

2017 Regular Session

HOUSE BILL NO. 415

BY REPRESENTATIVE LEGER

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

CIVIL/ACTIONS: Enacts the "Allen Toussaint Legacy Act" for the purpose of creating an individual property right of identity

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 470.10, relative to a property
4 right of identity; to provide for definitions; to provide for a property right of identity;
5 to provide for prohibitions; to provide for termination of the right of identity; to
6 provide for a cause of action; to provide for a prescriptive period; to provide for
7 remedies; to provide for penalties; to provide for exceptions; to provide for
8 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 470.10, 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 terms and phrases have the following
19 meanings:

1 (1)(a) "Commercial use" means the use of an individual's readily identifiable
2 name, voice, signature, photograph, or likeness in any of the following
3 circumstances:

4 (i) For advertising, selling, or soliciting purchases of products, merchandise,
5 goods, or services.

6 (ii) On or in connection with products, merchandise, or goods.

7 (b) "Commercial use" does not mean the use of an individual's name, voice,
8 signature, photograph, or likeness to identify the individual for the purpose of either
9 of the following:

10 (i) Data collection or data reporting and supplying the data collected or
11 reported.

12 (ii) Data processing, data matching, data distribution, or data licensing.

13 (2) "Individual" means a natural person, whether the person is living or
14 deceased.

15 (3) "Likeness" means a reproduction of the image of an individual by any
16 means other than a photograph.

17 (4)(a) "Person" means an individual or entity.

18 (b) "Person" includes any of the following:

19 (i) A partnership, a corporation, a company, an association, or any other
20 business entity.

21 (ii) A not-for-profit corporation or association.

22 (iii) An educational or religious institution.

23 (iv) A political party.

24 (v) A community, civic, or other organization.

25 (5) "Photograph" means a reproduction of the image of an individual that
26 readily identifies the individual, whether made by photography, videotape, live
27 transmission, or other means.

28 (6) "Successor in interest" means an owner or the beneficial owner of a
29 property right provided by this Subpart under either of the following:

1 (a) A transfer, assignment, or license of the property right.

2 (b) As provided by R.S. 51:470.3(B)(3).

3 §470.3. Property right in use of name, voice, signature, photograph, or likeness;

4 prior consent

5 A. An individual has a property right in the commercial use by any medium
6 in any manner without the individual's prior consent of the following:

7 (1) The individual's name, voice, signature, photograph, or likeness.

8 (2) Any combination of the individual's name, voice, signature, photograph,
9 or likeness.

10 B. The property right provided by Subsection A of this Section is subject to
11 all of the following:

12 (1) Is freely transferable, assignable, licensable, and heritable, in whole or
13 in part, by contract or by a trust, testamentary disposition, or other instrument
14 executed before or after the effective date of this Subpart.

15 (2) Does not expire upon the death of an individual, regardless of whether
16 the rights were commercially used by the individual during the individual's lifetime.

17 (3)(a) Upon the death of an individual, vests in the individual's executors,
18 administrators, heirs, legatees, and assignees according to either of the following:

19 (i) The terms of a trust, testamentary disposition, or other instrument under
20 Paragraph (1) of this Subsection.

21 (ii) Except as provided in Subparagraph (b) of this Paragraph, if a
22 testamentary instrument does not expressly provide for the transfer of a property
23 right provided by Subsection A of this Section, the laws of this state governing
24 intestate successions control.

25 (b) In the absence of an express transfer in a testamentary instrument of the
26 rights of an individual in his name, voice, signature, photograph, or likeness, a
27 provision in the testamentary instrument that provides for the disposition of the
28 residue of the individual's assets is effective to transfer the rights recognized under
29 this Section in accordance with the terms of the provision.

1 C. Subject to the terms of a transfer, assignment, or license of a property
2 right provided by this Section, the consent required by Subsection A of this Section
3 shall be exercised by any of the following:

4 (1) The individual during the lifetime of the individual.

5 (2) A person or persons to whom all or part of the right of consent has been
6 transferred, assigned, or licensed.

7 (3) After the death of an individual, as provided by R.S. 51:470.4.

8 §470.4. Exercise of rights after death

9 A. Subject to the terms of a transfer, assignment, or license of property rights
10 under R.S. 51:470.3, after the death of an individual, consent to the specified use of
11 the individual's name, voice, signature, photograph, or likeness shall be granted by
12 no less than fifty and one-thousandths percent of the owners of the right to the
13 specified use of the name, voice, signature, photograph, or likeness of the individual
14 as provided by R.S. 51:470.3(B)(3).

15 B. Compensation or other remuneration received under Subsection A of this
16 Section for the use of the name, voice, signature, photograph, or likeness of the
17 individual shall be shared by all owners of the right to use the name, voice, signature,
18 photograph, or likeness of the individual according to each owner's respective
19 ownership interest.

20 §470.5. Exclusive rights; expiration

21 Subject to a transfer, an assignment, or a licensing agreement, the property
22 rights provided by this Subpart are exclusive to any of the following persons:

23 (1) An individual during the individual's lifetime.

24 (2) The executors, administrators, heirs, legatees, and assignees of the
25 individual for a period commencing after the individual's death and terminating upon
26 the earlier of either fifty years or three consecutive years of nonuse of the
27 individual's identity for any commercial purpose.

1 §470.6. Unauthorized commercial use

2 A. Except as provided by R.S. 51:470.8, a person who commercially uses the
3 name, voice, signature, photograph, or likeness of an individual is liable to the holder
4 of the property right provided by this Subpart for damages and disgorgement of
5 profits, funds, goods, or services if the commercial use was not authorized by R.S.
6 51:470.3(C).

7 B. If a minor is the holder of the property right, the parent or legal guardian
8 may consent on the minor's behalf.

9 §470.7. Civil actions; damages

10 A. An aggrieved party may file a civil action in the parish where either of the
11 following occur:

12 (1) One or more defendants reside.

13 (2) A violation of this Subpart occurred.

14 B. Upon finding a violation of this Subpart, the court may issue an injunction
15 to prevent or restrain the unauthorized commercial use of the name, voice, signature,
16 photograph, or likeness of the individual.

17 C.(1) The holder of the property right under this Subpart is entitled to
18 recover for the unauthorized commercial use of the property right by seeking all of
19 the following:

20 (a) The actual damages the holder of the property right has suffered as a
21 result of a commercial use of the property right.

22 (b) Any profits that are attributable to the commercial use.

23 (2) Profits that are attributable to the commercial use shall not be considered
24 in computing the actual damages.

25 (3) The existence or nonexistence of profits from the unauthorized
26 commercial use shall not be a criterion for determining liability.

27 D. A court may award the prevailing party in any action under this Subpart
28 attorney fees and costs.

1 §470.8. Exempt use

2 A.(1) It is not a violation of this Subpart if the name, voice, signature,
3 photograph, or likeness of an individual is used in any of the following manners:

4 (a) In connection with a news, public affairs, or sports broadcast, including
5 the promotion of and advertising for a sports broadcast, an account of public interest,
6 or a political campaign.

7 (b)(i) A play, book, magazine, newspaper, musical composition, visual work,
8 work of art, audiovisual work, radio or television program if it is fictional or
9 nonfictional entertainment, or a dramatic, literary, or musical work.

10 (ii) A work of political, public interest, or newsworthy value including a
11 comment, criticism, parody, satire, or a transformative creation of a work of
12 authorship.

13 (iii) An advertisement or commercial announcement for any of the works
14 described in this Subparagraph or in Subparagraph (a) of this Paragraph.

15 (c) In a photograph or likeness where the individual appears as a member of
16 the public, an attendee of a photographed event, or in a public place, and the
17 individual is not named.

18 (d) By an institution of higher education or by a nonprofit organization, club,
19 or supporting foundation that is authorized by the institution of higher education and
20 established solely to advance the purposes of the institution of higher education if all
21 of the following apply:

22 (i) The use is for educational purposes or to promote the institution of higher
23 education and its educational, athletic, or other institutional objectives.

24 (ii) The individual is or was affiliated with the institution, including without
25 limitation as any of the following:

26 (aa) A student or member of the faculty or staff.

27 (bb) A donor or campus visitor.

28 (cc) A contractor, subcontractor, or employee.

1 (e) By any person practicing the profession of photography or his
2 representative for the following purposes:

3 (i) To exhibit and display photographs in a personal portfolio through
4 physical media or digital media unless the exhibit and display are continued by the
5 person practicing the profession of photography after written notice objecting to the
6 exhibit and display has been given by the individual or by the individual's
7 representative.

8 (ii) To distribute photographs for license and sale or other transfer to third
9 parties or to promote or advertise such activities.

10 (iii) To provide yearbooks to an educational institution or photographs for
11 school publications.

12 (f) By a service provider of a system or network, if the service provider does
13 not have actual knowledge of either of the following:

14 (i) A photograph or likeness on the system or network is in violation of this
15 Subpart.

16 (ii) Facts or circumstances from which a violation of this Subpart is apparent.

17 (2) The use of the name, voice, signature, photograph, or likeness of the
18 individual within a work that is protected under Subparagraph (1)(b) of this
19 Subsection is not an exempt use protected by this Subsection if the claimant proves
20 that the use is so directly connected with a product, article of merchandise, good, or
21 service other than the work itself as to constitute an act of advertising, selling, or
22 soliciting purchases of the product, article of merchandise, good, or service by the
23 individual without the prior consent required by this Subpart.

24 B. The commercial use of the name, voice, signature, photograph, or likeness
25 of the individual in a commercial medium does not constitute a commercial use for
26 purposes of advertising or solicitation if the material containing the commercial use
27 is authorized by the individual for commercial sponsorship or paid advertising.

28

1 §470.9. Construction

2 A.(1) This Subpart shall be liberally construed to accomplish its intent and

3 purposes.

4 (2) This Subpart does not render invalid or unenforceable a contract or

5 license entered into before or after the effective date of this Subpart by an individual

6 during his lifetime by which the individual transferred, assigned, or licensed all or

7 part of the right to use his name, voice, signature, photograph, or likeness.

8 B. The property rights granted by this Subpart are not considered intellectual

9 property for purposes of 47 U.S.C. 230.

10 §470.10. Applicability

11 The property rights granted by this Subpart vest with respect to an individual

12 on the effective date of this Subpart.

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 415 Reengrossed 2017 Regular Session Leger

Abstract: Creates a property right for the purpose of protecting the identity of an individual from unauthorized commercial uses.

Proposed law enacts the "Allen Toussaint Legacy Act".

Proposed law provides definitions for the purpose of proposed law.

Proposed law provides that an individual has a property right in the commercial use by any medium in any manner without the individual's prior consent of the individual's name, voice, signature, photograph, or likeness, or any combination of the individual's name, voice, signature, photograph, or likeness.

Proposed law provides that the property right is freely transferable, assignable, licensable, and heritable, does not expire upon the death of an individual, and, upon the death of an individual, vests in the individual's executors, administrators, heirs, legatees, and assignees according to the terms of a trust, testament, or other authorized instrument.

Proposed law provides that consent shall be exercised by the individual during the lifetime of the individual, a person to whom the right of consent has been transferred, assigned, or licensed, or, after the death of an individual, as provided by proposed law (R.S. 51:470.4).

Proposed law provides that, subject to the terms of a transfer, assignment, or license of property rights, after the death of an individual, consent to the specified use of the individual's name, voice, signature, photograph, or likeness shall be granted by no less than

50.001% of the owners of the right to use the name, voice, signature, photograph, or likeness of the individual.

Proposed law provides that compensation or other remuneration received for the specified use of the name, voice, signature, photograph, or likeness of the individual shall be shared by all owners of the right to each owner's respective ownership interest.

Proposed law provides that subject to a transfer, an assignment, or a licensing agreement, the property rights provided by proposed law are exclusive to an individual during the individual's lifetime, and to the executors, administrators, heirs, legatees, and assignees of the individual for a period commencing after the individual's death and terminating upon the earlier of either 50 years or three consecutive years of nonuse of the individual's identity for any commercial purpose.

Proposed law provides that a person who commercially uses the name, voice, signature, photograph, or likeness of an individual is liable to the holder of the property right for damages and disgorgement of profits, funds, goods, or services if the commercial use was not authorized.

Proposed law provides that an aggrieved party may file a civil action in the parish where either one or more defendants reside or where a violation of proposed law occurred.

Proposed law provides that the court may issue an injunction to prevent or restrain the unauthorized commercial use of the name, voice, signature, photograph, or likeness of the individual.

Proposed law provides that the holder of the property right is entitled to recover for the unauthorized commercial use of the property right by seeking actual damages and any profits that are attributable to the commercial use. Proposed law also provides that profits that are attributable to the commercial use shall not be considered in computing the actual damages.

Proposed law authorizes the court to award the prevailing party attorney fees and costs.

Proposed law provides that it is not a violation of proposed law if the name, voice, signature, photograph, or likeness of an individual is used in any of the following manners:

- (1) In connection with a news, public affairs, or sports broadcast, including the promotion of and advertising for a sports broadcast, an account of public interest, or a political campaign.
- (2) A play, book, magazine, newspaper, musical composition, visual work, work of art, audiovisual work, radio or television program if it is fictional or nonfictional entertainment, or a dramatic, literary, or musical work.
- (3) A work of political, public interest, or newsworthy value including a comment, criticism, parody, satire, or a transformative creation of a work of authorship.
- (4) An advertisement or commercial announcement for any of the works described by proposed law.
- (5) In a photograph or likeness where the individual appears as a member of the public, an attendee of a photographed event, or in a public place, and the individual is not named.
- (6) By an institution of higher education or by a nonprofit organization, club, or supporting foundation that is authorized by the institution of higher education and established solely to advance the purposes of the institution of higher education under certain circumstances.

- (7) By any person practicing the profession of photography or his representative for certain purposes.
- (8) By a service provider of a system or network, under certain circumstances.

Proposed law provides that the use of the name, voice, signature, photograph, or likeness of the individual within a work that is protected under proposed law is not an exempt use protected by proposed law if the claimant proves that the use is so directly connected with a product, article of merchandise, good, or service other than the work itself as to constitute an act of advertising, selling, or soliciting purchases of the product, article of merchandise, good, or service by the individual without the required prior consent.

Proposed law provides that the commercial use of the name, voice, signature, photograph, or likeness of the individual in a commercial medium does not constitute a commercial use for purposes of advertising or solicitation if the material containing the commercial use is authorized by the individual for commercial sponsorship or paid advertising.

Provides that proposed law shall be liberally construed to accomplish its intent and purposes and that proposed law does not render invalid or unenforceable a contract or license entered into before or after the effective date of proposed law.

Provides that the property rights granted by proposed law are not considered intellectual property for purposes of 47 U.S.C. 230.

Provides that the property rights granted by proposed law vest with respect to an individual on the effective date of proposed law, and that proposed law applies only to individuals maintaining a domicile or residence in Louisiana on or after the effective date of proposed law.

(Adds R.S. 51:470.1-470.10)

Summary of Amendments Adopted by House

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

1. Delete all provisions of proposed law providing for definitions, rights and termination of rights of identity, causes of action, prescription, and remedies for such causes of action, and scope of applicability.
2. Add new provisions of proposed law providing for definitions, property rights in the use of name, voice, signature, photograph or likeness and the exclusive exercise and expiration of those rights, and the civil actions and damages for the unauthorized use of those rights.
3. Add provisions specifying that proposed law is the exclusive basis for asserting a claim, and that proposed law shall be liberally construed and applied only to individuals domiciled or residing in Louisiana.

The House Floor Amendments to the engrossed bill:

1. Add provisions to restrict application of proposed law to "specified" uses of the individual's name, voice, signature, photograph, or likeness.
2. Provide an alternative 3-year prescriptive period.

3. Delete provisions specifying that it is a question of fact relative to whether the commercial use of the individual's name, voice, signature, photograph, or likeness is directly connected to the commercial sponsorship.
4. Delete provisions specifying that proposed law is the exclusive remedy.
5. Delete provisions regarding the applicability of proposed law to persons with a domicile or residence in La.
6. Add technical amendments.