

RÉSUMÉ DIGEST

ACT 425 (SB 426)

2022 Regular Session

McMath

New law enacts the Allen Toussaint Legacy Act.

New 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".

New 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.

New 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.

New law provides that the provisions of new 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.

New 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.

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

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

New 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.

New 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. New 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.

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

New 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.

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

New 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 new law shall be subject to a special motion to strike under existing 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.

New 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. New law provides a list of circumstances in which new law does not apply.

New law provides certain exempt uses.

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

New 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.

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

New 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 new law shall not be considered a violation by the news outlet, online news outlet, or other media.

New 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)