

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 470.7, relative to a right of
4 identity; to provide for definitions; to provide for a right of identity; to provide for
5 prohibitions; to provide for termination of the right of identity; to provide for a cause
6 of action; to provide for a prescriptive period; to provide for remedies; to provide for
7 penalties; to provide for exceptions; to provide for scope; to provide for clarity; and
8 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 470.7, 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 meanings
19 hereinafter ascribed to them:

1 (1) "Authorized representative" means the licensees, executors, heirs, or
2 legatees of an individual.

3 (2) "Commercial purpose" means the use of an identity for any of the
4 following purposes:

5 (a) Advertising or soliciting purchases of products, merchandise, goods,
6 services, or other commercial activities.

7 (b) Promoting commercial activities or fund-raising.

8 (3) "Identity" means the name, voice, signature, photograph, image, likeness,
9 or any distinct appearance, gesture, or mannerism of an individual.

10 (4) "Individual" means a natural person, living or dead, regardless of whether
11 the state of Louisiana is the domicile, residence, or citizenship of the natural person.

12 §470.3. Right of identity; nature of right; prohibition

13 A.(1) The identity of a person constitutes a freely alienable and licensable
14 property right.

15 (2) The right does not expire upon the death of the individual whether or not
16 the right was commercially exploited by the individual during his lifetime.

17 (3) The right descends to any heirs or legatees of the individual.

18 B.(1) It shall be unlawful for any person to use the identity of an individual
19 for a commercial purpose without having previously obtained the right from the
20 individual or from an authorized representative of the individual by one of the
21 following means:

22 (a) Instrument showing written consent of the individual or an authorized
23 representative of the individual.

24 (b) Operation of law in favor of an heir or legatee.

25 (2) The use of an identity for a commercial purpose shall be presumed
26 unlawful when the person who engages in the conduct does any of the following in
27 violation of Paragraph (1) of this Subsection:

28 (a) Creates or causes to be created goods, merchandise, or other materials.

1 (b) Transports or causes to be transported any goods, merchandise, or other
2 materials.

3 (c) Knowingly causes advertising or promotional material created or used
4 to be published, distributed, exhibited, or disseminated.

5 §470.4. Termination of right

6 The identity right of a particular individual shall terminate upon the earlier
7 of the following circumstances:

8 (1) A showing of proof of nonuse of the identity of the individual for any
9 commercial purpose by an authorized representative of the individual for a period
10 of three consecutive years following the death of the individual.

11 (2) The passage of seventy years following the date of death of the
12 individual.

13 §470.5. Cause of action; prescriptive period

14 A. A claim made pursuant to this Subpart against any person alleged to be
15 in violation of its provisions may be asserted only when the alleged act or event of
16 violation has occurred in Louisiana and may be asserted by only one or more of the
17 following persons:

18 (1) The individual.

19 (2) Heirs or legatees of the individual.

20 (3) Any person who has previously received written consent for use of an
21 identity from the individual or from an authorized representative of the individual.

22 B. The claim shall be subject to a prescriptive period of one year from the
23 later of either of the following:

24 (1) The date of the violation.

25 (2) The date upon which the violation could have been reasonably known by
26 the claimant.

27 §470.6. Remedies; penalties

28 A. In addition to any other remedies provided by law, a person who is in
29 violation of the provisions of this Subpart may be liable for any of the following:

1 (1) The greater of one thousand dollars plus any actual damages, including
2 profits derived from the unlawful use of the identity of an individual.

3 (2) Punitive damages when the person who committed the violation is
4 determined to have acted knowingly, willfully, or intentionally in violation of this
5 Subpart.

6 (3) Reasonable attorney fees, costs, and expenses.

7 B. For the purpose of calculating profits pursuant to Subsection A of this
8 Section, the plaintiff is required to prove only the gross revenue attributable to the
9 unlawful use. The defendant shall be required to prove any properly deductible
10 expenses.

11 C. Any court of appropriate jurisdiction may order any injunctive relief
12 determined to be necessary to prevent any further violation of the provisions of this
13 Subpart.

14 §470.7. Scope

15 A. This Subpart shall not be construed to restrict any other rights or
16 privileges recognized pursuant to any other law.

17 B. Notwithstanding any other provisions of this Subpart, this Subpart shall
18 not apply to any use of the identity of an individual in the following circumstances:

19 (1) Use in any literary work, theatrical work, musical composition, film,
20 radio, or television program unless the use of the identity of the individual is
21 primarily promotional in nature as opposed to bona fide artistic expression.

22 (2) Use in any newspaper, magazine, book, news broadcast, or telecast, or
23 other medium or publication as part of any bona fide news report, commentary, or
24 presentation regarding a legitimate matter of public interest and where the identity
25 of an individual is not used primarily for advertising purposes.

26 (3) Use in any single and original work of fine art.

27 (4) Use in any manner made to truthfully identify the individual as the author
28 or performer of a given work in any circumstance in which the work or performance
29 is otherwise rightfully reproduced, exhibited, or broadcast.

1 (5) Use in any lawful reproduction, display, distribution, or sale of a
2 copyrighted work of authorship provided that such work was lawfully created and
3 that the reproduction, display, distribution, or sale does not imply that the individual
4 has endorsed or associated with any product, service, or cause.

5 (6) Use in any circumstance in which the identity of the individual has
6 commercial value solely because the individual has been legally convicted of a
7 felony offense.

8 Section 2. The right of identity provided for by this Act applies to all individuals
9 whether or not the individual died before, on, or after the effective date of this Act. If the
10 individual died before the effective date of this Act, then the right is considered to have
11 existed on and after the date the individual died.

12 Section 3. Notwithstanding the provisions of Section 2 of this Act, a claim for any
13 violation of the identity right of an individual may not be asserted pursuant to this Act unless
14 the alleged act or event of violation occurs on or after the effective date of this Act.

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 Original

2017 Regular Session

Leger

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

Proposed law enacts the "Allen Toussaint Legacy Act".

Proposed law provides definitions for the purpose of proposed law to provide clarity.

Proposed law provides that the identity of a person constitutes a freely alienable and licensable property right. Proposed law further provides that the right does not expire upon the death of the individual whether or not the right was commercially exploited by the individual during his lifetime. Proposed law further provides that the right descends to any heirs or legatees of the individual.

Proposed law provides that it shall be unlawful for any person to use the identity of an individual for a commercial purpose without having previously obtained the right from the individual or from an authorized representative of the individual by one of the following means:

- (1) An instrument showing written consent of the individual or an authorized representative of the individual.

- (2) The operation of law in favor of an heir or legatee.

Proposed law provides that the use of an identity for a commercial purpose shall be presumed unlawful when the person who engages in the conduct does any of the following in violation of proposed law:

- (1) Creates or causes to be created goods, merchandise, or other materials.
- (2) Transports or causes to be transported any goods, merchandise, or other materials.
- (3) Knowingly causes advertising or promotional material created or used to be published, distributed, exhibited, or disseminated.

Proposed law provides that the identity right of a particular individual shall terminate upon the earlier of the following circumstances:

- (1) A showing of proof of nonuse of the identity of the individual for any commercial purpose by an authorized representative of the individual for a period of three consecutive years following the death of the individual.
- (2) The passage of 70 years following the date of death of the individual.

Proposed law provides that any claim made pursuant to proposed law against any person alleged to be in violation of proposed law may be asserted only when the alleged act or event of violation has occurred in La. and may be asserted by only one or more of the following persons:

- (1) The individual.
- (2) Heirs or legatees of the individual.
- (3) Any person who has previously received written consent for use of an identity from the individual or from an authorized representative of the individual.

Proposed law provides that the claim shall be subject to a prescriptive period of one year from the later of either of the following:

- (1) The date of the violation.
- (2) The date upon which the violation could have been reasonably known by the claimant.

Proposed law provides that, in addition to any other remedies provided by law, a person who is in violation of the provisions of proposed law may be liable for any of the following:

- (1) The greater of \$1,000 plus any actual damages, including profits derived from the unlawful use of the identity of an individual.
- (2) Punitive damages when the person who committed the violation is determined to have acted knowingly, willfully, or intentionally in violation of proposed law.
- (3) Reasonable attorney fees, costs, and expenses.

Proposed law provides procedure for the purpose of calculating profits pursuant to proposed law. Proposed law requires the plaintiff to prove only the gross revenue attributable to the unlawful use. Proposed law requires the defendant to prove any properly deductible expenses.

Proposed law clarifies that any court of appropriate jurisdiction may order any injunctive relief determined to be necessary to prevent any further violation of proposed law.

Proposed law clarifies that proposed law shall not be construed to restrict any other rights or privileges recognized pursuant to any other law.

Proposed law provides that, notwithstanding any other provisions of proposed law, proposed law shall not apply to any use of the identity of an individual in the following circumstances:

- (1) Use in any literary work, theatrical work, musical composition, film, radio, or television program unless the use of the identity of the individual is primarily promotional in nature as opposed to bona fide artistic expression.
- (2) Use in any newspaper, magazine, book, news broadcast, or telecast, or other medium or publication as part of any bona fide news report, commentary, or presentation regarding a legitimate matter of public interest and where the identity of an individual is not used primarily for advertising purposes.
- (3) Use in any single and original work of fine art.
- (4) Use in any manner made to truthfully identify the individual as the author or performer of a given work in any circumstance in which the work or performance is otherwise rightfully reproduced, exhibited, or broadcast.
- (5) Use in any lawful reproduction, display, distribution, or sale of a copyrighted work of authorship provided that such work was lawfully created and that the reproduction, display, distribution, or sale does not imply that the individual has endorsed or associated with any product, service, or cause.
- (6) Use in any circumstance in which the identity of the individual has commercial value solely because the individual has been legally convicted of a felony offense.

Proposed law declares for the sake of clarity that the right of identity provided for by proposed law applies to all individuals whether or not the individual died before, on, or after the effective date of proposed law. If the individual died before the effective date of proposed law, then the right is considered to have existed on and after the date the individual died.

However, proposed law further clarifies that, notwithstanding any other provisions of proposed law, a claim for any violation of the identity right of an individual may not be asserted pursuant to proposed law unless the alleged act or event of violation occurs on or after the effective date of proposed law.

(Adds R.S. 51:470.1-470.7)