
The original instrument was prepared by Lebra Bias. The following digest, which does not constitute a part of the legislative instrument, was prepared by Thomas L. Tyler.

SB 426 Reengrossed

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 as provided by law and that persons violating an individual's identity rights are liable for the greater of \$1,000 and the actual damages, and reasonable attorney fees, costs, and expenses relating to the action.

Proposed law authorizes a court of competent jurisdiction to grant the plaintiff a temporary restraining order or an order for injunctive relief.

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.

Senate Floor Amendments to engrossed bill

1. Clarifies that a plaintiff may be granted a temporary restraining order or order for injunctive relief by a court of competent jurisdiction for violations.
2. Makes technical amendment.