

1 H.563

2 Introduced by Representative Kleppner of Burlington

3 Referred to Committee on

4 Date:

5 Subject: Court procedure; unauthorized use of a person's likeness; private right

6 of action

7 Statement of purpose of bill as introduced: This bill proposes to create a

8 private right of action for the unauthorized use of a person's likeness that is

9 obtained near the immediate entrance of an essential care facility.

10 An act relating to a private right of action for unauthorized use of a person's  
11 likeness obtained near the immediate entrance of an essential care facility

12 It is hereby enacted by the General Assembly of the State of Vermont:

13 Sec. 1. 12 V.S.A. chapter 223 is added to read:

14 CHAPTER 223. UNCONSENTED USE OF PERSON'S LIKENESS

15 § 7401. APPLICATION AND CONSTRUCTION; PURPOSE

16 (a) In applying and construing this chapter, consideration shall be given to  
17 the following:

18 (1) Access to essential human and medical care is fundamental to the  
19 health, safety, and well-being of all Vermonters, particularly vulnerable  
20 populations.

1                   (2) Individuals seeking such care are often in moments of profound  
2                   vulnerability, seeking assistance for deeply personal circumstances, and have a  
3                   deeply personal and objectively reasonable expectation of privacy when  
4                   accessing these critical services.

5                   (3) The contemporary societal landscape mandates an expansive  
6                   understanding of “care” to encompass not only traditional medical facilities but  
7                   also critical human services that address fundamental needs, health, and well-  
8                   being, such as homeless shelters providing medical-adjacent services like  
9                   medication management.

10                  (4) National public policy, as exemplified by the Health Insurance  
11                  Portability and Accountability Act (HIPAA), establishes a powerful norm that  
12                  matters concerning one’s health and the act of seeking medical-related care are  
13                  inherently private.

14                  (5) The commercial exploitation of individuals’ images at the threshold  
15                  of facilities providing essential care undermines this national policy by  
16                  potentially deterring vulnerable individuals from accessing critical services due  
17                  to fear of public exposure of their private health circumstances.

18                  (6) While the First Amendment generally protects photography in public  
19                  places, this protection is not absolute, especially when images are used for  
20                  purely commercial purposes that invade an individual’s right to privacy or  
21                  control over the individual’s own likeness.

1                   (7) Vermont recognizes the tort of appropriation of likeness, which  
2                   protects an individual's right to control the commercial use of the individual's  
3                   name or image.

4                   (8) There is a compelling governmental interest in ensuring safe and  
5                   unimpeded access to health care facilities and protecting the health and safety  
6                   of citizens.

7                   (b) The purpose of this act is to:

8                   (1) recognize and protect a "functional curtilage of care" around the  
9                   immediate entrances of essential human and medical care facilities,  
10                   establishing a heightened and objectively reasonable expectation of privacy in  
11                   those sensitive areas;

12                   (2) prohibit the unauthorized commercial exploitation of individuals'  
13                   images taken around the immediate entrances of essential human and medical  
14                   care facilities; and

15                   (3) ensure unfettered access to essential care by mitigating deterrents  
16                   caused by unwanted visual intrusion for commercial gain.

17                   § 7402. DEFINITIONS

18                   As used in this chapter:

19                   (1) "Care" means any service provided to an individual that addresses  
20                   fundamental needs, health, and well-being, including medical treatment,  
21                   mental health services, reproductive health services, substance abuse treatment,

1 shelter, food assistance, or the secure holding and dispensing of prescribed  
2 medications or other health-related support.

3 (2) “Commercial exploitation” means the unauthorized use, publication,  
4 display, or dissemination of an individual’s image for advertising, marketing,  
5 or any other commercial purpose, including the sale of images, inclusion in  
6 commercial publications, or use in promotional materials, where such use is  
7 not connected to a legitimate newsgathering activity, journalistic purpose, or  
8 legitimate public interest nexus.

9 (3) “Essential human and medical care facility” means any building or  
10 premises where “care” is regularly provided, including abortion clinics, general  
11 hospital facilities, emergency medical treatment centers, methadone  
12 dispensaries, homeless shelters providing medical-adjacent services, and  
13 similar facilities.

14 (4) “Functional curtilage of care” means the immediate area surrounding  
15 any entrance, exit, or designated access point of an essential human and  
16 medical care facility. This area functions as a vital threshold to deeply private  
17 domains of human experience and vulnerability, where intimate activities  
18 associated with seeking care occur. For the purposes of this chapter, this area  
19 extends up to 25 feet from such entrance, exit, or access point.

20 (5) “Image” means any photograph, video recording, or digital  
21 representation that captures an individual’s likeness.

1       § 7403. PROHIBITED ACTS

2       (a) No person shall knowingly or recklessly capture, record, transmit, or  
3       otherwise obtain or use an image of an individual within the functional  
4       curtilage of care of an essential human and medical care facility if the primary  
5       intent is the commercial exploitation of that image without the express written  
6       consent of the individual depicted.

7       (b) Subsection (a) of this section shall not apply to:

8           (1) a federal law enforcement officer or a law enforcement officer  
9           certified as a law enforcement officer by the Vermont Criminal Justice  
10          Training Council pursuant to 20 V.S.A. § 2358, for legitimate law enforcement  
11          purposes;

12          (2) a security guard performing the security guard's official duties who  
13          is licensed under 26 V.S.A. chapter 59;

14          (3) legitimate newsgathering activities by a journalist if the image is  
15          used in connection with a newsworthy event or matter of legitimate public  
16          interest, and not primarily for the commercial exploitation of the person's  
17          likeness; or

18          (4) a person recording for the person's personal use, provided the  
19          recording is not subsequently used for commercial exploitation.

1       § 7404. REMEDIES AND ENFORCEMENT

2       (a) Civil action. Any person whose image is commercially exploited in  
3       violation of this chapter may bring a civil action in the Civil Division of the  
4       Superior Court against the person or entity responsible for the exploitation.

5       (b) Damages. A prevailing plaintiff in an action brought under this section  
6       may recover:

7           (1) actual damages, including damages for emotional distress and any  
8       financial harm caused by the commercial exploitation;  
9           (2) punitive damages if the violation was intentional or malicious; and  
10          (3) reasonable attorney's fees and costs.

11       (c) Injunctive relief. The court may grant injunctive relief to prevent or  
12       restrain violations of this chapter.

13       § 7405. CONSTRUCTION

14       This chapter shall be construed broadly to effectuate its purpose of  
15       protecting a person's privacy when accessing essential human and medical  
16       care. Nothing in this chapter shall be construed to limit existing rights or  
17       remedies under common law, including the tort of appropriation of likeness, or  
18       under other applicable statutes.

19       Sec. 2. EFFECTIVE DATE

20       This act shall take effect on July 1, 2026.