
HOUSE COMMITTEE AMENDMENTS

2017 Regular Session

Amendments proposed by House Committee on Civil Law and Procedure to Original House Bill No. 415 by Representative Leger

AMENDMENT NO. 1

On page 1, line 3, change "470.7" to "470.11"

AMENDMENT NO. 2

On page 1, line 11, change "470.7" to "470.11"

AMENDMENT NO. 3On page 1, line 18, change "meanings" to "following meanings:"AMENDMENT NO. 4

On page 1, delete line 19 in its entirety

AMENDMENT NO. 5

Delete pages 2 through 5 in their entirety and insert the following:

"(1)(a) "Commercial use" means the use of an individual's readily identifiable name, voice, signature, photograph, or likeness in any of the following circumstances:

(i) For advertising, selling, or soliciting purchases of products, merchandise, goods, or services.

(ii) On or in connection with products, merchandise, or goods.

(b) "Commercial use" does not mean the use of an individual's name, voice, signature, photograph, or likeness to identify the individual for the purpose of either of the following:

(i) Data collection or data reporting and supplying the data collected or reported.

(ii) Data processing, data matching, data distribution, or data licensing.

(2) "Individual" means a natural person, whether or not the person is living or deceased.

(3) "Likeness" means a reproduction of the image of an individual by any means other than a photograph.

(4)(a) "Person" means an individual or entity.

(b) "Person" includes any of the following:

(i) A partnership, a corporation, a company, an association, or any other business entity.;

(ii) A not-for-profit corporation or association.

(iii) An educational or religious institution.

(iv) A political party.

(v) A community, civic, or other organization.

(5) "Photograph" means a reproduction of the image of an individual that readily identifies the individual, whether made by photography, videotape, live transmission, or other means.

(6) "Successor in interest" means an owner or the beneficial owner of a property right provided by this Subpart under either of the following:

(a) A transfer, assignment, or license of the property right.

(b) As provided by R.S. 51:470.3(B)(3).

1 §470.3. Property right in use of name, voice, signature, photograph,
 2 or likeness; prior consent

3 A. An individual has a property right in the commercial use by any
 4 medium in any manner without the individual's prior consent and of the
 5 following:

6 (1) The individual's name, voice, signature, photograph, or likeness.

7 (2) Any combination of the individual's name, voice, signature,
 8 photograph, or likeness.

9 B. The property right provided by Subsection A of this Section is
 10 subject to all of the following:

11 (1) Is freely transferable, assignable, licensable, and heritable, in
 12 whole or in part, by contract or by a trust, testamentary disposition, or other
 13 instrument executed before or after the effective date of this Subpart.

14 (2) Does not expire upon the death of an individual, whether or not
 15 the rights were commercially used by the individual during the individual's
 16 lifetime.

17 (3)(a) Upon the death of an individual, vests in the individual's
 18 executors, administrators, heirs, legatees, and assignees according to either
 19 of the following:

20 (i) The terms of a trust, testamentary, or other instrument under
 21 Paragraph (1) of this Subsection.

22 (ii) Except as provided in Subparagraph (b) of this Paragraph, if a
 23 testamentary instrument does not expressly provide for the transfer of a
 24 property right provided by Subsection A of this Section, the laws of this state
 25 governing intestate successions controls.

26 (b) In the absence of an express transfer in a testamentary instrument
 27 of the rights of an individual in his name, voice, signature, photograph, or
 28 likeness, a provision in the testamentary instrument that provides for the
 29 disposition of the residue of the individual's assets is effective to transfer the
 30 rights recognized under this Section in accordance with the terms of the
 31 provision.

32 C. Subject to the terms of a transfer, assignment, or license of a
 33 property right provided by this Section, the consent required by Subsection
 34 A of this Section shall be exercised by any of the following:

35 (1) The individual during the lifetime of the individual.

36 (2) A person or persons to whom all or part of the right of consent has
 37 been transferred, assigned, or licensed.

38 (3) After the death of an individual, as provided by R.S. 51:470.4.

39 §470.4. Exercise of rights after death

40 A. Subject to the terms of a transfer, assignment, or license of
 41 property rights under R.S. 51:470.3, after the death of an individual, consent
 42 to the use of the individual's name, voice, signature, photograph, or likeness
 43 shall be granted by no less than fifty and one-thousandths percent of the
 44 owners of the right to use the name, voice, signature, photograph, or likeness
 45 of the individual as provided by R.S. 51:470.3(B)(3).

46 B. Compensation or other remuneration received under Subsection
 47 A of this Section for the use of the name, voice, signature, photograph, or
 48 likeness of the individual shall be shared by all owners of the right to use the
 49 name, voice, signature, photograph, or likeness of the individual according
 50 to each owner's respective ownership interest.

51 §470.5. Exclusive rights; expiration.

52 Subject to a transfer, an assignment, or a licensing agreement, the
 53 property rights provided by this Subpart are exclusive to:

54 (1) An individual during the individual's lifetime; and

55 (2) The executors, administrators, heirs, devisees, and assignees of
 56 the individual for fifty years after the individual's death.

§470.6. Unauthorized commercial use

A. Except as provided by R.S. 51:470.8, a person who commercially uses the name, voice, signature, photograph, or likeness of an individual is liable to the holder of the property right provided by this Subpart for damages and disgorgement of profits, funds, goods, or services if the commercial use was not authorized by R.S. 51:470.3(C).

B. If a minor is the holder of the property right, the parent or legal guardian may consent on the minor's behalf.

§470.7. Civil actions; damages

A. An aggrieved party may file a civil action in the parish where either of the following occur:

(1) One or more defendants reside.

(2) A violation of this Subpart occurred.

B. Upon finding a violation of this Subpart, the court may issue an injunction to prevent or restrain the unauthorized commercial use of the name, voice, signature, photograph, or likeness of the individual.

C.(1) The holder of the property right under this Subpart is entitled to recover for the unauthorized commercial use of the property right by seeking all of the following:

(a) The actual damages the holder of the property right has suffered as a result of a commercial use of the property right.

(b) Any profits that are attributable to the commercial use.

(2) Profits that are attributable to the commercial use shall not be considered in computing the actual damages.

(3) The existence or nonexistence of profits from the unauthorized commercial use shall not be a criterion for determining liability.

D. A court may award the prevailing party in any action under this Subpart attorney fees and costs.

§470.8. Exempt use; commercial use

A.(1) It is not a violation of this Subpart if the name, voice, signature, photograph, or likeness of an individual is used in any of the following manners:

(a) In connection with a news, public affairs, or sports broadcast, including the promotion of and advertising for a sports broadcast, an account of public interest, or a political campaign.

(b)(i) A play, book, magazine, newspaper, musical composition, visual work, work of art, audiovisual work, radio or television program if it is fictional or nonfictional entertainment, or a dramatic, literary, or musical work.

(ii) A work of political, public interest, or newsworthy value including a comment, criticism, parody, satire, or a transformative creation of a work of authorship.

(iii) An advertisement or commercial announcement for any of the works described in this Subparagraph or in Subparagraph (a) of this Paragraph.

(c) In a photograph or likeness where the individual appears as a member of the public, an attendee of a photographed event, or in a public place, and the individual is not named.

(d) By an institution of higher education or by a nonprofit organization, club, or supporting foundation that is authorized by the institution of higher education and established solely to advance the purposes of the institution of higher education if all of the following apply:

(i) The use is for educational purposes or to promote the institution of higher education and its educational, athletic, or other institutional objectives.

(ii) The individual is or was affiliated with the institution, including without limitation as any of the following:

1 (aa) A student or member of the faculty or staff.

2 (bb) A donor or campus visitor.

3 (cc) A contractor, subcontractor, or employee.

4 (e) By any person practicing the profession of photography or his
5 representative for the following purposes:

6 (i) To exhibit and display photographs in a personal portfolio through
7 physical media or digital media unless the exhibit and display are continued
8 by the person practicing the profession of photography after written notice
9 objecting to the exhibit and display has been given by the individual or by the
10 individual's representative.

11 (ii) To distribute photographs for license and sale or other transfer to
12 third parties or to promote or advertise such activities.

13 (iii) To provide yearbooks to an educational institution or
14 photographs for school publications.

15 (f) By a service provider of a system or network, if the service
16 provider either:

17 (i) Does not have actual knowledge that a photograph or likeness on
18 the system or network is in violation of this Subpart.

19 (ii) In the absence of such actual knowledge, is not aware of facts or
20 circumstances from which a violation of this Subpart is apparent.

21 (2) The use of the name, voice, signature, photograph, or likeness of
22 the individual within a work that is protected under Subparagraph (1)(b) of
23 this Subsection is not an exempt use protected by Subparagraph (b) of this
24 Paragraph if the claimant proves that the use is so directly connected with a
25 product, article of merchandise, good, or service other than the work itself as
26 to constitute an act of advertising, selling, or soliciting purchases of the
27 product, article of merchandise, good, or service by the individual without
28 the prior consent required by this Subpart.

29 B.(1) The commercial use of the name, voice, signature, photograph,
30 or likeness of the individual in a commercial medium does not constitute a
31 commercial use for purposes of advertising or solicitation if the material
32 containing the commercial use is authorized by the individual for commercial
33 sponsorship or paid advertising.

34 (2) It is a question of fact as to whether or not the commercial use of
35 the name, voice, signature, photograph, or likeness of an individual is so
36 directly connected with the commercial sponsorship or paid advertising as to
37 constitute an authorized use for purposes of advertising or solicitation.

38 §470.9. Exclusive remedies

39 A. Remedies granted by this Subpart shall constitute the exclusive
40 basis for asserting a claim for the unauthorized commercial use of the name,
41 voice, signature, photograph, or likeness of an individual.

42 B. Except as provided in this Subpart, a right of publicity in the use
43 of the name, voice, signature, photograph, or likeness of an individual does
44 not exist.

45 §470.10. Construction

46 A.(1) This Subpart shall be liberally construed to accomplish its
47 intent and purposes.

48 (2) This Subpart does not render invalid or unenforceable a contract
49 or license entered into before or after the effective date of this Subpart by an
50 individual during his lifetime by which the individual transferred, assigned,
51 or licensed all or part of the right to use his name, voice, signature,
52 photograph, or likeness.

53 B. The property rights granted by this Subpart are not considered
54 intellectual property for purposes of 47 U.S.C. 230.

55 §470.11. Applicability.

- 1 A. The property rights granted by this Subpart vest with respect to an
2 individual on the effective date of this Subpart.
3 B. This Subpart applies only to individuals maintaining a domicile or
4 residence in the state of Louisiana on or after the effective date of this
5 Subpart."