

2022 Regular Session

SENATE BILL NO. 426

BY SENATOR MCMATH

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17

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 a professional performer's likeness or voice that is so realistic  
21 as to be indistinguishable from the actual likeness or voice of the professional  
22 performer. "Digital replica" does not include the making or duplication of  
23 another recording that consists entirely of an independent fixation of other  
24 sounds, even though the sounds imitate or simulate the voice of the professional  
25 performer.

26          (5) "Expressive work" means such work as a play, book, magazine,  
27 newspaper, musical composition, audiovisual work, radio or television program,  
28 work of art, or a dramatic, literary, or musical work, if it is fictional or  
29 nonfictional entertainment, a work of political or newsworthy value, or an

1 advertisement or commercial announcement for any of these works.

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

4 (7) "Individual" means a living natural person domiciled in Louisiana  
5 or a deceased natural person who was domiciled in Louisiana at the time of the  
6 individual's death.

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

10 (9) "Interactive computer service" means any information service,  
11 system, or access software provider that provides or enables computer access  
12 by multiple users to a computer server, including specifically, a service or  
13 system that provides access to the internet and such systems operated or  
14 services offered by libraries or educational institutions.

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

17 (11) "Performance" means the use of a digital replica to substitute for  
18 a performance by a professional performer in a work in which the professional  
19 performer did not actually appear.

20 (12) "Professional performer" means an individual who, for gain or  
21 livelihood, is or was regularly engaged in acting, singing, dancing, playing a  
22 musical instrument, or appearing on a news broadcast as an anchor or reporter.

23 §470.3. Property right in an individual's identity

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

26 B. The identity rights provided in this Subpart constitute property rights  
27 that do not expire upon the death of the individual so protected, regardless of  
28 whether such rights were commercially exploited by the individual during the  
29 individual's lifetime. Notwithstanding the foregoing, the identity rights with

1 respect to a performance in audiovisual works shall expire upon the death of the  
2 individual.

3 C. Identity rights are heritable, licensable, assignable, and transferable  
4 to the executors, heirs, legatees, assignees, or licensees of the individual.

5 D. Any transfer or exclusive license of an individual's identity rights is  
6 not valid unless in writing and signed by the individual or the individual's  
7 authorized representative, or if the individual is deceased, by more than fifty  
8 percent of the authorized representatives holding the rights specified in the  
9 transfer or license. An exclusive licensee of an individual's identity rights may,  
10 within the scope of, and to the extent permitted by the license, assert a claim  
11 against a third party for a violation of this Subpart.

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

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

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

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

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

1           **§470.4. Misappropriation of identity**

2           **A. It shall be a violation of this Subpart for any person to use an**  
3           **individual's identity for a commercial purpose in Louisiana without having first**  
4           **obtained consent from the individual or the individual's authorized**  
5           **representative.**

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

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

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

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

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

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

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

27           **E. In addition to any other remedies that may be available under the**  
28           **laws of this state, a person who violates an individual's identity rights may be**  
29           **liable for, and a court may order, any of the following:**

1           **(1) Temporary or permanent injunctive relief.**

2           **(2) The greater of one thousand dollars and the actual damages, and to**  
3 **the extent not duplicative of the plaintiff's compensatory damages, the**  
4 **disgorgement of profits derived from the unauthorized use of the individual's**  
5 **identity. For purposes of calculating such profits, the plaintiff is only required**  
6 **to prove the gross revenue attributable to the unauthorized use, and the**  
7 **defendant is required to prove properly deductible expenses.**

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

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

19           **§470.5. Exempt uses**

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

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

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

27           **(2) In a work of political, public interest, educational, or newsworthy**  
28 **value, including comment, criticism, or parody, or similar works, such as**  
29 **documentaries, docudramas, or historical or biographical works, or a**

1 representation of an individual as himself or herself, regardless of the degree of  
2 fictionalization.

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

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

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

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

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

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

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

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

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

23 (12) If the use is merely incidental.

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

29 D. The carriage or transmission by a radio or television broadcast station

1 licensed by the Federal Communications Commission, cable or satellite  
 2 television company, or other video service provider, streaming video provider,  
 3 newspaper company, periodical company, billboard company, media platform,  
 4 voice, data, or other communications, information services, or internet access  
 5 provider of any content created by a third party which violates any provision  
 6 of this Subpart shall not be considered a violation of this Subpart by any such  
 7 entity which carried or transmitted the content.

8 E. Provisions of this Subpart do not create a liability for publishers or  
 9 speakers of any information provided by another information content provider  
 10 including the internet, an interactive computer service, an information content  
 11 provider, or an access software provider.

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

16 §470.6. Construction and applicability

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

19 B. The property rights granted by this Subpart vest with an individual  
 20 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.

---

SB 426 Engrossed

DIGEST  
 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", "performance" and "professional performer".

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 will 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 under present law, and any alleged violation shall be presumed an act in furtherance of a person's right of petition or free speech under the U.S. Constitution or the La. 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)

#### Summary of Amendments Adopted by Senate

##### Committee Amendments Proposed by Senate Committee on Judiciary A to the original bill

1. Changes definitions of "digital replica", "expressive work", "individual", and "performance".
2. Adds definition of "professional performer".
3. Adds assignees and licensees to the list of individuals for whom identity rights transferable.
4. Specifies that any exclusive license of an individual's identity rights must be valid, in writing.
5. Specifies if the individual is deceased, any transfer or license of the individual's identity rights is not valid unless in writing and signed by more than 50% of the authorized representatives holding the rights specified in the transfer or license; and changes lawful licensee to an exclusive licensee of an individual's identity rights who may assert a claim against a third party for a violation.
6. Changes consent requirements.
7. Adds requirements for use of a digital replica in a public performance.
8. Adds additional remedies for violations of an individual's identity rights.
9. Provides exceptions.
10. Removes the lawful created reproduction, display, distribution, or selling of a copyrighted work.
11. Adds 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 to the list of licensees for which the carriage or transmission by a radio or television broadcast station of any content created by a third party is in violation.

12. Changes that R.S. 51:470.6 shall be liberally construed to accomplish its intent and purposes to the rights granted by R.S. 51:470.6 are cumulative and shall be in addition to any others provided by law.
13. Makes technical changes.