

2023 Regular Session

HOUSE BILL NO. 475

BY REPRESENTATIVES MAGEE AND KNOX

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

EVIDENCE: Provides relative to admissibility of evidence of a defendant's creative or artistic expression

1

AN ACT

2 To amend and reenact Code of Evidence Article 404(B)(1) and to enact Code of Criminal
3 Procedure Article 718.2, relative to evidence; to prohibit the admissibility of a
4 defendant's creative or artistic expression; to provide for exceptions; to provide
5 relative to jury instructions; to provide for definitions; to provide relative to the
6 admissibility of a defendant's creative or artistic expression in a criminal case; and
7 to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Code of Criminal Procedure Article 718.2 is hereby enacted to read as
10 follows:

11 Art. 718.2. Evidence of a defendant's creative or artistic expression

12 A. Except as provided in Paragraph B of this Article, evidence of a
13 defendant's creative or artistic expression, whether original or derivative, is not
14 admissible against such defendant in any criminal action.

15 B.(1) A court may admit evidence of a defendant's creative or artistic
16 expression, whether original or derivative, if the district attorney proves by clear and
17 convincing evidence all of the following:

18 (a) If the creative or artistic expression is original, that the defendant
19 intended a literal meaning rather than a figurative or fictional meaning.

1 (b) If the creative or artistic expression is derivative, that the defendant
2 intended to adopt the literal meaning of the creative or artistic expression as the
3 defendant's own thought or statement.

(2) In any hearing under this Paragraph, the court shall make its ruling on the record and shall include its findings of fact essential to its ruling.

12 C. If the court admits any evidence described under Paragraph B of this
13 Article, the court shall do all of the following:

14 (1) Ensure that the creative or artistic expression is redacted in a manner to
15 limit the evidence presented to the jury to that which is specifically provided by
16 Paragraph B of this Article.

17 (2) Provide appropriate limiting instructions to the jury.

18 D. The rules of admissibility of evidence provided by this Article shall not
19 apply to civil actions.

20 E. For the purposes of this Article, "creative or artistic expression" means
21 the expression or application of creativity or imagination in the production or
22 arrangement of forms, sounds, words, movements, or symbols, including music,
23 dance, performance art, visual art, poetry, literature, film, and other such objects or
24 media.

25 Section 2. Code of Evidence Article 404(B)(1) is hereby amended and reenacted to
26 read as follows:

27 Art. 404. Character evidence generally not admissible in civil or criminal trial to
28 prove conduct; exceptions; other criminal acts

* * *

1 B. Other crimes, wrongs, or acts; creative or artistic expression. (1)(a)
2 Except as provided in Article 412 or as otherwise provided by law, evidence of other
3 crimes, wrongs, or acts is not admissible to prove the character of a person in order
4 to show that he acted in conformity therewith. It may, however, be admissible for
5 other purposes, such as proof of motive, opportunity, intent, preparation, plan,
6 knowledge, identity, absence of mistake or accident, provided that upon request by
7 the accused, the prosecution in a criminal case shall provide reasonable notice in
8 advance of trial, of the nature of any such evidence it intends to introduce at trial for
9 such purposes, or when it relates to conduct that constitutes an integral part of the act
10 or transaction that is the subject of the present proceeding.

11 (b)(i) For purposes of this Subparagraph "creative or artistic expression"
12 means the expression or application of creativity or imagination in the production or
13 arrangement of forms, sounds, words, movements, or symbols, including music,
14 dance, performance art, visual art, poetry, literature, film, and other such objects or
15 media.

16 (ii) Except as provided in Article 412 or as otherwise provided by law,
17 creative or artistic expression is not admissible in a criminal case to prove the
18 character of a person in order to show that he acted in conformity therewith,
19 provided that the accused provides reasonable notice to the prosecution in advance
20 of trial asserting that the evidence is creative or artistic expression. Evidence of
21 creative or artistic expression may, however, be admissible for other purposes, such
22 as proof of motive, opportunity, intent, preparation, plan, knowledge, identity,
23 absence of mistake or accident, provided that upon request by the accused, the
24 prosecution in a criminal case shall provide reasonable notice in advance of trial, of
25 the nature of any such evidence it intends to introduce at trial for such purposes, or
26 when it relates to conduct that constitutes an integral part of the act or transaction
27 that is the subject of the present proceeding.

1 (iii) This Subparagraph shall not be construed to limit the admission or
2 consideration of evidence under any other rule.

3 * * *

4 Section 3. This Act shall be known and may be cited as the "Restoring Artistic
5 Protection Act of 2023".

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 475 Engrossed

2023 Regular Session

Magee

Abstract: Provides relative to the admissibility of evidence of a defendant's creative or artistic expression in criminal actions.

Proposed law provides that evidence of a defendant's creative or artistic expression, whether original or derivative, is not admissible in criminal actions except as provided by proposed law.

Proposed law provides that a court may admit evidence of a defendant's creative or artistic expression if the district attorney proves by clear and convincing evidence all of the following:

- (1) If the expression is original, that the defendant intended a literal meaning.
- (2) If the expression is derivative, that the defendant intended to adopt a literal meaning.
- (3) The expression refers to the specific facts of the crime alleged.
- (4) The expression is relevant to a disputed issue of fact.
- (5) The expression has distinct probative value not provided by any other admissible evidence.

Proposed law provides that a court shall make a ruling on the record and include findings of fact essential to its ruling.

Proposed law provides if the court admits any evidence pursuant to proposed law that it shall ensure that the expression is redacted in a manner to limit the evidence presented to the jury and provide appropriate limiting instructions to the jury.

Proposed law provides that proposed law shall not apply to civil actions.

Proposed law defines "creative or artistic expression".

Present law (C.E. Art. 404(B)(1)) provides that, unless there is an exception, evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith, but may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident.

Present law further provides that evidence of other crimes, wrongs, or acts may be admissible for other purposes if, upon request by the accused, the prosecution in a criminal case provides reasonable notice in advance of trial of the nature of any such evidence that it intends to introduce at trial for such purposes, or when the evidence relates to conduct that constitutes an integral part of the act or transaction that is the subject of the present proceeding.

Proposed law retains present law.

Proposed law provides that, unless there is an exception, creative or artistic expression is not admissible in a criminal case to prove the character of a person in order to show that he acted in conformity therewith, provided that the accused provides reasonable notice to the prosecution in advance of trial asserting that the evidence is creative or artistic expression.

Proposed law further provides that evidence of creative or artistic expression may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case provides reasonable notice in advance of trial of the nature of any such evidence that it intends to introduce at trial for such purposes, or when the evidence relates to conduct that constitutes an integral part of the act or transaction that is the subject of the present proceeding.

Proposed law provides that proposed law shall not be construed to limit the admission or consideration of evidence under any other rule.

Proposed law shall be known and cited as the "Restoring Artistic Protection Act of 2023".

(Amends C.E. Art. 404(B)(1); Adds C.Cr.P. Art. 718.2)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the original bill:

1. Make technical changes.
2. Define "creative or artistic expression" within La. Code of Evidence and establish when it is admissible as evidence in criminal proceedings.
3. Provide that proposed law relative to the admissibility of creative or artistic expression shall not be construed to limit the admission or consideration of evidence under any other rule.