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## DIGEST

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HB 377 Engrossed

2019 Regular Session

Leger

**Abstract:** Enacts the Allen Toussaint Legacy Act.

Proposed law enacts the Allen Toussaint Legacy Act.

Proposed law provides definitions for "authorized representative", "commercial purposes", "digital replica", "expressive work", "identity", "individual", and "performance".

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.

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.

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 non-use of the individual's identity for commercial purposes by an individual's authorized representative for a period of 10 consecutive years following the individual's death or 30 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, 2019.

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, and the claimant is a resident of this state. 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 including temporary or permanent injunctive relief, the greater of \$1,000 and the actual damages, and reasonable attorney fees, costs, and expenses relating to the action.

Proposed law provides certain exempt uses.

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, 2019.

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 shall not apply to claims arising from a publication of an expressive work created prior to August 1, 2019.

(Adds R.S. 51:470.1 - 470.6)

#### Summary of Amendments Adopted by House

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

1. Add the definition of "expressive work" and change the definition of "individual".
2. Specify that a transfer of ownership of identity rights is not valid unless it is in writing.
3. Specify that the transfer of ownership must be signed by authorized representatives holding more than 50% of the rights.
4. Provide that proposed law shall not be construed to render invalid contracts entered into by the individual during his lifetime.
5. Change that period of time in which identity rights terminate after the death of the individual from 70 years to 30 years.
6. Require the person asserting the claim to be a resident of this state.

7. Change the prescriptive period from one year to two years.
8. Remove exemptions from the exceptions to proposed law.
9. Specify 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.
10. Provide that proposed law shall not apply to claims arising from a publication created prior to August 1, 2019.