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**HOUSE COMMITTEE AMENDMENTS**

2017 Regular Session

Amendments proposed by House Committee on Civil Law and Procedure to Original House Bill No. 415 by Representative Leger

AMENDMENT NO. 1

On page 1, line 3, change "470.7" to "470.11" and change "right" to "property right"

AMENDMENT NO. 2

On page 1, line 4, change "right" to "property right"

AMENDMENT NO. 3

On page 1, line 7, after "scope;" delete the remainder of the line and insert "and"

AMENDMENT NO. 4

On page 1, line 11, change "470.7" to "470.11"

AMENDMENT NO. 5On page 1, line 18, change "meanings" to "following meanings:"AMENDMENT NO. 6

On page 1, delete line 19 in its entirety

AMENDMENT NO. 7

Delete pages 2 through 5 in their entirety and insert the following:

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

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

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

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

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

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

(2) "Individual" means a natural person, whether or not the person is living or deceased.

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

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

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

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

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

(iii) An educational or religious institution.

(iv) A political party.

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

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

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

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

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

8           §470.3. Property right in use of name, voice, signature, photograph, or likeness;  
 9 prior consent

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

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

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

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

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

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

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

24          (i) The terms of a trust, testamentary, or other instrument under Paragraph  
 25 (1) of this Subsection.

26          (ii) Except as provided in Subparagraph (b) of this Paragraph, if a  
 27 testamentary instrument does not expressly provide for the transfer of a property  
 28 right provided by Subsection A of this Section, the laws of this state governing  
 29 intestate successions controls.

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

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

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

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

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

42           §470.4. Exercise of rights after death

43           A. Subject to the terms of a transfer, assignment, or license of property rights  
 44 under R.S. 51:470.3, after the death of an individual, consent to the use of the  
 45 individual's name, voice, signature, photograph, or likeness shall be granted by no  
 46 less than fifty and one-thousandths percent of the owners of the right to use the  
 47 name, voice, signature, photograph, or likeness of the individual as provided by R.S.  
 48 51:470.3(B)(3).

49           B. Compensation or other remuneration received under Subsection A of this  
 50 Section for the use of the name, voice, signature, photograph, or likeness of the  
 51 individual shall be shared by all owners of the right to use the name, voice, signature,  
 52 photograph, or likeness of the individual according to each owner's respective  
 53 ownership interest.

54           §470.5. Exclusive rights; expiration.

55           Subject to a transfer, an assignment, or a licensing agreement, the property  
 56 rights provided by this Subpart are exclusive to:

- 1           (1) An individual during the individual's lifetime; and  
 2           (2) The executors, administrators, heirs, legatees, and assignees of the  
 3           individual for fifty years after the individual's death.

4           §470.6. Unauthorized commercial use

5           A. Except as provided by R.S. 51:470.8, a person who commercially uses the  
 6           name, voice, signature, photograph, or likeness of an individual is liable to the holder  
 7           of the property right provided by this Subpart for damages and disgorgement of  
 8           profits, funds, goods, or services if the commercial use was not authorized by R.S.  
 9           51:470.3(C).

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

12          §470.7. Civil actions; damages

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

15           (1) One or more defendants reside.

16           (2) A violation of this Subpart occurred.

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

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

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

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

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

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

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

32          §470.8. Exempt use; commercial use

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

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

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

41           (ii) A work of political, public interest, or newsworthy value including a  
 42           comment, criticism, parody, satire, or a transformative creation of a work of  
 43           authorship.

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

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

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

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

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

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

2 (bb) A donor or campus visitor.

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

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

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

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

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

15 (f) By a service provider of a system or network, if the service provider  
16 either:

17 (i) Does not have actual knowledge that a photograph or likeness on the  
18 system or network is in violation of this Subpart.

19 (ii) In the absence of such actual knowledge, is not aware of facts or  
20 circumstances from which a violation of this Subpart is apparent.

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

28 B.(1) The commercial use of the name, voice, signature, photograph, or  
29 likeness of the individual in a commercial medium does not constitute a commercial  
30 use for purposes of advertising or solicitation if the material containing the  
31 commercial use is authorized by the individual for commercial sponsorship or paid  
32 advertising.

33 (2) It is a question of fact as to whether or not the commercial use of the  
34 name, voice, signature, photograph, or likeness of an individual is so directly  
35 connected with the commercial sponsorship or paid advertising as to constitute an  
36 authorized use for purposes of advertising or solicitation.

37 §470.9. Exclusive remedies

38 A. Remedies granted by this Subpart shall constitute the exclusive basis for  
39 asserting a claim for the unauthorized commercial use of the name, voice, signature,  
40 photograph, or likeness of an individual.

41 B. Except as provided in this Subpart, a right of publicity in the use of the  
42 name, voice, signature, photograph, or likeness of an individual does not exist.

43 §470.10. Construction

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

46 (2) This Subpart does not render invalid or unenforceable a contract or  
47 license entered into before or after the effective date of this Subpart by an individual  
48 during his lifetime by which the individual transferred, assigned, or licensed all or  
49 part of the right to use his name, voice, signature, photograph, or likeness.

50 B. The property rights granted by this Subpart are not considered intellectual  
51 property for purposes of 47 U.S.C. 230.

52 §470.11. Applicability

53 A. The property rights granted by this Subpart vest with respect to an  
54 individual on the effective date of this Subpart.

55 B. This Subpart applies only to individuals maintaining a domicile or  
56 residence in the state of Louisiana on or after the effective date of this Subpart."