

SENATE BILL NO. 1502

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHROER.

6522S.011

KRISTINA MARTIN, Secretary

AN ACT

To amend chapter 434, RSMo, by adding thereto one new section relating to contracts for the use of an individual's identifiable attributes, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 434, RSMo, is amended by adding thereto
2 one new section, to be known as section 434.120, to read as
3 follows:

434.120. 1. This section shall be known and may be
2 cited as the "Missouri Consent and Likeness Protection Act".

3 2. As used in this section, the following terms mean:

4 (1) "Adhesion contract", any contract, waiver,
5 release, disclaimer, or terms of entry that is:

6 (a) Presented on a take-it-or-leave-it basis;

7 (b) Not subject to meaningful negotiation; or

8 (c) Required as a condition of entry, participation,
9 service, or access;

10 (2) "Disclaimer or waiver", any written, posted,
11 digital, or verbal statement purporting to limit liability,
12 obtain consent, or waive legal rights, including, but not
13 limited to, terms or language provided by any posted sign,
14 ticket, website, or mobile application, linked by a quick
15 response code, or by statements asserting consent by
16 entering, by participating, by remaining on the premises, or
17 similar conditions;

18 (3) "Identity attributes", an individual's name,
19 image, photograph, voice, likeness, signature, biometric
20 identifiers, digital replica, persona, or any substantially
21 similar identifying characteristics.

22 3. No adhesion contract, disclaimer or waiver, or
23 condition of entry shall be valid or enforceable if it:

24 (1) Waives or limits an individual's right to bring a
25 civil action for the unauthorized use of the individual's
26 identity attributes; or

27 (2) Grants a company or third party the right to use
28 an individual's identity attributes without allowing the
29 individual to seek judicial relief.

30 4. Any provision that purports to release liability,
31 require arbitration, waive jury trial, limit damages, or
32 provide consent without reasonable and just compensation
33 shall be void as against public policy when applied to the
34 use of identity attributes.

35 5. For purposes of this section, consent shall not be
36 implied by:

37 (1) Entry onto premises;

38 (2) Presence in a public or quasi-public space;

39 (3) Participation in an activity;

40 (4) Purchase of a ticket; or

41 (5) Failure to read or object to posted terms.

42 6. Consent for the commercial or promotional use of
43 identity attributes shall be valid only if the consent is:

44 (1) Affirmative, explicit, and written;

45 (2) Negotiated by all parties in good faith;

46 (3) Separate and distinct from any general terms or
47 conditions;

48 (4) Clearly describing:

49 (a) The specific use of the identity attributes;

50 (b) That the use of the identity attributes is limited
51 in duration, which shall not to exceed a period of twenty
52 years;

53 (c) The parties authorized to use the identity
54 attributes; and

55 (d) Whether reasonable and just compensation for the
56 identity attributes is provided relevant to the negotiated
57 duration; and

58 (5) Freely revocable at any time.

59 7. Consent for the commercial or promotional use of
60 identity attributes obtained through adhesion contracts or
61 disclaimers or waivers shall be conclusively presumed
62 invalid.

63 8. Any individual whose identity attributes are used
64 in violation of this section may bring a civil action for
65 damages in a court of competent jurisdiction. The court may
66 award a prevailing plaintiff:

67 (1) Actual damages;

68 (2) Statutory damages of not less than ten thousand
69 dollars per violation, with each unauthorized use of an
70 individual's identity attributes constituting a separate
71 violation;

72 (3) Disgorgement of profits;

73 (4) Injunctive relief;

74 (5) Declaratory relief; and

75 (6) Reasonable attorney's fees and costs.

76 9. Whenever any individual or entity is engaged or
77 appears to be engaged in any act or practice which is a
78 violation of this section, the attorney general may:

79 (1) Investigate possible violations of this section;

80 (2) Bring an enforcement action to enjoin such act or
81 practice; and

82 (3) Upon a showing of a violation, seek a civil
83 penalty of up to twenty-five thousand dollars per violation,
84 with each unauthorized use of an individual's identity
85 attributes constituting a separate violation.

86 10. The rights and requirements established by this
87 section shall not be waived by contract.

88 11. This section shall apply to any entity doing
89 business in this state and to any individual physically
90 present in this state at the time of the alleged violation.

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