

2022 Regular Session

SENATE BILL NO. 426

BY SENATORS MCMATH, BARROW, BERNARD, BOUDREAUX, BOUIE, CATHEY,
CLOUD, FESI, FIELDS, HARRIS, HEWITT, JACKSON, LUNEAU,
MILLIGAN, ROBERT MILLS, PRICE, SMITH, STINE, TALBOT,
TARVER, WARD AND WOMACK

OWNERSHIP. Provides for the Allen Toussaint Legacy Act. (8/1/22)

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 470.6, relative to a property right

4 of identity; to provide for definitions; to provide for prohibitions; to provide for

5 termination of the right of identity; to provide for protection from misappropriation;

6 to 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 470.6, 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**

1 As used in this Subpart, the following words and phrases shall have the
2 following meanings:

3 (1) "Access software provider" means a provider of software, including
4 client or server software, or enabling tools that do any one or more of the
5 following:

6 (a) Filter, screen, allow, or disallow content.

7 (b) Pick, choose, analyze, or digest content.

8 (c) Transmit, receive, display, forward, cache, search, subset, organize,
9 reorganize, or translate content.

10 (2) "Authorized representative" means an assignee, licensee, executor,
11 heir, legatee, or other representative of an individual.

12 (3) "Commercial purposes" means the use of an individual's identity for
13 any of the following purposes:

14 (a) On or in connection with products, merchandise, goods, services,
15 commercial activities, or performances.

16 (b) For advertising, soliciting, or promoting products, merchandise,
17 goods, services, commercial activities, or performances.

18 (c) For the purpose of fundraising.

19 (4) "Digital replica" means a computer-generated or electronic
20 reproduction of a professional performer's likeness or voice that is so realistic
21 as to be indistinguishable from the actual likeness or voice of the professional
22 performer. "Digital replica" does not include the making or duplication of
23 another recording that consists entirely of an independent fixation of other
24 sounds, even though the sounds imitate or simulate the voice of the professional
25 performer.

26 (5) "Expressive work" means such work as a play, book, magazine,
27 newspaper, musical composition, audiovisual work, radio or television program,
28 work of art, or a dramatic, literary, or musical work, if it is fictional or
29 nonfictional entertainment, a work of political or newsworthy value, or an

1 advertisement or commercial announcement for any of these works.

2 (6) "Identity" means an individual's name, voice, signature, photograph,
3 image, likeness, or digital replica.

4 (7) "Individual" means a living natural person domiciled in Louisiana
5 or a deceased natural person who was domiciled in Louisiana at the time of the
6 individual's death.

7 (8) "Information content provider" means any person or entity that is
8 responsible, in whole or in part, for the creation or development of information
9 provided through the internet or any other interactive computer service.

10 (9) "Interactive computer service" means any information service,
11 system, or access software provider that provides or enables computer access
12 by multiple users to a computer server, including specifically a service or system
13 that provides access to the internet and such systems operated or services
14 offered by libraries or educational institutions.

15 (10) "Internet" means the international computer network of both
16 federal and nonfederal interoperable packet switched data networks.

17 (11) "Performance" means the use of a digital replica to substitute for
18 a performance by a professional performer in a work in which the professional
19 performer did not actually appear.

20 (12) "Professional performer" means an individual who, for gain or
21 livelihood, is or was regularly engaged in acting, singing, dancing, playing a
22 musical instrument, or appearing on a news broadcast as an anchor or reporter.

23 §470.3. Property right in an individual's identity

24 A. Every individual has a property right in connection with the use of
25 that individual's identity for commercial purposes.

26 B. The identity rights provided in this Subpart constitute property rights
27 that do not expire upon the death of the individual so protected, regardless of
28 whether such rights were commercially exploited by the individual during the
29 individual's lifetime. Notwithstanding the foregoing, the identity rights with

1 respect to a performance in audiovisual works shall expire upon the death of the
2 individual.

3 C. Identity rights are heritable, licensable, assignable, and transferable
4 to the executors, heirs, legatees, assignees, or licensees of the individual.

5 D. Any transfer or exclusive license of an individual's identity rights is
6 not valid unless in writing and signed by the individual or the individual's
7 authorized representative, or if the individual is deceased, by more than fifty
8 percent of the authorized representatives holding the rights specified in the
9 transfer or license. An exclusive licensee of an individual's identity rights may,
10 within the scope of and to the extent permitted by the license, assert a claim
11 against a third party for a violation of this Subpart.

12 E. The identity rights provided by this Subpart shall terminate upon the
13 earlier of either of the following:

14 (1) Proof of nonuse of the individual's identity for commercial purposes
15 by an individual's authorized representative for a period of three consecutive
16 years following the individual's death.

17 (2) Fifty years following the individual's death.

18 F. The rights provided by this Subpart apply to all individuals whether
19 or not the individual died before, on, or after August 1, 2022. If the individual
20 died before August 1, 2022, the rights are considered to have existed on and
21 after the date the individual died. Notwithstanding the foregoing, a claim for a
22 violation of an individual's identity rights may not be asserted under this
23 Subpart unless the alleged act or event of violation occurs after August 1, 2022.

24 G. Rights under this Subpart are not subject to levy or attachment and
25 may not be the subject of a security interest, marital property distribution, or
26 debt collection. Nothing in this Section limits the ability to levy, attach, or obtain
27 a security interest in the proceeds of the exercise of the rights under this
28 Subpart, if the individual chooses to exercise his rights, or as otherwise ordered
29 by a court of competent jurisdiction.

1 §470.4. Misappropriation of identity

2 A. It shall be a violation of this Subpart for any person to use an
3 individual's identity for a commercial purpose in Louisiana without having first
4 obtained consent from the individual or the individual's authorized
5 representative.

6 B. A claim for a violation of an individual's identity rights may not be
7 asserted under this Subpart unless the alleged act occurs within Louisiana, and
8 shall be subject to a prescriptive period of two years from the date the violation
9 was discovered or should have been discovered.

10 C. It shall be a violation of this Subpart to use a digital replica in a public
11 performance of a scripted audiovisual work, or in a live performance of a
12 dramatic work, if the use is intended to create, and creates, the clear impression
13 that the professional performer is actually performing in the role of a fictional
14 character.

15 D. A person who does any of the following shall be deemed to have
16 submitted to the jurisdiction of this state:

17 (1) Engages in conduct within Louisiana that is prohibited under this
18 Subpart.

19 (2) Creates or causes to be created within this state products,
20 merchandise, goods, services, or other materials prohibited under this Subpart.

21 (3) Transports or causes to be transported into this state products,
22 merchandise, goods, or other materials created or used in violation of this
23 Subpart.

24 (4) Knowingly causes advertising or promotional material created or
25 used in violation of this Subpart to be published, distributed, exhibited, or
26 disseminated within Louisiana.

27 E.(1) In addition to any other remedy authorized by law, a person who
28 violates an individual's identity rights may be liable for the greater of one
29 thousand dollars and the actual damages, and to the extent not duplicative of

1 the plaintiff's compensatory damages, the disgorgement of profits derived from
2 the unauthorized use of the individual's identity. For purposes of calculating
3 such profits, the plaintiff is only required to prove the gross revenue
4 attributable to the unauthorized use, and the defendant is required to prove
5 properly deductible expenses.

6 (2) A court of competent jurisdiction may grant the plaintiff, in a
7 proceeding under this Section, a temporary restraining order or an order for
8 injunctive relief.

9 F. A court may award reasonable attorney fees, costs, and expenses to
10 the prevailing party in an action under this Subpart.

11 G. Any suit arising out of the alleged offending use of a digital replica,
12 expressive work, identity, or performance, or brought against a newspaper,
13 broadcast outlet, media outlet, online news outlet, news publication, or other
14 media pursuant to this Subpart shall be subject to the provisions of Code of
15 Civil Procedure Article 971, and any alleged violation of this Subpart shall be
16 presumed an act in furtherance of a person's right of petition or free speech
17 under the Constitution of the United States of America or the Constitution of
18 Louisiana in connection with a public issue in accordance with Code of Civil
19 Procedure Article 971.

20 §470.5. Exempt uses

21 A. This Subpart does not affect rights and privileges recognized under
22 other state or federal laws, including those privileges afforded under the "fair
23 use" factors in the United States Copyright Act of 1976.

24 B. It shall not constitute a violation of this Subpart to use an individual's
25 identity under any of the following circumstances:

26 (1) In connection with a news, public affairs, sports transmission or
27 account, or political campaign.

28 (2) In a work of political, public interest, educational, or newsworthy
29 value, including comment, criticism, or parody, or similar works, such as

1 documentaries, docudramas, or historical or biographical works, or a
2 representation of an individual as himself or herself, regardless of the degree of
3 fictionalization.

4 (3) In a play, book, magazine, newspaper, literary work, musical
5 composition, single and original work of art or photograph, or visual work.

6 (4) In a sound recording, audiovisual work, motion picture, or radio or
7 television program, unless the use creates an unauthorized performance.

8 (5) Any act of restoration or preservation of a sound recording,
9 audiovisual work, or radio or television program.

10 (6) In an advertisement, commercial announcement, or display of any of
11 the works described in this Subpart.

12 (7) To accurately identify the individual as the author of a given work,
13 or a performer of a given work or performance, under circumstances in which
14 the work or performance is otherwise rightfully reproduced, exhibited, or
15 broadcast.

16 (8) To lawfully make a work available for sale or licensing purposes
17 insofar as the terms of the sale or license do not permit the user to violate this
18 Subpart.

19 (9) Data collection or data reporting and supplying the data collected or
20 reported.

21 (10) Data processing, data matching, data distribution, or data licensing.

22 (11) In connection with the publication of an expressive work created
23 prior to August 1, 2022.

24 (12) If the use is merely incidental.

25 C. An otherwise exempt use of an individual's identity protected under
26 Subsection B of this Section is not an exempt use if it is so directly connected
27 with a product, article of merchandise, good, or service as to constitute an act
28 of advertising, selling, or soliciting purchases of that product, article of
29 merchandise, good, or service.

1 **D. The carriage or transmission by a radio or television broadcast station**
 2 **licensed by the Federal Communications Commission, cable or satellite**
 3 **television company, or other video service provider, streaming video provider,**
 4 **newspaper company, periodical company, billboard company, media platform,**
 5 **voice, data, or other communications, information services, or internet access**
 6 **provider of any content created by a third party which violates any provision**
 7 **of this Subpart shall not be considered a violation of this Subpart by any such**
 8 **entity which carried or transmitted the content.**

9 **E. Provisions of this Subpart do not create a liability for publishers or**
 10 **speakers of any information provided by another information content provider**
 11 **including the internet, an interactive computer service, an information content**
 12 **provider, or an access software provider.**

13 **F. The publication by a news entity or outlet, online news outlet,**
 14 **newspaper, news publication, or other media which violates any provision of**
 15 **this Subpart shall not be considered a violation of this Subpart by the news**
 16 **outlet, online news outlet, or other media.**

17 **§470.6. Construction and applicability**

18 **A. The rights granted by this Subpart are cumulative and shall be in**
 19 **addition to any others provided by law.**

20 **B. The property rights granted by this Subpart vest with an individual**
 21 **or the individual's authorized representative on August 1, 2022.**

The original instrument was prepared by Lebra Bias. The following digest, which does not constitute a part of the legislative instrument, was prepared by Thomas L. Tyler.

SB 426 Reengrossed

DIGEST
2022 Regular Session

McMath

Proposed law enacts the Allen Toussaint Legacy Act.

Proposed 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".

Proposed 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.

Proposed 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.

Proposed law provides that the provisions of proposed 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.

Proposed 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.

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

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

Proposed 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.

Proposed 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. Proposed 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.

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

Proposed 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.

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

Proposed 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 proposed law shall be subject to a special motion to strike under present 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.

Proposed law provides that proposed 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. Proposed law provides a list of circumstances in

which proposed law does not apply.

Proposed law provides certain exempt uses.

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

Proposed law provides that proposed 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.

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

Proposed 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 proposed law shall not be considered a violation of this proposed law by the news outlet, online news outlet, or other media.

Proposed law provides that proposed 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)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the original bill

1. Changes definitions of "digital replica", "expressive work", "individual", and "performance".
2. Adds definition of "professional performer".
3. Adds assignees and licensees to the list of individuals for whom identity rights transferable.
4. Specifies that any exclusive license of an individual's identity rights must be valid, in writing.
5. Specifies if the individual is deceased, any transfer or license of the individual's identity rights is not valid unless in writing and signed by more than 50% of the authorized representatives holding the rights specified in the transfer or license; and changes lawful licensee to an exclusive licensee of an individual's identity rights who may assert a claim against a third party for a violation.
6. Changes consent requirements.
7. Adds requirements for use of a digital replica in a public performance.
8. Adds additional remedies for violations of an individual's identity rights.

9. Provides exceptions.
10. Removes the lawful created reproduction, display, distribution, or selling of a copyrighted work.
11. Adds cable or satellite television company, or other video service provider, streaming video provider, newspaper company, periodical company, billboard company, media platform, voice, data, or other communications, information services, or internet access provider to the list of licensees for which the carriage or transmission by a radio or television broadcast station of any content created by a third party is in violation.
12. Changes that R.S. 51:470.6 shall be liberally construed to accomplish its intent and purposes to the rights granted by R.S. 51:470.6 are cumulative and shall be in addition to any others provided by law.
13. Makes technical changes.

Senate Floor Amendments to engrossed bill

1. Clarifies that a plaintiff may be granted a temporary restraining order or order for injunctive relief by a court of competent jurisdiction for violations.
2. Makes technical amendment.