140 (c) The provisions of subsections (a) and (b) of this Code section shall not apply if the
141 license is governed by a collective bargaining agreement that addresses digital replicas.

142 (d) The provisions of subsections (a) and (b) of this Code section shall not affect terms and
143 conditions of a license or related contract other than those described in this Code section,
144 and the expiration of such license does not affect the remainder of the license or related
145 contract.

146 10-1-973.

147 (a) A post-mortem transfer or license as provided in subparagraph (b)(3)(B) of Code
148 Section 10-1-971 shall be valid only if the transfer agreement or license agreement is in
149 writing and signed by the right holder or an authorized representative of the right holder.

150 (b) The renewal of a post-mortem right under division (b)(4)(B)(ii) of Code
151 Section 10-1-971 shall be effective if, during the two-year renewal period, the right holder
152 files a notice with the Secretary of State which shall include:

153 (1) The name of the deceased individual;

154 (2) A statement, under penalty of perjury, that the right holder has engaged in active and
155 authorized public use of the voice or visual likeness during the two-year period;

156 (3) The identity of and contact information for the right holder; and

157 (4) Such other information as the Secretary of State may prescribe by regulation.

158 (c) The Secretary of State shall maintain a current directory of post-mortem digital
159 replication rights registered under this Code section. Such directory may include voluntary
160 registrations of the post-mortem right provided in division (b)(4)(b)(ii) of Code
161 Section 10-1-971. Such directory shall be posted on the appropriate website and available
162 to the public for inspection. The Secretary of State may require payment of a reasonable
163 filing fee by the registrant, which may take into consideration the costs of maintaining such
164 directory.

165 (d) The right holder may voluntarily register the post-mortem right under
166 division (b)(4)(B)(ii) of Code Section 10-1-971 by filing a notice with the Secretary of
167 State that complies with such requirements regarding form, content, and filing procedures
168 as the Secretary of State may prescribe by regulation.

169 (e) The Secretary of State may make such interpretations and resolve such ambiguities as
170 may be appropriate to carry out this article.

171 (f) The Secretary of State shall promulgate rules and regulations necessary to implement
172 and administer the provisions of this article.

173 10-1-974.

174 A digital replica that is embodied in a sound recording, image, audiovisual work, including
175 an audiovisual work that does not have any accompanying sounds, or transmission, and the
176 use of which is authorized pursuant to the terms of a license, may continue to be utilized
177 in a manner consistent with the terms of that license after the expiration or termination of
178 the license.

179 10-1-975.

180 (a) Any individual or entity that engages in an activity prohibited in subsection (b) of this
181 Code section shall be liable in a civil action brought under this Code section.

182 (b) The following activities shall be prohibited pursuant to this article:

183 (1) The publication, display, distribution, transmission, or communication of, or
184 otherwise making available to the public a digital replica without consent of the right
185 holder; or

186 (2) Distributing, importing, transmitting, or otherwise making available to the public a
187 product or service that:

188 (A) Is primarily designed to produce one or more digital replicas of a specifically
189 identified individual or individuals without the authorization of:

190 (i) Such individual or individuals;

191 (ii) The applicable right holder; or

192 (iii) The laws of this state;

193 (B) Has only limited commercially significant purpose or use other than to produce a
194 digital replica of a specifically identified individual or individuals without the
195 authorization of:

196 (i) Such individual or individuals;

197 (ii) The applicable right holder; or

198 (iii) The laws of this state; or

- 199 (C) Is marketed, advertised, or otherwise promoted as a product or service designed to
200 produce a digital replica of a specifically identified individual by an individual or entity
201 described in subsection (a) of this Code section or by an individual or entity acting in
202 concert and with knowledge of such individual or entity, without the authorization of:
- 203 (i) Such individual or individuals;
 - 204 (ii) The applicable right holder; or
 - 205 (iii) The laws of this state.
- 206 (c) To incur liability under this Code section:
- 207 (1) An online service provider carrying out an action prohibited under subsection (b) of
208 this Code section, shall have actual knowledge, which could be obtained through a
209 notification that satisfies subsection (1) of this Code section, willfully avoided having
210 such knowledge, or a court order stating that the applicable material is:
 - 211 (A) A digital replica which was not authorized by the right holder; or
 - 212 (B) A product or service described in paragraph (2) of subsection (b) of this Code
213 section; or
 - 214 (2) An individual or entity, which is not a provider of an online service, carrying out an
215 action prohibited under subsection (b) of this Code section, shall have actual knowledge,
216 or must willfully avoid having such knowledge that the applicable material is:
 - 217 (A) A digital replica which was not authorized by the right holder; or
 - 218 (B) A product or service described in paragraph (2) of subsection (b) of this Code
219 section.
- 220 (d) It shall not be a violation of subsection (b) of this Code section if:
- 221 (1) The digital replica is produced or used in a bona fide news, public affairs, or sports
222 broadcast or account, provided that the digital replica is the subject of, or is materially
223 relevant to, the subject of such broadcast or account; or
 - 224 (2) The digital replica is a representation of the individual in a documentary or in a
225 historical or biographical context, including some degree of fictionalization, unless:

- 226 (A) The production or use of such digital replica creates the false impression that the
227 work is an authentic sound recording, image, transmission, or audiovisual work in
228 which the individual participated; or
- 229 (B) The digital replica is embodied in a musical sound recording that is synchronized
230 to accompany a motion picture or other audiovisual work, except to the extent that the
231 use of such digital replica is protected by the First Amendment to the United States
232 Constitution;
- 233 (3) The applicable digital replica is produced or used in a manner consistent with the
234 public interest in bona fide commentary, criticism, scholarship, satire, or parody;
- 235 (4) The use of the digital replica is fleeting or negligible;
- 236 (5) The digital replica is used in an advertisement or commercial announcement for any
237 purpose described in paragraphs (1) through (4) of this subsection and the digital replica
238 is relevant to the subject of the work so advertised or announced;
- 239 (6) The service provides, by wire or radio, the capability to transmit data to and receive
240 data from all, or substantially all, internet endpoints, including any capabilities that are
241 incidental to enable the operation of the communications service of a provider of online
242 services or network access, or the operator of facilities for such service; or
- 243 (7)(A) It is not technologically feasible for the provider of an online service to disable
244 access to the offending material, or disable the reference or link to such material, at the
245 specific location identified in the notification sent pursuant to subsection (l) of this
246 Code section.
- 247 (B) Disabling access to the offending material would be prohibited by law.
- 248 (e) The exceptions provided in subsection (d) of this Code section shall not apply when
249 the digital replica is used to depict sexually explicit conduct, as such term is set forth in
250 Code Section 16-12-100.
- 251 (f) No individual or entity shall be directly or secondarily liable for a violation of this Code
252 section for manufacturing, importing, offering to the public, providing, or otherwise

253 distributing a product or service unless such product or service is listed in paragraph (3) of
254 subsection (b) of Code Section 10-1-975.

255 (g) An online service shall not be liable for violating this Code section by referring or
256 linking to, or violating subsection (b) of this Code section with respect to user uploaded
257 material, a user to an unauthorized digital replica if:

258 (1) The provider of an online service, other than a search engine or a search component
259 of a service, described in division (5)(A)(iii) of Code Section 10-1-970, has adopted,
260 reasonably implemented, and informed users of the online service of a policy that
261 provides for the termination in appropriate circumstances of account holders of the online
262 service that are repeat violators of subsection (b) of this Code section, provided that the
263 failure to terminate any such account holder in accordance with such policy shall subject
264 the provider of such online service to potential liability only with respect to content in
265 violation of subsection (b) of this Code section posted by the account holder; and

266 (2) Upon receiving notification that satisfies subsection (1) of this Code section:

267 (A) The provider removes or disables access to the work embodying the claimed
268 unauthorized digital replica or the product or service specifically identified in a notice
269 sent under such paragraph, or, as applicable, the link or reference to the unauthorized
270 digital replica or product or service, as soon as is technically and practically feasible for
271 such provider;

272 (B) The provider of an online service described in division (5)(A)(i) or (5)(A)(ii) of
273 Code Section 10-1-970, as soon as is technically and practically feasible for such
274 provider, removes or disables access to all other publicly available instances of the
275 work embodying the claimed unauthorized digital replica which:

276 (i) Match the digital fingerprint of an unauthorized digital replica specifically
277 identified in a notification under subsection (1) of this Code section; and

278 (ii) Are uploaded after valid, applicable notice was submitted to, and processed by,
279 the provider; and

280 (C) The provider takes reasonable steps to promptly notify the right holder, and the end
281 user that uploaded the material, that the online service removed or disabled access to
282 such material.

283 (h) An online service shall not be liable for violating this Code section by storing
284 third-party provided material that resides on a system or network controlled or operated by
285 or for the online service, or violating subsection (b) of this Code section, specifically, with
286 respect to user uploaded material if:

287 (1) The provider of an online service, other than a search engine or a search component
288 of a service described in division (5)(A)(iii) of Code Section 10-1-970, has adopted,
289 reasonably implemented, and informed users of the online service of a policy that
290 provides for the termination in appropriate circumstances of account holders of the online
291 service that are repeat violators of subsection (b) of this Code section, provided that the
292 failure to terminate any such account holder in accordance with such policy shall subject
293 the provider of such online service to potential liability only with respect to content in
294 violation of subsection (b) of this Code section posted by the account holder; and

295 (2) Upon receiving notification that satisfies subsection (l) of this Code section:

296 (A) The provider removes or disables access to the work embodying the claimed
297 unauthorized digital replica or the product or service specifically identified in a notice
298 sent under such subsection, or, as applicable, the link or reference to the unauthorized
299 digital replica or product or service, as soon as is technically and practically feasible for
300 such provider;

301 (B) The provider of an online service described in division (5)(A)(i) or (5)(A)(ii) of
302 Code Section 10-1-970, as soon as is technically and practically feasible for such
303 provider, removes or disables access to all other publicly available instances of the
304 work embodying the claimed unauthorized digital replica which:

305 (i) Match the digital fingerprint of an unauthorized digital replica specifically
306 identified in a notification under subsection (l) of this Code section; and

307 (ii) Are uploaded after valid, applicable notice was submitted to, and processed by,
308 such provider; and

309 (C) The provider takes reasonable steps to promptly notify the right holder and the end
310 user that uploaded the material that the online service removed or disabled access to
311 such material.

312 (i) An online service shall designate an agent to receive notifications under subsection (l)
313 of this Code section by making available through the online service, including on the
314 website of the online service in a location accessible to the public, and by providing to the
315 Secretary of State, substantially the following information:

316 (1) The name, address, telephone number, and email address of the agent; and

317 (2) Other contact information that the Secretary of State may deem appropriate.

318 (j) The Secretary of State shall maintain a current directory of designated agents for the
319 purposes of this Code section. Such directory shall be available for public inspection,
320 including through the internet. The Secretary of State may require payment of a reasonable
321 filing fee by the online service, which may take into consideration the costs of maintaining
322 the directory of designated agents.

323 (k) The failure of an online service to register a designated agent under subsection (i) of
324 this Code section shall establish that the online service has not undertaken good faith effort
325 to comply with this Code section.

326 (l) A notification of a claimed violation of the right described in subsection (a) of Code
327 Section 10-1-971 shall be a written communication provided to the designated agent of an
328 online service that includes:

329 (1) A physical or electronic signature of the right holder, an individual authorized to act
330 on behalf of such right holder, or an individual identified under subsection (o) of this
331 Code section;

- 332 (2) Identification of the individual, the voice or visual likeness of whom is being used
333 in an unauthorized digital replica or a product or service described in paragraph (3) of
334 subsection (b) of this Code section;
- 335 (3) Identification of the material containing an unauthorized digital replica, or a product
336 or service described in paragraph (3) of subsection (b) of this Code section, including
337 information sufficient to allow the online service to locate the identified material;
- 338 (4) Information reasonably sufficient to permit the online service to contact the notifying
339 party, such as an address, telephone number, and email address;
- 340 (5) A statement that the notifying party believes in good faith that the material is an
341 unauthorized use of a digital replica;
- 342 (6) If not the right holder or an individual identified under subsection (o) of this Code
343 section, a statement that the notifying party has the authority to act on behalf of such right
344 holder; and
- 345 (7) For the purposes of subsection (g) of this Code section, information reasonably
346 sufficient to:
- 347 (A) Identify the reference or link to the material or activity claimed to be an
348 unauthorized digital replica, or a product or service described in paragraph (3) of
349 subsection (b) of this Code section that is to be removed or to which access is to be
350 disabled; and
- 351 (B) Permit the online service to locate the reference or link described in
352 subparagraph (A) of this paragraph.
- 353 (m)(1) It shall be unlawful to knowingly materially misrepresent that:
- 354 (A) The material requested to be removed is an unauthorized digital replica;
355 (B) An individual has the authority to act on behalf of the right holder; or
356 (C) A digital replica, or a product or service described in paragraph (3) of
357 subsection (b) of this Code section is not authorized by the right holder or by law.

358 (2) Failure to undertake a good faith review to determine whether material with respect
359 to which notice is provided under subsection (l) of this Code section qualifies as a digital
360 replica shall constitute a knowing material misrepresentation under this subsection.

361 (n) Any individual or entity that violates subsection (m) of this Code section shall be liable
362 for an amount equal to the greater of:

363 (1) Any actual damages, including costs and attorney's fees, incurred by the alleged
364 violator, as well as by any online service injured by the reliance of the online service on
365 the misrepresentation in removing or disabling access to the material or activity claimed
366 to be an unauthorized digital replica; or

367 (2) The amount of \$25,000.00 per notification sent pursuant to subsection (m) of this
368 Code section.

369 (o) A civil action for a violation of this subsection (b) of this Code section may be brought
370 by:

371 (1) The right holder;

372 (2) If the right holder is an individual younger than 18 years of age, a parent or guardian
373 of such individual; or

374 (3) In the case of a digital replica involving a sound recording artist, any individual or
375 entity that has, directly or indirectly, entered into:

376 (A) A contract for the exclusive personal services of the sound recording artist as a
377 sound recording artist; or

378 (B) An exclusive license to distribute or transmit one or more works that capture the
379 audio performance of the sound recording artist.

380 (p) A civil action may not be brought under this Code section unless the action is
381 commenced not later than three years after the date on which the party seeking to bring the
382 civil action discovered, or should have discovered, the violation.

383 (q) It shall not be a defense in a civil action brought under this Code section that the
384 defendant displayed or otherwise communicated to the public a disclaimer stating that the

385 digital replica or a product or service described in paragraph (3) of subsection (b) of this
386 Code section was unauthorized or disclosing that the digital replica was generated through
387 the use of artificial intelligence or other technology.

388 (r) In any civil action brought under this Code section:

389 (1) An individual or entity that engages in an activity described in paragraph (2) of
390 subsection (b) of this Code section shall be liable to the injured party in an amount equal
391 to the greater of:

392 (A)(i) In the case of an individual, \$5,000.00 per work embodying the unauthorized
393 digital replica.

394 (ii) In the case of an online service that has undertaken a good faith effort to comply
395 with subsection (g) of this Code section, \$25,000.00 per work embodying the
396 unauthorized digital replica.

397 (iii) In the case of an online service that has not undertaken a good faith effort to
398 comply with subsection (g) of this Code section, \$5,000.00 per display, copy made,
399 transmission, and instance of the unauthorized digital replica being made available on
400 the online service in a sum of not more than \$750,000.00 per work embodying the
401 unauthorized digital replica.

402 (iv) In the case of an entity that is not an online service, \$25,000.00 per work
403 embodying the unauthorized digital replica; or

404 (B) Any actual damages suffered by the injured party as a result of the activity, plus
405 any profits from the unauthorized use that are attributable to such use and are not taken
406 into account in computing the actual damages;

407 (2) An individual or entity that engages in an activity described in paragraph (3) of
408 subsection (b) of this Code section shall be liable to the injured party in an amount equal
409 to the greater of:

410 (A) In the case of an individual, \$5,000.00 per product or service;

- 411 (B) In the case of an online service that has undertaken a good faith effort to comply
412 with subsection (g) of this Code section, \$25,000.00 per product or service;
- 413 (C) In the case of an online service that has not undertaken a good faith effort to
414 comply with subsection (g) of this Code section, \$750,000.00 per product or service;
- 415 (D) In the case of an entity that is not an online service, \$25,000.00 per product or
416 service; or
- 417 (E) Any actual damages suffered by the injured party as a result of the activity, plus
418 any profits from the unauthorized use that are attributable to such use and are not taken
419 into account in computing the actual damages;
- 420 (3) The plaintiff may seek injunctive or other equitable relief;
- 421 (4) In the case of willful activity in which the injured party has proven that the defendant
422 acted with malice, fraud, knowledge, or willful avoidance of knowledge that the conduct
423 violated the law, the court may award to the injured party punitive damages;
- 424 (5) If the party bringing the action prevails, the court shall award reasonable attorney's
425 fees. If the party defending the action prevails, the court shall award reasonable
426 attorney's fees if the court determines that the action was not brought in good faith;
- 427 (6) An online service that has an objectively reasonable belief that material that is
428 claimed to be an unauthorized digital replica does not qualify as a digital replica shall not
429 be liable for statutory or actual damages exceeding \$1 million regardless of whether the
430 material is ultimately determined to be an unauthorized digital replica; and
- 431 (7) In the event that the third-party provider of the material that the online service has
432 removed or to which the online service has disabled access files a lawsuit against the
433 sender of a notice under subsection (l) of this Code section claiming that such notice was
434 false or deceptive as provided in subsection (m) of this Code section, the online service
435 may, provided that the lawsuit was filed not later than 14 days after the user receives
436 notice that the online service has removed or disabled access to the material, restore the
437 removed material to its network for access by members of the public without monetary

438 liability therefor to either the notice sender or third-party provider of the material that the
439 online service had removed or disabled access.

440 10-1-976.

441 (a) A right holder, an individual or entity authorized to act on behalf of a right holder, or
442 an individual identified under subsection (o) of Code Section 10-1-975 may request the
443 clerk of any state court of competent jurisdiction to issue a subpoena to a provider of an
444 online service for identification of an alleged violator of this section in accordance with this
445 subsection.

446 (b) A request under subparagraph (a) of this Code section may be made by filing with the
447 clerk of any state court where venue and jurisdiction are proper:

448 (1) A copy of a notification described in subsection (l) of Code Section 10-1-975;

449 (2) A proposed subpoena; and

450 (3) A sworn declaration indicating that:

451 (A) The purpose of the subpoena is to obtain the identity of an individual or entity
452 alleged to be liable under subsection (b) of Code Section 10-1-975; and

453 (B) Information obtained from such subpoena shall only be used for the purpose of
454 protecting rights under this article.

455 (c) A subpoena issued under this Code section shall authorize and order the provider of the
456 online service to expeditiously disclose information sufficient to identify the alleged
457 violator by virtue of the activity described in the notification to the extent that information
458 is available to the provider of the online service.

459 (d) If a proposed subpoena under this Code section is in proper form, the notification filed
460 satisfies the requirements under subsection (l) of Code Section 10-1-975, and the
461 accompanying declaration is properly executed, the clerk of any state court where venue
462 and jurisdiction are proper shall expeditiously issue and sign the proposed subpoena and
463 return such subpoena to the requester for delivery to the provider of the online service.

464 10-1-977.

465 (a) Nothing in this article shall be construed to abrogate causes of action under federal law.

466 (b) Liability under this article shall apply only to:

467 (1) Conduct occurring after the effective date of this article; and

468 (2) In the case of conduct covered by a license or contract, a license or contract that is
469 executed after the effective date of this article.

470 (c) The right granted under subsection (a) of Code Section 10-1-971:

471 (1) Shall apply to any individual, regardless of whether the individual dies before or after
472 the date of enactment of this article; and

473 (2) In the case of a right holder who has died before the date of enactment of this article,
474 shall vest in the executors, heirs, assigns, or devisees of the right holder.

475 (d) Except as expressly provided in paragraph (2) of subsection (g) of Code
476 Section 10-1-975, nothing in this section shall be construed to require the provider of an
477 online service to:

478 (1) Monitor the online service for, or affirmatively seek facts about, any digital replica;
479 or

480 (2) Gain access to material."

481 **SECTION 3.**

482 All provisions of this Act shall be severable in accordance with Code Section 1-1-3.

483 **SECTION 4.**

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