

2018 Regular Session

HOUSE BILL NO. 276

BY REPRESENTATIVE LEGER

CIVIL/ACTIONS: Establishes a right of publicity

1 AN ACT

2 To enact Subpart K of Part VIII of Chapter 1 of Title 51 of the Louisiana Revised Statutes
3 of 1950, to be comprised of R.S. 51:470.1 through 470.11, relative to a property
4 right of identity; to provide for definitions; to provide for a property right of identity;
5 to provide for prohibitions; to provide for termination of the right of identity; to
6 provide for a cause of action; to provide for a prescriptive period; to provide for
7 remedies; to provide for penalties; to provide for exceptions; to provide for
8 applicability; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Subpart K of Part VIII of Chapter 1 of Title 51 of the Louisiana Revised
11 Statutes of 1950, comprised of R.S. 51:470.1 through 470.11, is hereby enacted to read as
12 follows:

13 SUBPART K. ALLEN TOUSSAINT LEGACY ACT

14 §470.1. Short title

15 This Subpart shall be known and may be cited as the "Allen Toussaint
16 Legacy Act".

17 §470.2. Definitions

18 As used in this Subpart, the following terms and phrases have the following
19 meanings:

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

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

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

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

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

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

13 (2) "Individual" means a natural person who is deceased.

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

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

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

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

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

21 (iii) An educational or religious institution.

22 (iv) A political party.

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

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

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

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

1 (b) As provided by R.S. 51:470.3(B)(2).

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

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

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

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

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

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

14 (2)(a) Upon the death of an individual, vests in the individual's executors,
15 administrators, heirs, legatees, and assignees according to either of the following:

16 (i) The terms of a trust, testamentary disposition, or other instrument under
17 Paragraph (1) of this Subsection.

18 (ii) Except as provided in Subparagraph (b) of this Paragraph, if a
19 testamentary instrument does not expressly provide for the transfer of a property
20 right provided by Subsection A of this Section, the laws of this state governing
21 intestate successions control.

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

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

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

3 (2) After the death of an individual, as provided by R.S. 51:470.4.
4 §470.4. Exercise of rights after death

5 A. Subject to the terms of a transfer, assignment, or license of property rights
6 under R.S. 51:470.3, after the death of an individual, consent to the specified use of
7 the individual's name, voice, signature, photograph, or likeness shall be granted by
8 no less than fifty and one-thousandths percent of the owners of the right to the
9 specified use of the name, voice, signature, photograph, or likeness of the individual
10 as provided by R.S. 51:470.3(B)(2).

11 B. Compensation or other remuneration received under Subsection A of this
12 Section for the use of the name, voice, signature, photograph, or likeness of the
13 individual shall be shared by all owners of the right to use the name, voice, signature,
14 photograph, or likeness of the individual according to each owner's respective
15 ownership interest.

16 §470.5. Exclusive rights; expiration

17 Subject to a transfer, an assignment, or a licensing agreement, the property
18 rights provided by this Subpart are exclusive to the executors, administrators, heirs,
19 legatees, and assignees of the individual for a period commencing after the
20 individual's death and terminating upon the earlier of either fifty years or three
21 consecutive years of nonuse of the individual's identity for any commercial purpose.

22 §470.6. Unauthorized commercial use

23 A. Except as provided by R.S. 51:470.8, a person who commercially uses the
24 name, voice, signature, photograph, or likeness of an individual is liable to the holder
25 of the property right provided by this Subpart for damages and disgorgement of
26 profits, funds, goods, or services if the commercial use was not authorized by R.S.
27 51:470.3(C).

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

1 §470.7. Civil actions; damages

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

4 (1) One or more defendants reside.

5 (2) A violation of this Subpart occurred.

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

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

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

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

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

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

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

21 §470.8. Exempt use

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

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

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

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

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

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

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

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

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

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

18 (bb) A donor or campus visitor.

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

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

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

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

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

3 (f) By a service provider of a system or network, if the service provider does
4 not have actual knowledge of either of the following:

5 (i) A photograph or likeness on the system or network is in violation of this
6 Subpart.

7 (ii) Facts or circumstances from which a violation of this Subpart is apparent.

8 (2) The use of the name, voice, signature, photograph, or likeness of the
9 individual within a work that is protected under Subparagraph (1)(b) of this
10 Subsection is not an exempt use protected by this Subsection if the use is so directly
11 connected with a product, article of merchandise, good, or service other than the
12 work itself as to constitute an act of advertising, selling, or soliciting purchases of
13 the product, article of merchandise, good, or service by the individual without the
14 prior consent required by this Subpart.

15 B. The commercial use of the name, voice, signature, photograph, or likeness
16 of the individual in a commercial medium does not constitute a commercial use for
17 purposes of advertising or solicitation if the material containing the commercial use
18 is authorized by the individual for commercial sponsorship or paid advertising.

19 §470.9. Exclusive remedies

20 Remedies granted by this Subpart shall constitute the exclusive basis for
21 asserting a claim for the unauthorized commercial use of the name, voice, signature,
22 photograph, or likeness of an individual as defined by R.S. 51:470.2.

23 §470.10. Construction

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

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

1 B. The property rights granted by this Subpart are not considered intellectual
 2 property for purposes of 47 U.S.C. 230.
 3 §470.11. Applicability
 4 The property rights granted by this Subpart vest with respect to an individual
 5 on the effective date of this Subpart and subject to the provisions of R.S. 51:470.5,
 6 shall apply to an individual whether deceased before or after the effective date of this
 7 Subpart.

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 276 Original

2018 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, 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 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 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 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 constitute the exclusive basis for asserting a claim.

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 to an individual whether deceased before or after the effective date of proposed law.

(Adds R.S. 51:470.1-470.11)