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## DIGEST

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HB 415 Original

2017 Regular Session

Leger

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

Proposed law enacts the "Allen Toussaint Legacy Act".

Proposed law provides definitions for the purpose of proposed law to provide clarity.

Proposed law provides that the identity of a person constitutes a freely alienable and licensable property right. Proposed law further provides that the right does not expire upon the death of the individual whether or not the right was commercially exploited by the individual during his lifetime. Proposed law further provides that the right descends to any heirs or legatees of the individual.

Proposed law provides that it shall be unlawful for any person to use the identity of an individual for a commercial purpose without having previously obtained the right from the individual or from an authorized representative of the individual by one of the following means:

- (1) An instrument showing written consent of the individual or an authorized representative of the individual.
- (2) The operation of law in favor of an heir or legatee.

Proposed law provides that the use of an identity for a commercial purpose shall be presumed unlawful when the person who engages in the conduct does any of the following in violation of proposed law:

- (1) Creates or causes to be created goods, merchandise, or other materials.
- (2) Transports or causes to be transported any goods, merchandise, or other materials.
- (3) Knowingly causes advertising or promotional material created or used to be published, distributed, exhibited, or disseminated.

Proposed law provides that the identity right of a particular individual shall terminate upon the earlier of the following circumstances:

- (1) A showing of proof of nonuse of the identity of the individual for any commercial purpose

by an authorized representative of the individual for a period of three consecutive years following the death of the individual.

- (2) The passage of 70 years following the date of death of the individual.

Proposed law provides that any claim made pursuant to proposed law against any person alleged to be in violation of proposed law may be asserted only when the alleged act or event of violation has occurred in La. and may be asserted by only one or more of the following persons:

- (1) The individual.
- (2) Heirs or legatees of the individual.
- (3) Any person who has previously received written consent for use of an identity from the individual or from an authorized representative of the individual.

Proposed law provides that the claim shall be subject to a prescriptive period of one year from the later of either of the following:

- (1) The date of the violation.
- (2) The date upon which the violation could have been reasonably known by the claimant.

Proposed law provides that, in addition to any other remedies provided by law, a person who is in violation of the provisions of proposed law may be liable for any of the following:

- (1) The greater of \$1,000 plus any actual damages, including profits derived from the unlawful use of the identity of an individual.
- (2) Punitive damages when the person who committed the violation is determined to have acted knowingly, willfully, or intentionally in violation of proposed law.
- (3) Reasonable attorney fees, costs, and expenses.

Proposed law provides procedure for the purpose of calculating profits pursuant to proposed law. Proposed law requires the plaintiff to prove only the gross revenue attributable to the unlawful use. Proposed law requires the defendant to prove any properly deductible expenses.

Proposed law clarifies that any court of appropriate jurisdiction may order any injunctive relief determined to be necessary to prevent any further violation of proposed law.

Proposed law clarifies that proposed law shall not be construed to restrict any other rights or privileges recognized pursuant to any other law.

Proposed law provides that, notwithstanding any other provisions of proposed law, proposed law

shall not apply to any use of the identity of an individual in the following circumstances:

- (1) Use in any literary work, theatrical work, musical composition, film, radio, or television program unless the use of the identity of the individual is primarily promotional in nature as opposed to bona fide artistic expression.
- (2) Use in any newspaper, magazine, book, news broadcast, or telecast, or other medium or publication as part of any bona fide news report, commentary, or presentation regarding a legitimate matter of public interest and where the identity of an individual is not used primarily for advertising purposes.
- (3) Use in any single and original work of fine art.
- (4) Use in any manner made to truthfully identify the individual as the author or performer of a given work in any circumstance in which the work or performance is otherwise rightfully reproduced, exhibited, or broadcast.
- (5) Use in any lawful reproduction, display, distribution, or sale of a copyrighted work of authorship provided that such work was lawfully created and that the reproduction, display, distribution, or sale does not imply that the individual has endorsed or associated with any product, service, or cause.
- (6) Use in any circumstance in which the identity of the individual has commercial value solely because the individual has been legally convicted of a felony offense.

Proposed law declares for the sake of clarity that the right of identity provided for by proposed law applies to all individuals whether or not the individual died before, on, or after the effective date of proposed law. If the individual died before the effective date of proposed law, then the right is considered to have existed on and after the date the individual died.

However, proposed law further clarifies that, notwithstanding any other provisions of proposed law, a claim for any violation of the identity right of an individual may not be asserted pursuant to proposed law unless the alleged act or event of violation occurs on or after the effective date of proposed law.

(Adds R.S. 51:470.1-470.7)