

JAN 25 2006

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# A BILL FOR AN ACT

RELATING TO THE ECONOMIC VALUE OF ENTERTAINMENT CELEBRITY  
IDENTITIES.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that recording artists  
2 and television or movie personalities (celebrities) have a right  
3 to control the use of their identities for commercial purposes  
4 after their death. The image and likeness of a celebrity is a  
5 valuable commodity that can profit other persons after the death  
6 of that celebrity. The legislature further finds that no one  
7 has a right to exploit the image or likeness of a celebrity  
8 posthumously without consent of the celebrity's heirs.

9           Many states have enacted a "right of publicity" statute,  
10 including California, Florida, Illinois, Indiana, Kentucky,  
11 Massachusetts, Nebraska, Nevada, New York, Ohio, Oklahoma, Rhode  
12 Island, Tennessee, Texas, Virginia, Washington, and Wisconsin.  
13 Current Hawaii law does not provide the same protection to its  
14 celebrities.

15           The legislature further finds that a right of publicity law  
16 enhances economic development in Hawaii by encouraging  
17 celebrities to produce or perform in Hawaii, which in turn



1 increases publicity for the State as an entertainment  
2 destination and media production center. As Hawaii's digital  
3 media and film industry continues to expand into new  
4 technological areas, celebrity right of publicity protections  
5 become increasingly important in attracting and keeping  
6 production in the State.

7 The purpose of this Act is to create a right of publicity  
8 statute, which is modeled after California's statute known as  
9 the "Astaire Celebrity Image Protection Act".

10 SECTION 2. The Hawaii Revised Statutes is amended by  
11 adding a new section to be appropriately designated and to read  
12 as follows:

13 **"§ - Unauthorized use of a person's persona; damages.**

14 (a) Any person who knowingly uses another's name, voice,  
15 signature, photograph, or likeness, including that of a deceased  
16 personality's, in any manner, on or in products, merchandise, or  
17 goods, or for purposes of advertising or selling, or soliciting  
18 purchases of, products, merchandise, goods, or services, without  
19 the person's or the person's transferee's prior written consent,  
20 or, in the case of a minor, the prior written consent of the  
21 parent or legal guardian, shall be liable for any damages  
22 sustained by the person or persons injured as a result thereof.



1        In addition, in any action brought under this section, any  
2 person found to have violated this section shall be liable to  
3 the injured party or parties in an amount equal to the greater  
4 of \$1,500 or the actual damages suffered as a result of the  
5 unauthorized use and any profits from the unauthorized use that  
6 are attributable to the use and are not taken into account in  
7 computing the actual damages. In establishing profits, the  
8 injured party or parties shall present proof only of the gross  
9 revenue attributable to the use. A person who violates this  
10 section shall prove any deductible expenses.

11        Punitive damages may also be awarded to the injured party.  
12 The prevailing party in any action under this section shall also  
13 be entitled to attorney's fees and costs.

14        (b) With respect to deceased personalities, a play, book,  
15 magazine, newspaper, musical composition, audiovisual work,  
16 radio or television program, single and original work of art,  
17 work of political or newsworthy value, or an advertisement or  
18 commercial announcement for any of these works, shall not be  
19 considered a product, article of merchandise, good, or service  
20 under this section if it is fictional or nonfictional  
21 entertainment or a dramatic, literary, or musical work, or work  
22 of a political or newsworthy value. A work that includes within



1 it a use in connection with a product, article of merchandise,  
2 good, or service shall not be exempt, notwithstanding the  
3 inclusion in a work of a use otherwise exempt under this  
4 subsection, if the claimant proves that the use is so directly  
5 connected with a product, article of merchandise, good, or  
6 service as to constitute an act of advertising, selling, or  
7 soliciting purchases of that product, article of merchandise,  
8 good, or service by the deceased personality without prior  
9 consent from the person or persons specified in subsection (d).

10 (c) With respect to deceased personalities, the rights  
11 recognized under this section shall be freely transferable, in  
12 whole or in part, by written contract or by means of trust or  
13 testamentary documents.

14 (d) The consent required by this section shall be  
15 exercisable by the person or persons to whom the right of  
16 consent, or portion thereof, has been transferred in accordance  
17 with subsection (c), or if no transfer has occurred, then by the  
18 person or persons to whom the right of consent, or portion  
19 thereof, has passed in accordance with subsection (e).

20 (e) Subject to subsections (b), (c), and (d), after the  
21 death of any person, the rights under this section shall belong  
22 to the following person or persons and may be exercised, on



1 behalf of and for the benefit of all of those persons, by those  
2 persons who, in the aggregate, are entitled to more than a one-  
3 half interest in the rights:

4       (1) The entire interest in those rights belong to the  
5       surviving spouse of the deceased personality unless  
6       there are any surviving children or grandchildren of  
7       the deceased personality, in which case one-half of  
8       the entire interest in those rights belong to the  
9       surviving spouse;

10       (2) The entire interest in those rights belong to the  
11       surviving children of the deceased personality and to  
12       the surviving children of any dead child of the  
13       deceased personality unless the deceased personality  
14       has a surviving spouse, in which case the ownership of  
15       a one-half interest in rights is divided among the  
16       surviving children and grandchildren;

17       (3) If there is no surviving spouse, and no surviving  
18       children or grandchildren, then the entire interest in  
19       those rights belong to the surviving parent or parents  
20       of the deceased personality; and

21       (4) The rights of the deceased personality's children and  
22       grandchildren are in all cases divided among them and



1           exercisable in the manner provided in section  
2           560:2-106 of the Uniform Probate Code according to the  
3           number of the deceased personality's children  
4           represented. The share of the children of a dead  
5           child of a deceased personality can be exercised only  
6           by the action of a majority of them.

7           (f) If any deceased personality does not transfer rights  
8           under this section by contract, or by means of a trust or  
9           testamentary document, and there are no surviving persons as  
10           described in subsection (e), then the rights set forth in  
11           subsection (a) shall terminate.

12           (g) A successor in interest to the rights of a deceased  
13           personality under this section or a licensee thereof may not  
14           recover damages for a use prohibited by this section that occurs  
15           before the successor in interest or licensee registers a claim  
16           of the rights. Any person claiming to be a successor in  
17           interest to the rights of a deceased personality under this  
18           section or a licensee thereof may register that claim with the  
19           department of commerce and consumer affairs on a form prescribed  
20           by the director of commerce and consumer affairs and upon  
21           payment of a fee of \$500. The registration shall include the  
22           name and date of death of the deceased personality, the name and



1 address of the claimant, the basis of the claim, and the rights  
2 claimed.

3 (h) Upon receipt and after filing of any document under  
4 this section, the director of commerce and consumer affairs  
5 shall post the document, along with the entire registry of  
6 persons claiming to be a successor in interest to the rights of  
7 a deceased personality or a registered licensee under this  
8 section, on a website accessible by the internet. The director  
9 of commerce and consumer affairs may microfilm or reproduce by  
10 other techniques any of the filings or documents and destroy the  
11 original filing or document. The microfilm or other  
12 reproduction of any document under this section shall be  
13 admissible in any court of law. The microfilm or other  
14 reproduction of any document may be destroyed by the director of  
15 commerce and consumer affairs seventy years after the death of  
16 the personality named therein.

17 (i) Claims registered under subsection (g) shall be public  
18 records.

19 (j) No action shall be brought under this section by  
20 reason of any use of a deceased personality's name, voice,  
21 signature, photograph, or likeness occurring after the



1 expiration of seventy years after the death of the deceased  
2 personality.

3 (k) The use of a name, voice, signature, photograph, or  
4 likeness in a commercial medium shall not constitute a use for  
5 which consent is required under subsection (a) solely because  
6 the material containing the use is commercially sponsored or  
7 contains paid advertising. Rather, it shall be a question of  
8 fact whether the use of the deceased personality's name, voice,  
9 signature, photograph, or likeness was so directly connected  
10 with the commercial sponsorship or with the paid advertising as  
11 to constitute a use for which consent is required under  
12 subsection (a).

13 (l) This section shall not apply to the owners or  
14 employees of any medium used for advertising, including, but not  
15 limited to, newspapers, magazines, radio and television networks  
16 and stations, cable television systems, the Internet,  
17 billboards, and transit ads, by whom any advertisement or  
18 solicitation in violation of this section is published or  
19 disseminated, unless it is established that the owners or  
20 employees had knowledge of the unauthorized use of the deceased  
21 personality's name, voice, signature, photograph, or likeness as  
22 prohibited by this section.





1        (m) This section shall not be construed so as to prevent:

2        (1) Any person, firm, or corporation from selling or  
3        otherwise transferring any material containing the  
4        name, voice, signature, photograph, or likeness in any  
5        medium to any user of the name, voice, signature,  
6        photograph, or likeness, or to any third party for  
7        sale or transfer directly or indirectly to a user, for  
8        use in a lawful manner not in violation of this  
9        section;

10       (2) Any person, firm, or corporation practicing the  
11       profession of photography from exhibiting in or about  
12       a home or establishment of that person, firm, or  
13       corporation specimens of the work of that person,  
14       firm, or corporation, if the person, firm, or  
15       corporation has not received written notice objecting  
16       thereto by the person portrayed or the person having a  
17       right to the work under this section;

18       (3) Any person, firm, or corporation from using the:  
19       (A) Name, voice, signature, photograph, or likeness  
20       of any manufacturer or dealer in connection with  
21       the goods, wares, and merchandise manufactured,  
22       produced, or dealt in by the person who has sold

1                   or disposed of while living with the name, voice,  
2                   signature, photograph, or likeness used in  
3                   connection therewith; or

4           (B) Name, voice, signature, photograph, or likeness  
5           of any author, composer, or artist in connection  
6           with the literary, musical, or artistic  
7           productions sold or disposed of while living with  
8           the name, voice, signature, photograph, or  
9           likeness used in connection therewith; and

10       (4) The copyright owner of a sound recording from  
11       disposing of, dealing in, licensing, or selling that  
12       sound recording to any party, if the right to dispose  
13       of, deal in, license, or sell the sound recording has  
14       been conferred by contract or other written  
15       documentation by the person having a right thereto or  
16       holding the right.

17       (n) The remedies under this section shall be cumulative  
18       and in addition to all other remedies provided by law.

19       (o) For purposes of this section, a use of a name, voice,  
20       signature, photograph, or likeness in connection with any news,  
21       public affairs, or sports broadcast or account, or any political



1 campaign, shall not constitute a use for which consent is  
2 required under subsection (a).

3 (p) As used in this section:

4 "Deceased personality" means any natural person whose name,  
5 voice, signature, photograph, or likeness has commercial value  
6 at the time of the person's death, regardless of whether during  
7 the lifetime of that natural person the person used the person's  
8 name, voice, signature, photograph, or likeness on or in  
9 products, merchandise, or goods, or for purposes of advertising  
10 or selling, or solicitation of purchase of, products,  
11 merchandise, goods, or services. A deceased personality shall  
12 include, but not be limited to, any natural person who has died  
13 within seventy years prior to June 30, 2006.

14 "Photograph" means any photograph or photographic  
15 reproduction, still or moving, or any videotape, digital  
16 download, digital video, internet streaming video, or live  
17 television transmission, of any person or deceased personality,  
18 so that the person or deceased personality is readily  
19 identifiable. A person or deceased personality shall be deemed  
20 to be readily identifiable from a photograph when one who views  
21 the photograph with the naked eye can reasonably determine who  
22 is the person depicted in the photograph."



1 SECTION 3. This Act does not affect rights and duties that  
 2 matured, penalties that were incurred, and proceedings that were  
 3 begun, before its effective date.

4 SECTION 4. New statutory material is underscored.

5 SECTION 5. This Act shall take effect upon its approval.

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**Report Title:**

Right of Publicity

**Description:**

Creates a right of publicity law to allow recording artists, TV personalities, and other media celebrities to control the use of their identity for commercial uses during their life and after their death.

