

HLS 19RS-235

ENGROSSED

2019 Regular Session

HOUSE BILL NO. 377

BY REPRESENTATIVE LEGER

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CIVIL/ACTIONS: Provides for the Allen Toussaint Legacy Act

1

AN ACT

2

To enact Subpart K of Part VIII of Chapter 1 of Title 51 of the Louisiana Revised Statutes

3

of 1950, to be comprised of R.S. 51:470.1 through 470.6, relative to a property right

4

of identity; to provide for definitions; to provide for a property right of identity; to

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provide for prohibitions; to provide for termination of the right of identity; to provide

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for protection from misappropriation; to provide for a cause of action; to provide for

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a prescriptive period; to provide for remedies; to provide for penalties; to provide for

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exceptions; to provide for applicability; and to provide for related matters.

9

Be it enacted by the Legislature of Louisiana:

10

Section 1. Subpart K of Part VIII of Chapter 1 of Title 51 of the Louisiana Revised

11

Statutes of 1950, comprised of R.S. 51:470.1 through 470.6, is hereby enacted to read as

12

follows:

13

SUBPART K. ALLEN TOUSSAINT LEGACY ACT

14

§470.1. Short title

15

This Subpart shall be known and may be cited as the "Allen Toussaint

16

Legacy Act"

17

§470.2. Definitions

18 As used in this Subpart, the following words and phrases shall have the
19 following meanings:

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- 1 (1) "Authorized representative" means an assignee, licensee, executor, heir,
2 legatee, or other representative of an individual.
- 3 (2) "Commercial purposes" means the use of an individual's identity for any
4 of the following purposes:
- 5 (a) On or in connection with products, merchandise, goods, services,
6 commercial activities, or performances.
- 7 (b) For advertising, soliciting, or promoting products, merchandise, goods,
8 services, commercial activities, or performances.
- 9 (c) For the purpose of fund-raising.
- 10 (3) "Digital replica" means a computer-generated or electronic reproduction
11 of an individual's likeness or voice that intentionally depicts the likeness or voice of
12 the individual.
- 13 (4) "Expressive work" means such work as a play, book, magazine,
14 newspaper, musical composition, audiovisual work, radio or television program,
15 work of art, work of political or newsworthy value, or an advertisement or
16 commercial announcement for any of these works, if it is fictional or nonfictional
17 entertainment, or a dramatic, literary, or musical work.
- 18 (5) "Identity" means an individual's name, voice, signature, photograph,
19 image, likeness, or digital replica.
- 20 (6) "Individual" means a natural person, living or deceased.

21 (7) "Performance" means the use of a digital replica to substitute for a
22 performance by a professional actor, singer, dancer, musician, broadcaster, or athlete
23 who, for gain or livelihood, engages or engaged in the depicted professional activity.
24 §470.3. Property right in an individual's identity.

25 A. Every individual has a property right in connection with the use of that
26 individual's identity for commercial purposes.

27 B. The identity rights provided in this Subpart constitute property rights that
28 do not expire upon the death of the individual so protected, whether or not such
29 rights were commercially exploited by the individual during the individual's lifetime.

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1 Identity rights are heritable, licensable, and transferable to the executors, heirs, or
2 legatees of the individual.

3 C.(1) Any transfer of ownership, including an exclusive license, of an
4 individual's identity rights is not valid unless in writing and signed by the individual
5 or the individual's authorized representative, or if the individual is deceased, by
6 authorized representatives holding more than fifty percent of such rights. A lawful
7 licensee of an individual's identity rights may, within the scope of the license, assert
8 a claim against a third party for a violation of this Subpart.

9 (2) The provisions of this Section shall not be construed to render invalid or
10 unenforceable any contract entered into by the then lawful rights owner, including
11 contracts entered into by a deceased individual during his lifetime.

12 D. The identity rights provided by this Subpart shall terminate upon the
13 earlier of either of the following:

14 (1) Proof of non-use of the individual's identity for commercial purposes by
15 an individual's authorized representative for a period of ten consecutive years

16 following the individual's death.

17 (2) Thirty years following the individual's death.

18 E. The rights provided by this Subpart apply to all individuals whether or not
19 the individual died before, on, or after August 1, 2019. If the individual died before
20 August 1, 2019, the rights are considered to have existed on and after the date the
21 individual died. Notwithstanding the foregoing, a claim for a violation of an
22 individual's identity rights may not be asserted under this Subpart unless the alleged
23 act or event of violation occurs after August 1, 2019.

24 F. Rights under this Subpart are not subject to levy or attachment and may
25 not be the subject of a security interest, marital property distribution, or debt
26 collection. Nothing in this Section limits the ability to levy, attach, or obtain a
27 security interest in the proceeds of the exercise of the rights under this Subpart, if the
28 living or deceased individual chooses to exercise his rights, or as otherwise ordered
29 by a court of competent jurisdiction.

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1 §470.4. Misappropriation of identity for commercial purposes

2 A. It shall be unlawful for any person to use an individual's identity for a
3 commercial purpose in Louisiana without having first obtained previous written
4 consent from the individual or the individual's authorized representative.

5 B.(1) A claim for a violation of an individual's identity rights may not be
6 asserted under this Subpart unless the alleged act occurs within Louisiana, and the
7 person asserting the claim is a resident of this state.

8 (2) A claim asserted under the provisions of this Subpart shall be subject to
9 a prescriptive period of two years from the date the violation was discovered or

10 should have been discovered.

11 C. A person who does any of the following shall be deemed to have
12 submitted to the jurisdiction of this state:

13 (1) Engages in conduct within Louisiana that is prohibited under this
14 Subpart.

15 (2) Creates or causes to be created within this state products, merchandise,
16 goods, services, or other materials prohibited under this Subpart.

17 (3) Transports or causes to be transported into this state products,
18 merchandise, goods, or other materials created or used in violation of this Subpart.

19 (4) Knowingly causes advertising or promotional material created or used
20 in violation of this Subpart to be published, distributed, exhibited, or disseminated
21 within Louisiana.

22 D. In addition to any other remedies that may be available under the laws of
23 this state, a person who violates an individual's identity rights may be liable for, and
24 a court may order, any of the following:

25 (1) Temporary or permanent injunctive relief.

26 (2) The greater of one thousand dollars and the actual damages, including
27 profits derived from the unauthorized use of the individual's identity. For purposes
28 of calculating profits, the plaintiff is only required to prove the gross revenue

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1 attributable to the unauthorized use, and the defendant is required to prove properly.

2 deductible expenses.

3 (3) Reasonable attorney fees, costs, and expenses relating to an action under

4 this Subpart.

5 §470.5. Exempt uses

6 A. This Subpart does not affect rights and privileges recognized under other
7 state or federal laws.

8 B. This Subpart does not apply to the use of an individual's identity under
9 any of the following circumstances:

10 (1) In connection with a news, public affairs, or sports broadcast, or the
11 broadcast of an account thereof, or political campaign.

12 (2) A work of political, public interest, or newsworthy value, including a
13 comment, criticism, or parody, and regardless of the degree of fictionalization in the
14 work.

15 (3) A play, book, magazine, newspaper, literary work, musical composition,
16 single and original work of art or photograph, or visual work.

17 (4) A sound recording, audiovisual work, or radio or television program,
18 unless the identity is used to create an unauthorized performance.

19 (5) Any act of restoration or preservation of a sound recording, audiovisual
20 work, or radio or television program.

21 (6) An advertisement, commercial announcement, or display of any of the
22 works described in this Subpart.

23 (7) To truthfully identify the individual as the author of a given work, or a
24 performer of a given performance under circumstances in which the work or
25 performance is otherwise rightfully reproduced, exhibited, or broadcast.

26 (8) To lawfully reproduce, display, distribute, or sell a copyrighted work of
27 authorship, provided that such work was lawfully created.

28 (9) To lawfully make a work available for sale or licensing purposes insofar
29 as the terms of the sale or license does not permit the user to violate this Subpart.

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- 1 (10) In a manner which is de minimis or incidental.
- 2 §470.6. Construction and applicability.
- 3 A. This Subpart shall be liberally construed to accomplish its intent and
4 purposes.
- 5 B. The property rights granted by this Subpart vest with an individual or the
6 individual's authorized representative on August 1, 2019.
- 7 C. The carriage or transmission by a radio or television broadcast station
8 licensed by the Federal Communications Commission of any content which violates
9 any provision of this Subpart shall not be considered a violation of this Subpart by
10 the radio or television broadcast station which carried or transmitted the content.
- 11 D. The provisions of this Subpart shall not apply to claims arising from a
12 publication of an expressive work created prior to August 1, 2019.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 377 Engrossed

2019 Regular Session

Leger

Abstract: Enacts the Allen Toussaint Legacy Act.

Proposed law enacts the Allen Toussaint Legacy Act.

Proposed law provides definitions for "authorized representative", "commercial purposes", "digital replica", "expressive work", "identity", "individual", and "performance".

Proposed law provides that every individual has a property right in connection with the use of that individual's identity for commercial purposes, and that those identity rights constitute property rights that 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. Identity rights are heritable, licensable, and transferable to the executors, heirs, or legatees of the individual.

Proposed law provides that any license of an individual's identity rights is not valid unless in writing and signed by the individual or the individual's authorized representative, or if the individual is deceased, by authorized representatives holding more than 50% of such rights.

Proposed law provides that the provisions of proposed law shall not be construed to render invalid or unenforceable any contract entered into by the then lawful rights owner, including contracts entered into by a deceased individual during his lifetime.

Proposed law provides that the identity rights shall terminate upon the earlier of either the proof of non-use of the individual's identity for commercial purposes by an individual's

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authorized representative for a period of 10 consecutive years following the individual's death or 30 years following the individual's death.

Proposed law provides for the application of proposed law regardless of whether the individual died before, on, or after August 1, 2019.

Proposed law provides that rights under proposed law are not subject to levy or attachment and may not be the subject of a security interest, marital property distribution, or debt collection.

Proposed law prohibits the use of an individual's identity for a commercial purpose in Louisiana without having first obtained previous written consent from the individual or the individual's authorized representative.

Proposed law provides that a claim for a violation of an individual's identity rights may not be asserted unless the alleged act occurs within Louisiana, and the claimant is a resident of this state. Proposed law further provides that the claim shall be subject to a prescriptive period of two years from the date the violation was discovered or should have been discovered.

Proposed law provides for certain actions which result in a person submitting to the jurisdiction of this state.

Proposed law authorizes additional remedies including temporary or permanent injunctive relief, the greater of \$1,000 and the actual damages, and reasonable attorney fees, costs, and expenses relating to the action.

Proposed law provides certain exempt uses.

Proposed law provides that proposed law shall be liberally construed to accomplish its intent and purposes, and that the property rights granted by proposed law vest with an individual or the individual's authorized representative on August 1, 2019.

Proposed law provides that the carriage or transmission by a radio or television station of content violating proposed law shall not be considered a violation by the radio or television station.

Proposed law provides that proposed law shall not apply to claims arising from a publication of an expressive work created prior to August 1, 2019.

(Adds R.S. 51:470.1 - 470.6)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill:

1. Add the definition of "expressive work" and change the definition of "individual".
2. Specify that a transfer of ownership of identity rights is not valid unless it is in writing.
3. Specify that the transfer of ownership must be signed by authorized representatives holding more than 50% of the rights.
4. Provide that proposed law shall not be construed to render invalid contracts entered into by the individual during his lifetime.

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5. Change that period of time in which identity rights terminate after the death of the individual from 70 years to 30 years.
6. Require the person asserting the claim to be a resident of this state.
7. Change the prescriptive period from one year to two years.
8. Remove exemptions from the exceptions to proposed law.
9. Specify that the carriage or transmission by a radio or television station of content violating proposed law shall not be considered a violation by the radio or television station.
10. Provide that proposed law shall not apply to claims arising from a publication created prior to August 1, 2019.

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