
DIGEST

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HB 415 Reengrossed

2017 Regular Session

Leger

Abstract: Creates a property right for the purpose of protecting the identity of an individual from unauthorized commercial uses.

Proposed law enacts the "Allen Toussaint Legacy Act".

Proposed law provides definitions for the purpose of proposed law.

Proposed law provides that an individual has a property right in the commercial use by any medium in any manner without the individual's prior consent of the individual's name, voice, signature, photograph, or likeness, or any combination of the individual's name, voice, signature, photograph, or likeness.

Proposed law provides that the property right is freely transferable, assignable, licensable, and heritable, does not expire upon the death of an individual, and, upon the death of an individual, vests in the individual's executors, administrators, heirs, legatees, and assignees according to the terms of a trust, testament, or other authorized instrument.

Proposed law provides that consent shall be exercised by the individual during the lifetime of the individual, a person to whom the right of consent has been transferred, assigned, or licensed, or, after the death of an individual, as provided by proposed law (R.S. 51:470.4).

Proposed law provides that, subject to the terms of a transfer, assignment, or license of property rights, after the death of an individual, consent to the specified use of the individual's name, voice, signature, photograph, or likeness shall be granted by no less than 50.001% of the owners of the right to use the name, voice, signature, photograph, or likeness of the individual.

Proposed law provides that compensation or other remuneration received for the specified use of the name, voice, signature, photograph, or likeness of the individual shall be shared by all owners of the right to each owner's respective ownership interest.

Proposed law provides that subject to a transfer, an assignment, or a licensing agreement, the property rights provided by proposed law are exclusive to an individual during the individual's lifetime, and to the executors, administrators, heirs, legatees, and assignees of the individual for a period commencing after the individual's death and terminating upon the earlier of either 50 years or three consecutive years of nonuse of the individual's identity for any commercial purpose.

Proposed law provides that a person who commercially uses the name, voice, signature, photograph, or likeness of an individual is liable to the holder of the property right for damages and disgorgement of profits, funds, goods, or services if the commercial use was not authorized.

Proposed law provides that an aggrieved party may file a civil action in the parish where either one or more defendants reside or where a violation of proposed law occurred.

Proposed law provides that 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.

Proposed law provides that the holder of the property right is entitled to recover for the unauthorized commercial use of the property right by seeking actual damages and any profits that are attributable to the commercial use. Proposed law also provides that profits that are attributable to the commercial use shall not be considered in computing the actual damages.

Proposed law authorizes the court to award the prevailing party attorney fees and costs.

Proposed law provides that it is not a violation of proposed law if the name, voice, signature, photograph, or likeness of an individual is used in any of the following manners:

- (1) 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.
- (2) 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.
- (3) A work of political, public interest, or newsworthy value including a comment, criticism, parody, satire, or a transformative creation of a work of authorship.
- (4) An advertisement or commercial announcement for any of the works described by proposed law.
- (5) 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.
- (6) 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 under certain circumstances.
- (7) By any person practicing the profession of photography or his representative for certain purposes.
- (8) By a service provider of a system or network, under certain circumstances.

Proposed law provides that the use of the name, voice, signature, photograph, or likeness of the individual within a work that is protected under proposed law is not an exempt use protected by proposed law if the claimant proves that the use is so directly connected with a product, article of merchandise, good, or service other than the work itself as to constitute an act of advertising, selling, or soliciting purchases of the product, article of merchandise, good, or service by the individual without the required prior consent.

Proposed law provides that the commercial use of the name, voice, signature, photograph, or likeness of the individual in a commercial medium does not constitute a commercial use for purposes of advertising or solicitation if the material containing the commercial use is authorized by the individual for commercial sponsorship or paid advertising.

Provides that proposed law shall be liberally construed to accomplish its intent and purposes and that proposed law does not render invalid or unenforceable a contract or license entered into before or after the effective date of proposed law.

Provides that the property rights granted by proposed law are not considered intellectual property for purposes of 47 U.S.C. 230.

Provides that the property rights granted by proposed law vest with respect to an individual on the effective date of proposed law, and that proposed law applies only to individuals maintaining a domicile or residence in Louisiana on or after the effective date of proposed law.

(Adds R.S. 51:470.1-470.10)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill:

1. Delete all provisions of proposed law providing for definitions, rights and termination of rights of identity, causes of action, prescription, and remedies for such causes of action, and scope of applicability.
2. Add new provisions of proposed law providing for definitions, property rights in the use of name, voice, signature, photograph or likeness and the exclusive exercise and expiration of those rights, and the civil actions and damages for the unauthorized use of those rights.
3. Add provisions specifying that proposed law is the exclusive basis for asserting a claim, and that proposed law shall be liberally construed and applied only to individuals domiciled or residing in Louisiana.

The House Floor Amendments to the engrossed bill:

1. Add provisions to restrict application of proposed law to "specified" uses of the individual's name, voice, signature, photograph, or likeness.
2. Provide an alternative 3-year prescriptive period.
3. Delete provisions specifying that it is a question of fact relative to whether the commercial use of the individual's name, voice, signature, photograph, or likeness is directly connected to the commercial sponsorship.
4. Delete provisions specifying that proposed law is the exclusive remedy.
5. Delete provisions regarding the applicability of proposed law to persons with a domicile or residence in La.
6. Add technical amendments.