

HOUSE SUMMARY OF SENATE AMENDMENTS

HB 415

2017 Regular Session

Leger

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

Synopsis of Senate Amendments

1. Defines "individual" as a natural person who is deceased.
2. Delete provisions relative to certain property rights and consent.
3. Adds technical Legislative Bureau amendments.
4. Adds provisions to specify that no person shall commercially use the name, voice, signature, photograph, or likeness of an individual if not so authorized, and that any person doing so shall be liable for certain specified damages.
5. Adds provisions specifying that the remedies of proposed law shall constitute the exclusive basis for asserting a claim.
6. Adds provisions for applicability to persons deceased prior to the effective date of proposed law.

Digest of Bill as Finally Passed by Senate

Proposed law enacts the "Allen Toussaint Legacy Act".

Proposed law provides definitions for the purpose of proposed law. Proposed law defines "Individual" as a natural person who is deceased.

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, 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 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 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 no person shall commercially use the name, voice, signature, photograph, or likeness of an individual if the commercial use was not authorized pursuant to proposed law. Any person doing so shall be liable to the holder of the property right for damages and disgorgement of profits, funds, goods, or services.

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 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.

Proposed law provides that remedies provided by proposed law shall constitute the exclusive basis for asserting a claim for the unauthorized commercial use of the name, voice, signature, photograph, or likeness of an individual.

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, whether the individual is deceased before or after the effective date of proposed law, and further provides 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. 51:470.1-470.11)