

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 AND REPRESENTATIVES BOURRIAQUE, CARRIER, WILFORD CARTER, FISHER, GAROFALO, GLOVER, HORTON, JENKINS, LARVADAIN, MAGEE, MCKNIGHT, GREGORY MILLER, NEWELL, PIERRE, SCHLEGEL, SELDERS AND WHITE

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**

18 **As used in this Subpart, the following words and phrases shall have the**
19 **following meanings:**

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

4 **(a) Filter, screen, allow, or disallow content.**

5 **(b) Pick, choose, analyze, or digest content.**

6 **(c) Transmit, receive, display, forward, cache, search, subset, organize,**
7 **reorganize, or translate content.**

8 **(2) "Authorized representative" means an assignee, licensee, executor,**
9 **heir, legatee, or other representative of an individual.**

10 **(3) "Commercial purposes" means the use of an individual's identity for**
11 **any of the following purposes:**

12 **(a) On or in connection with products, merchandise, goods, services,**
13 **commercial activities, or performances.**

14 **(b) For advertising, soliciting, or promoting products, merchandise,**
15 **goods, services, commercial activities, or performances.**

16 **(c) For the purpose of fundraising.**

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

24 **(5) "Expressive work" means such work as a play, book, magazine,**
25 **newspaper, musical composition, audiovisual work, radio or television program,**
26 **work of art, or a dramatic, literary, or musical work, if it is fictional or**
27 **nonfictional entertainment, a work of political or newsworthy value, or an**
28 **advertisement or commercial announcement for any of these works.**

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

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

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

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

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

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

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

20 §470.3. Property right in an individual's identity

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

23 B. The identity rights provided in this Subpart constitute property rights
24 that do not expire upon the death of the individual so protected, regardless of
25 whether such rights were commercially exploited by the individual during the
26 individual's lifetime. Notwithstanding the foregoing, the identity rights with
27 respect to a performance in audiovisual works shall expire upon the death of the
28 individual.

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

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

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

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

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

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

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

26 §470.4. Misappropriation of identity

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

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

5 **C. It shall be a violation of this Subpart to use a digital replica in a public**
6 **performance of a scripted audiovisual work, or in a live performance of a**
7 **dramatic work, if the use is intended to create, and creates, the clear impression**
8 **that the professional performer is actually performing in the role of a fictional**
9 **character.**

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

12 **(1) Engages in conduct within Louisiana that is prohibited under this**
13 **Subpart.**

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

16 **(3) Transports or causes to be transported into this state products,**
17 **merchandise, goods, or other materials created or used in violation of this**
18 **Subpart.**

19 **(4) Knowingly causes advertising or promotional material created or**
20 **used in violation of this Subpart to be published, distributed, exhibited, or**
21 **disseminated within Louisiana.**

22 **E.(1) In addition to any other remedy authorized by law, a person who**
23 **violates an individual's identity rights may be liable for the greater of one**
24 **thousand dollars and the actual damages, and to the extent not duplicative of**
25 **the plaintiff's compensatory damages, the disgorgement of profits derived from**
26 **the unauthorized use of the individual's identity. For purposes of calculating**
27 **such profits, the plaintiff is only required to prove the gross revenue**
28 **attributable to the unauthorized use, and the defendant is required to prove**
29 **properly deductible expenses.**

30 **(2) A court of competent jurisdiction may grant the plaintiff, in a**

1 proceeding under this Section, a temporary restraining order or an order for
2 injunctive relief.

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

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

14 §470.5. Exempt uses

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

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

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

22 (2) In a work of political, public interest, educational, or newsworthy
23 value, including comment, criticism, or parody, or similar works, such as
24 documentaries, docudramas, or historical or biographical works, or a
25 representation of an individual as himself or herself, regardless of the degree of
26 fictionalization.

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

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

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

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

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

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

12 (9) Data collection or data reporting and supplying the data collected or
13 reported.

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

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

17 (12) If the use is merely incidental.

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

23 D. The carriage or transmission by a radio or television broadcast station
24 licensed by the Federal Communications Commission, cable or satellite
25 television company, or other video service provider, streaming video provider,
26 newspaper company, periodical company, billboard company, media platform,
27 voice, data, or other communications, information services, or internet access
28 provider of any content created by a third party which violates any provision
29 of this Subpart shall not be considered a violation of this Subpart by any such
30 entity which carried or transmitted the content.

1 E. Provisions of this Subpart do not create a liability for publishers or
 2 speakers of any information provided by another information content provider
 3 including the internet, an interactive computer service, an information content
 4 provider, or an access software provider.

5 F. The publication by a news entity or outlet, online news outlet,
 6 newspaper, news publication, or other media which violates any provision of
 7 this Subpart shall not be considered a violation of this Subpart by the news
 8 outlet, online news outlet, or other media.

9 §470.6. Construction and applicability

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

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

 PRESIDENT OF THE SENATE

 SPEAKER OF THE HOUSE OF REPRESENTATIVES

 GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____