

2022 Regular Session

SENATE BILL NO. 426

BY SENATOR MCMATH

OWNERSHIP. Provides for the Allen Toussaint Legacy Act. (8/1/22)

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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

1 As used in this Subpart, the following words and phrases shall have the
2 following meanings:

3 (1) "Access software provider" means a provider of software, including
4 client or server software, or enabling tools that do any one or more of the
5 following:

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

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

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

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

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

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

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

18 (c) For the purpose of fundraising.

19 (4) "Digital replica" means a computer-generated or electronic
20 reproduction of an individual's likeness or voice that intentionally depicts the
21 likeness or voice of the individual.

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

27 (6) "Identity" means an individual's name, voice, signature, photograph,
28 image, likeness, or digital replica.

29 (7) "Individual" means a natural person, living or deceased.

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

4 **(9) "Interactive computer service" means any information service,**
5 **system, or access software provider that provides or enables computer access**
6 **by multiple users to a computer server, including specifically, a service or**
7 **system that provides access to the internet and such systems operated or**
8 **services offered by libraries or educational institutions.**

9 **(10) "Internet" means the international computer network of both**
10 **federal and nonfederal interoperable packet switched data networks.**

11 **(11) "Performance" means the use of a digital replica to substitute for**
12 **a performance by a professional actor, singer, dancer, musician, or vocalist**
13 **who, for gain or livelihood, engages or engaged in the depicted professional**
14 **activity.**

15 **§470.3. Property right in an individual's identity**

16 **A. Every individual has a property right in connection with the use of**
17 **that individual's identity for commercial purposes.**

18 **B. The identity rights provided in this Subpart constitute property rights**
19 **that do not expire upon the death of the individual so protected, regardless of**
20 **whether such rights were commercially exploited by the individual during the**
21 **individual's lifetime. Notwithstanding the foregoing, the identity rights with**
22 **respect to a performance in audiovisual works shall expire upon the death of the**
23 **individual.**

24 **C. Identity rights are heritable, licensable, assignable, and transferable**
25 **to the executors, heirs, or legatees of the individual.**

26 **D. Any transfer or license of an individual's identity rights is not valid**
27 **unless in writing and signed by the individual or the individual's authorized**
28 **representative, or if the individual is deceased, by more than fifty percent of the**
29 **authorized representatives holding such rights. A lawful licensee of an**

1 individual's identity rights may, within the scope of the license, assert a claim
2 against a third party for a violation of this Subpart.

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

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

8 (2) Fifty years following the individual's death.

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

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

21 §470.4. Misappropriation of identity for commercial purposes

22 A. It shall be unlawful for any person to use an individual's identity for
23 a commercial purpose in Louisiana without having first obtained previous
24 written consent from the individual or the individual's authorized
25 representative.

26 B. A claim for a violation of an individual's identity rights may not be
27 asserted under this Subpart unless the alleged act occurs within Louisiana, and
28 shall be subject to a prescriptive period of two years from the date the violation
29 was discovered or should have been discovered.

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

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

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

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

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

13 D. In addition to any other remedies that may be available under the
14 laws of this state, a person who violates an individual's identity rights may be
15 liable for, and a court may order, any of the following:

16 (1) Temporary or permanent injunctive relief.

17 (2) The greater of one thousand dollars and the actual damages,
18 including profits derived from the unauthorized use of the individual's identity.
19 For purposes of calculating profits, the plaintiff is only required to prove the
20 gross revenue attributable to the unauthorized use, and the defendant is
21 required to prove properly deductible expenses.

22 (3) Reasonable attorney fees, costs, and expenses relating to an action
23 under this Subpart.

24 E. Any suit arising out of the alleged offending use of a digital replica,
25 expressive work, identity, or performance, or brought against a newspaper,
26 broadcast outlet, media outlet, online news outlet, news publication, or other
27 media pursuant to this Subpart shall be subject to the provisions of Code of
28 Civil Procedure Article 971, and any alleged violation of this Subpart shall be
29 presumed an act in furtherance of a person's right of petition or free speech

1 under the United States Constitution or the Louisiana Constitution in
2 connection with a public issue in accordance with Code of Civil Procedure
3 Article 971.

4 §470.5. Exempt uses

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

8 B. This Subpart does not apply to the use of an individual's identity
9 under any of the following circumstances:

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

12 (2) A work of political, public interest, or newsworthy value, including
13 a comment, criticism, or parody, and regardless of the degree of fictionalization
14 in the work.

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

17 (4) A sound recording, audiovisual work, or radio or television program,
18 unless the identity is used to create an unauthorized performance.

19 (5) Any act of restoration or preservation of a sound recording,
20 audiovisual work, or radio or television program.

21 (6) An advertisement, commercial announcement, or display of any of
22 the works described in this Subpart.

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

26 (8) To lawfully reproduce, display, distribute, or sell a copyrighted work
27 of authorship, provided that such work was lawfully created.

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

1 **Subpart.**

2 **(10) Data collection or data reporting and supplying the data collected**
3 **or reported.**

4 **(11) Data processing, data matching, data distribution, or data licensing.**

5 **(12) In connection with the publication of an expressive work created**
6 **prior to August 1, 2022.**

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

12 **D. The carriage or transmission by a radio or television broadcast station**
13 **licensed by the Federal Communications Commission of any content which**
14 **violates any provision of this Subpart shall not be considered a violation of this**
15 **Subpart by the radio or television broadcast station which carried or**
16 **transmitted the content.**

17 **E. Provisions of this Subpart do not create a liability for publishers or**
18 **speakers of any information provided by another information content provider**
19 **including the internet, an interactive computer service, an information content**
20 **provider, or an access software provider.**

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

25 **§470.6. Construction and applicability**

26 **A. This Subpart shall be liberally construed to accomplish its intent and**
27 **purposes.**

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

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Lebra R. Bias.

DIGEST

SB 426 Original 2022 Regular Session McMath

Proposed law enacts the Allen Toussaint Legacy Act.

Proposed law provides definitions for "access software provider", "authorized representative", "commercial purposes", "digital replica", "expressive work", "identity", "individual", "information content provider", interactive computer service, "internet", and "performance".

Proposed law provides that every individual has a property right in connection with the use of that individual's identity for commercial purposes, and that those identity rights constitute property rights that do not expire upon the death of the individual so protected, whether or not such rights were commercially exploited by the individual during the individual's lifetime. Identity rights are heritable, licensable, and transferable to the executors, heirs, or legatees of the individual. The identity rights with respect to a performance in audiovisual works shall expire upon the death of the individual.

Proposed law provides that any 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 authorized representatives holding more than 50% of such rights. A lawful licensee of an individual's identity rights may, within the scope of the license, assert a claim against a third party for a violation.

Proposed law provides that the provisions of proposed law shall not be construed to render invalid or unenforceable any contract entered into by the then lawful rights owner, including contracts entered into by a deceased individual during his lifetime.

Proposed law provides that the identity rights shall terminate upon the earlier of either the 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 or 50 years following the individual's death.

Proposed law provides for the application of proposed law regardless of whether the individual died before, on, or after August 1, 2022.

Proposed law provides that rights under proposed law are not subject to levy or attachment and may not be the subject of a security interest, marital property distribution, or debt collection.

Proposed law prohibits the use of an individual's identity for a commercial purpose in Louisiana without having first obtained previous written consent from the individual or the individual's authorized representative.

Proposed law provides that a claim for a violation of an individual's identity rights may not be asserted unless the alleged act occurs within Louisiana. Proposed law further provides that the claim shall be subject to a prescriptive period of two years from the date the violation was discovered or should have been discovered.

Proposed law provides for certain actions which result in a person submitting to the jurisdiction of this state.

Proposed law authorizes additional remedies including temporary or permanent injunctive relief, the greater of \$1,000 and the actual damages, and reasonable attorney fees, costs, and

expenses relating to the action.

Proposed law provides that 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 proposed law shall be subject to a special motion to strike (C.C.P. Art. 971), and any alleged violation shall be presumed an act in furtherance of a person's right of petition or free speech under the United States Constitution or the Louisiana Constitution in connection with a public issue.

Proposed law provides that proposed law does not affect rights and privileges recognized under other state or federal laws, including those privileges afforded under the "fair use" factors in the U.S. Copyright Act of 1976. Proposed law provides a list of circumstances in which proposed law does not apply.

Proposed law provides certain exempt uses.

Proposed law provides that the carriage or transmission by a radio or television station of content violating proposed law shall not be considered a violation by the radio or television station.

Proposed law provides that proposed law does 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.

Proposed law provides that proposed law shall be liberally construed to accomplish its intent and purposes, and that the property rights granted by proposed law vest with an individual or the individual's authorized representative on August 1, 2022.

Proposed law provides that the publication by a news entity or outlet, online news outlet, newspaper, news publication, or other media which violates any provision of proposed law shall not be considered a violation of this proposed law by the news outlet, online news outlet, or other media.

Proposed law provides that proposed law shall not apply to claims arising from a publication of an expressive work created prior to August 1, 2022.

Effective August 1, 2022.

(Adds R.S. 51:470.1 - 470.6)