

2023 Regular Session

HOUSE BILL NO. 475

BY REPRESENTATIVE MAGEE

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

EVIDENCE: Provides relative to admissibility of evidence of a defendant's creative or artistic expression

1 AN ACT

2 To enact Code of Criminal Procedure Article 718.2, relative to evidence; to prohibit the
3 admissibility of a defendant's creative or artistic expression; to provide for
4 exceptions; to provide relative to jury instructions; to provide for definitions; and to
5 provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. Code of Criminal Procedure Article 718.2 is hereby enacted to read as
8 follows:

9 Art. 718.2. Evidence of a defendant's creative or artistic expression

10 A. Except as provided in Paragraph B of this Article, evidence of a
11 defendant's creative or artistic expression, whether original or derivative, is not
12 admissible against such defendant in any criminal action.

13 B.(1) A court may admit evidence of a defendant's creative or artistic
14 expression, whether original or derivative, if the district attorney proves by clear and
15 convincing evidence all of the following:

16 (a) If the creative or artistic expression is original, that the defendant
17 intended a literal meaning rather than a figurative or fictional meaning.

18 (b) If the creative or artistic expression is derivative, that the defendant
19 intended to adopt the literal meaning of the creative or artistic expression as the
20 defendant's own thought or statement.

1 (c) That the creative or artistic expression refers to the specific facts of the
2 crime alleged.

3 (d) That the creative or artistic expression is relevant to a disputed issue of
4 fact.

5 (e) That the creative or artistic expression has distinct probative value not
6 provided by other admissible evidence.

7 (2) In any hearing under this Paragraph, the court shall make its ruling on the
8 record and shall include its findings of fact essential to its ruling.

9 C. If the court admits any evidence described under Paragraph B of this
10 Article, the court shall do all of the following:

11 (1) Ensure that the creative or artistic expression is redacted in a manner to
12 limit the evidence presented to the jury to that which is specifically provided by
13 Paragraph B of this Article.

14 (2) Provide appropriate limiting instructions to the jury.

15 D. The rules of admissibility of evidence provided by this Article shall not
16 apply to civil actions.

17 E. For the purposes of this Article, "creative or artistic expression" means
18 the expression or application of creativity or imagination in the production or
19 arrangement of forms, sounds, words, movements, or symbols, including music,
20 dance, performance art, visual art, poetry, literature, film, and other such objects or
21 media.

22 Section 2. This Act shall be known and may be cited as the "Restoring Artistic
23 Protection Act of 2023".

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 475 Original

2023 Regular Session

Magee

Abstract: Provides relative to the admissibility of evidence of a defendant's creative or artistic expression in criminal actions.

Proposed law provides that evidence of a defendant's creative or artistic expression, whether original or derivative, is not admissible in criminal actions except as provided by proposed law.

Proposed law provides that a court may admit evidence of a defendant's creative or artistic expression if the district attorney proves by clear and convincing evidence all of the following:

- (1) If the expression is original, that the defendant intended a literal meaning.
- (2) If the expression is derivative, that the defendant intended to adopt a literal meaning.
- (3) The expression refers to the specific facts of the crime alleged.
- (4) The expression is relevant to a disputed issue of fact.
- (5) The expression has distinct probative value not provided by any other admissible evidence.

Proposed law provides that a court shall make a ruling on the record and include findings of fact essential to its ruling.

Proposed law provides if the court admits any evidence pursuant to proposed law that it shall ensure that the expression is redacted in a manner to limit the evidence presented to the jury and provide appropriate limiting instructions to the jury.

Proposed law provides that proposed law shall not apply to civil actions.

Proposed law defines "creative or artistic expression".

Proposed law shall be known and cited as the "Restoring Artistic Protection Act of 2023".

(Adds C.Cr.P. Art. 718.2)