AN ACT

To enact Subpart K of Part VIII of Chapter 1 of Title 51 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 51:470.1 through 470.6, relative to a property right of identity; to provide for definitions; to provide for prohibitions; to provide for termination of the right of identity; to provide for protection from misappropriation; to provide for a cause of action; to provide for a prescriptive period; to provide for remedies; to provide for penalties; to provide for exceptions; to provide for applicability; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Subpart K of Part VIII of Chapter 1 of Title 51 of the Louisiana Revised Statutes of 1950, comprised of R.S. 51:470.1 through 470.6, is hereby enacted to read as follows:

SUBPART K, ALLEN TOUSSAINT LEGACY ACT

§470.1. Short title

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

§470.2. Definitions

As used in this Subpart, the following words and phrases shall have the following meanings:
(1) "Access software provider" means a provider of software, including client or server software, or enabling tools that do any one or more of the following:

(a) Filter, screen, allow, or disallow content.

(b) Pick, choose, analyze, or digest content.

(c) Transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.

(2) "Authorized representative" means an assignee, licensee, executor, heir, legatee, or other representative of an individual.

(3) "Commercial purposes" means the use of an individual’s identity for any of the following purposes:

(a) On or in connection with products, merchandise, goods, services, commercial activities, or performances.

(b) For advertising, soliciting, or promoting products, merchandise, goods, services, commercial activities, or performances.

(c) For the purpose of fundraising.

(4) "Digital replica" means a computer-generated or electronic reproduction of a professional performer’s likeness or voice that is so realistic as to be indistinguishable from the actual likeness or voice of the professional performer. "Digital replica" does not include the making or duplication of another recording that consists entirely of an independent fixation of other sounds, even though the sounds imitate or simulate the voice of the professional performer.

(5) "Expressive work" means such work as a play, book, magazine, newspaper, musical composition, audiovisual work, radio or television program, work of art, or a dramatic, literary, or musical work, if it is fictional or nonfictional entertainment, a work of political or newsworthy value, or an advertisement or commercial announcement for any of these works.

(6) "Identity" means an individual’s name, voice, signature, photograph, image, likeness, or digital replica.
(7) "Individual" means a living natural person domiciled in Louisiana
or a deceased natural person who was domiciled in Louisiana at the time of the
individual's death.

(8) "Information content provider" means any person or entity that is
responsible, in whole or in part, for the creation or development of information
provided through the internet or any other interactive computer service.

(9) "Interactive computer service" means any information service,

system, or access software provider that provides or enables computer access
by multiple users to a computer server, including specifically a service or system
that provides access to the internet and such systems operated or services
offered by libraries or educational institutions.

(10) "Internet" means the international computer network of both

federal and nonfederal interoperable packet switched data networks.

(11) "Performance" means the use of a digital replica to substitute for

a performance by a professional performer in a work in which the professional
performer did not actually appear.

(12) "Professional performer" means an individual who, for gain or

livelihood, is or was regularly engaged in acting, singing, dancing, playing a
musical instrument, or appearing on a news broadcast as an anchor or reporter.

§470.3. Property right in an individual's identity

A. Every individual has a property right in connection with the use of

that individual's identity for commercial purposes.

B. The identity rights provided in this Subpart constitute property rights

that do not expire upon the death of the individual so protected, regardless of

whether such rights were commercially exploited by the individual during the

individual's lifetime. Notwithstanding the foregoing, the identity rights with

respect to a performance in audiovisual works shall expire upon the death of the

individual.

C. Identity rights are heritable, licensable, assignable, and transferable
to the executors, heirs, legatees, assignees, or licensees of the individual.
D. Any transfer or exclusive 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 more than fifty percent of the authorized representatives holding the rights specified in the transfer or license. An exclusive licensee of an individual's identity rights may, within the scope of and to the extent permitted by the license, assert a claim against a third party for a violation of this Subpart.

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

1. Proof of nonuse of the individual's identity for commercial purposes by an individual's authorized representative for a period of three consecutive years following the individual's death.

2. Fifty years following the individual's death.

F. The rights provided by this Subpart apply to all individuals whether or not the individual died before, on, or after August 1, 2022. If the individual died before August 1, 2022, the rights are considered to have existed on and after the date the individual died. Notwithstanding the foregoing, a claim for a violation of an individual's identity rights may not be asserted under this Subpart unless the alleged act or event of violation occurs after August 1, 2022.

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

§470.4. Misappropriation of identity

A. It shall be a violation of this Subpart for any person to use an individual's identity for a commercial purpose in Louisiana without having first obtained consent from the individual or the individual's authorized representative.
B. A claim for a violation of an individual's identity rights may not be asserted under this Subpart unless the alleged act occurs within Louisiana, and shall be subject to a prescriptive period of two years from the date the violation was discovered or should have been discovered.

C. It shall be a violation of this Subpart to use a digital replica in a public performance of a scripted audiovisual work, or in a live performance of a dramatic work, if the use is intended to create, and creates, the clear impression that the professional performer is actually performing in the role of a fictional character.

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

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

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

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

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

E.(1) In addition to any other remedy authorized by law, a person who violates an individual's identity rights may be liable for the greater of one thousand dollars and the actual damages, and to the extent not duplicative of the plaintiff's compensatory damages, the disgorgement of profits derived from the unauthorized use of the individual's identity. For purposes of calculating such profits, the plaintiff is only required to prove the gross revenue attributable to the unauthorized use, and the defendant is required to prove properly deductible expenses.

(2) A court of competent jurisdiction may grant the plaintiff, in a
proceeding under this Section, a temporary restraining order or an order for injunctive relief.

F. A court may award reasonable attorney fees, costs, and expenses to the prevailing party in an action under this Subpart.

G. Any suit arising out of the alleged offending use of a digital replica, expressive work, identity, or performance, or brought against a newspaper, broadcast outlet, media outlet, online news outlet, news publication, or other media pursuant to this Subpart shall be subject to the provisions of Code of Civil Procedure Article 971, and any alleged violation of this Subpart shall be presumed an act in furtherance of a person's right of petition or free speech under the Constitution of the United States of America or the Constitution of Louisiana in connection with a public issue in accordance with Code of Civil Procedure Article 971.

§470.5. Exempt uses

A. This Subpart does not affect rights and privileges recognized under other state or federal laws, including those privileges afforded under the "fair use" factors in the United States Copyright Act of 1976.

B. It shall not constitute a violation of this Subpart to use an individual's identity under any of the following circumstances:

    (1) In connection with a news, public affairs, sports transmission or account, or political campaign.

    (2) In a work of political, public interest, educational, or newsworthy value, including comment, criticism, or parody, or similar works, such as documentaries, docudramas, or historical or biographical works, or a representation of an individual as himself or herself, regardless of the degree of fictionalization.

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

    (4) In a sound recording, audiovisual work, motion picture, or radio or television program, unless the use creates an unauthorized performance.
(5) Any act of restoration or preservation of a sound recording, audiovisual work, or radio or television program.

(6) In an advertisement, commercial announcement, or display of any of the works described in this Subpart.

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

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

(9) Data collection or data reporting and supplying the data collected or reported.

(10) Data processing, data matching, data distribution, or data licensing.

(11) In connection with the publication of an expressive work created prior to August 1, 2022.

(12) If the use is merely incidental.

C. An otherwise exempt use of an individual's identity protected under Subsection B of this Section is not an exempt use if it is so directly connected with a product, article of merchandise, good, or service as to constitute an act of advertising, selling, or soliciting purchases of that product, article of merchandise, good, or service.

D. The carriage or transmission by a radio or television broadcast station licensed by the Federal Communications Commission, cable or satellite television company, or other video service provider, streaming video provider, newspaper company, periodical company, billboard company, media platform, voice, data, or other communications, information services, or internet access provider of any content created by a third party which violates any provision of this Subpart shall not be considered a violation of this Subpart by any such entity which carried or transmitted the content.

Coding: Words which are struck through are deletions from existing law; words in **boldface type and underscored** are additions.
E. Provisions of this Subpart do not create a liability for publishers or
speakers of any information provided by another information content provider
including the internet, an interactive computer service, an information content
provider, or an access software provider.

F. The publication by a news entity or outlet, online news outlet,
newspaper, news publication, or other media which violates any provision of
this Subpart shall not be considered a violation of this Subpart by the news
outlet, online news outlet, or other media.

§470.6. Construction and applicability

A. The rights granted by this Subpart are cumulative and shall be in
addition to any others provided by law.

B. The property rights granted by this Subpart vest with an individual
or the individual's authorized representative on August 1, 2022.