
A BILL FOR AN ACT

RELATING TO PUBLICITY RIGHTS.

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

1 SECTION 1. Notwithstanding any existing copyright law
2 concerning sound recordings, the purpose of this Act is to
3 protect the music of Hawaii, and all other works of authorship,
4 by establishing a property right in the commercial use of a
5 person's name, voice, signature, photograph, or likeness. This
6 right, generally called a "right of publicity," protects an
7 individual or personality from the unauthorized appropriation by
8 promoters and marketers of the music of Hawaii, without the
9 permission of the artists or their heirs, and the sale of
10 products that feature the artist's name, voice, signature,
11 photograph, or likeness but are objectionable to the artists or
12 heirs.

13 SECTION 2. The Hawaii Revised Statutes is amended by
14 adding a new chapter to be appropriately designated and to read
15 as follows:



1 "CHAPTER

2 PUBLICITY RIGHTS

3 § -1 Definitions. As used in this chapter, unless the
4 context clearly requires otherwise:

5 "Deceased individual" means any individual, regardless of
6 the individual's place of domicile, residence, or citizenship at
7 the time of death or otherwise, who has died.

8 "Deceased personality" means any individual, regardless of
9 the personality's place of domicile, residence, or citizenship
10 at the time of death or otherwise, whose name, voice, signature,
11 photograph, or likeness had commercial value at the time of the
12 individual's death, whether or not during the lifetime of that
13 individual, the individual used the individual's name, voice,
14 signature, photograph, or likeness on or in products,
15 merchandise, or goods, or for purposes of advertising, selling,
16 or soliciting the purchase or sale of products, merchandise,
17 goods, or services.

18 "Fund-raising" means an organized activity to solicit
19 donations of money or other goods or services from persons or
20 entities by an organization, company, or public entity. A fund-
21 raising activity does not include a live, public performance by

1 an individual or group of individuals for which money is
2 received in solicited or unsolicited gratuities.

3 "Individual" means a natural person, living or dead.

4 "Likeness" means an image, painting, sketching, model,
5 diagram, or other clear representation, other than a photograph,
6 of an individual's face, body, or parts thereof, or the
7 distinctive appearance, gestures, or mannerisms of an
8 individual.

9 "Name" means the actual or assumed name, or nickname, of a
10 living or deceased individual that is intended to identify that
11 individual.

12 "Person" means any natural person, firm, association,
13 partnership, corporation, joint stock company, syndicate,
14 receiver, common law trust, conservator, statutory trust, or any
15 other concern by whatever name known or however organized,
16 formed, or created, and includes nonprofit corporations,
17 associations, educational and religious institutions, political
18 parties, and community, civic, or other organizations.

19 "Personality" means any individual whose name, voice,
20 signature, photograph, or likeness has commercial value, whether
21 or not that individual uses the individual's name, voice,
22 signature, photograph, or likeness on or in products,



1 merchandise, or goods, or for purposes of advertising, selling,
2 or soliciting the purchase of products, merchandise, goods, or
3 services.

4 "Photograph" means any photograph or photographic
5 reproduction, still or moving, or any videotape, online or live
6 television transmission, of any individual, in which the
7 individual is readily identifiable.

8 "Signature" means the one handwritten or otherwise legally
9 binding form of an individual's name, written or authorized by
10 that individual, that distinguishes the individual from all
11 others.

12 § -2 Property right in use of name, voice, signature,
13 photograph, or likeness. Beginning August 1, 2009, every
14 individual or personality has a property right in the use of the
15 individual's or personality's name, voice, signature,
16 photograph, or likeness. This right exists in the name, voice,
17 signature, photograph, or likeness of individuals or
18 personalities living or deceased. This right shall be freely
19 transferable, assignable, and licensable, in whole or in part,
20 by any otherwise permissible form of inter vivos or testamentary
21 transfer, including without limitation a will or other
22 testamentary instrument, trust, contract, community property



1 agreement, or cotenancy with survivorship provisions or payable-
2 on-death provisions, whether the will or other testamentary
3 instrument, trust, contract, community property agreement, or
4 cotenancy document is entered into or executed by the deceased
5 individual or personality or by any subsequent owner of the
6 deceased individual's or personality's rights as recognized by
7 this chapter; or, if none is applicable, then the owner of the
8 rights shall be determined under the laws of intestate
9 succession applicable to interests in intangible personal
10 property. The property right does not expire upon the death of
11 the individual or personality, regardless of whether the law of
12 the domicile, residence, or citizenship of the individual or
13 personality at the time of death or otherwise recognizes a
14 similar or identical property right. The right exists whether
15 or not it was commercially exploited by the individual or the
16 personality during the individual or the personality's lifetime.
17 This chapter is intended to apply to all individuals and
18 personalities, living and deceased, regardless of place of
19 domicile or place of domicile at time of death. In the case of
20 a deceased individual or personality, the rights recognized
21 under this chapter shall be deemed to exist at the time of death
22 of any deceased individual or personality or subsequent



1 successor of their rights for the purpose of determining the
2 person or persons entitled to these property rights as provided
3 for in section -3.

4 § -3 Transfer, assignment, and license. (a) Beginning
5 August 1, 2009, every individual or personality has a property
6 right in the use of the individual or personality's name, voice,
7 signature, photograph, or likeness. This right shall be freely
8 transferable, assignable, and licensable, in whole or in part,
9 by contract or inter vivos transfer. This right shall not
10 expire upon the death of the individual or personality, but
11 shall be owned and enforceable by the following successors,
12 heirs, or other transferees of living or deceased individuals or
13 personalities:

14 (1) Except where rights were transferred or assigned
15 before the deceased personality's death by means of
16 any contract or trust instrument, the right shall be
17 owned by the person entitled to the rights under the
18 deceased individual's or personality's last will and
19 testament or, if none, then by the beneficiaries or
20 heirs under the laws of intestate succession
21 applicable to interests in intangible personal
22 property generally of the individual or personality's

1 domicile, regardless of whether the law of the
2 domicile of the deceased individual or personality, at
3 the time of death, or thereafter, recognizes a similar
4 or identical property right; or

5 (2) If the deceased individual or personality transferred
6 or assigned any interest in the personality rights
7 during the individual or personality's life by means
8 of any contract or trust instrument, then the
9 transferred or assigned interest shall be held as
10 follows:

11 (A) If the transferred or assigned interest was held
12 in trust, in accordance with the terms of the
13 trust;

14 (B) If the interest is subject to a cotenancy with
15 any survivorship provisions or payable-on-death
16 provisions, in accordance with those provisions;

17 (C) If the interest is subject to any contract,
18 including without limitation an exclusive
19 license, assignment, or a community property
20 agreement, in accordance with the terms of the
21 applicable contract or contracts; or



1 (D) If the interest has been transferred or assigned
2 to a third person in a form that is not addressed
3 in this section, by the individual or
4 personality, or the successor, heir, or other
5 transferee of the living or deceased individual
6 or personality, then the interest may be
7 transferred, assigned, or licensed by that third
8 person, in whole or in part, by any otherwise
9 permissible form of inter vivos or testamentary
10 transfer or, if none is applicable, under the
11 laws of intestate succession applicable to
12 interests in intangible personal property of the
13 third person's domicile, regardless of whether
14 the law of the domicile of the deceased third
15 party, at the time of death, or thereafter,
16 recognizes a similar or identical property right.

17 (b) A property right exists whether or not those rights
18 were commercially exploited by or under the authority of the
19 individual or the personality, or the individual or
20 personality's successors or transferees, during the individual
21 or the personality's lifetime.



1 § -4 Right is exclusive for individuals and
2 personalities. (a) For individuals, except to the extent that
3 the individual may have assigned or licensed the rights, the
4 rights protected in this chapter are exclusive to the
5 individual, subject to the assignment or licensing of the rights
6 during the individual's lifetime, and are exclusive to the
7 persons entitled to the rights under section -3 for a period
8 of twenty years after the death of the individual, including to
9 the extent that the persons entitled to the rights under section
10 -3 may have assigned or licensed these rights to others.

11 (b) For personalities, except to the extent that the
12 personality may have assigned or licensed the rights, the rights
13 protected in this chapter are exclusive to the personality,
14 subject to the assignment or licensing of the rights during the
15 personality's lifetime, and to the persons entitled to these
16 rights under section -3 for a period of seventy years after
17 the death of the personality, including to the extent that the
18 persons entitled to these rights under section -3 may have
19 assigned or licensed these rights to others.

20 (c) The rights granted in this chapter may be exercised by
21 a personal representative, attorney-in-fact, parent of a minor
22 child, or guardian, or as authorized by a court of competent



1 jurisdiction. The terms "personal representative," "attorney-
2 in-fact," and "guardian" shall have the same meanings as in
3 chapter 560.

4 **§ -5 Infringement of right; use without consent; profit**
5 **or not for profit.** Beginning August 1, 2009, any person who
6 uses or authorizes the use of a living or deceased individual or
7 personality's name, voice, signature, photograph, or likeness,
8 on or in goods, merchandise, or products entered into commerce
9 in this state, or for purposes of advertising products,
10 merchandise, goods, or services, or for purposes of fund-raising
11 or solicitation of donations, or if any person disseminates or
12 publishes advertisements in this state that contain a living or
13 deceased individual or personality's name, voice, signature,
14 photograph, or likeness, without written or oral, express or
15 implied consent of the owner of the right, has infringed this
16 right. An infringement may occur under this section without
17 regard to whether the use or activity is for profit or not for
18 profit.

19 **§ -6 Infringement of right; circuit courts; injunctions;**
20 **liability for damages and profits; impoundment; destruction;**
21 **attorneys' fees.** (a) Beginning August 1, 2009, the circuit
22 courts of this State may grant injunctions on reasonable terms



1 to prevent or restrain the unauthorized use of the rights in a
2 living or deceased individual or personality's name, voice,
3 signature, photograph, or likeness.

4 (b) Any person who infringes the rights under this chapter
5 shall be liable for the greater of \$10,000 or the actual damages
6 sustained as a result of the infringement, and any profits that
7 are attributable to the infringement and not taken into account
8 when calculating actual damages. To prove profits under this
9 subsection, the injured party or parties shall submit proof of
10 gross revenues attributable to the infringement, and the
11 infringing party is required to prove the infringing party's
12 deductible expenses. For the purposes of computing statutory
13 damages, the use of a name, voice, signature, photograph, or
14 likeness in or related to one work constitutes a single act of
15 infringement regardless of the number of copies made or the
16 number of times the name, voice, signature, photograph, or
17 likeness is displayed.

18 (c) At any time while an action under this chapter is
19 pending, the court may order the impounding, on reasonable
20 terms, of all materials or any part thereof claimed to have been
21 made or used in violation of the injured party's rights, and the
22 court may enjoin the use of all plates, molds, matrices,



1 masters, tapes, film negatives, master recordings, copies of
2 recordings, optical disk stampers, or other articles by means of
3 which these materials may be reproduced.

4 (d) As part of a final judgment or decree, the court may
5 order the destruction or other reasonable disposition of all
6 materials found to have been made or used in violation of the
7 injured party's rights, and of all plates, molds, matrices,
8 masters, tapes, film negatives, master recordings, copies of
9 recordings, optical disk stampers, or other articles by means of
10 which these materials may be reproduced.

11 (e) The prevailing party may recover reasonable attorneys'
12 fees, expenses, and court costs incurred in recovering any
13 remedy or defending any claim brought under this section.

14 (f) The remedies provided for in this section are
15 cumulative and are in addition to any others provided for by
16 law.

17 **§ -7 Exemptions from use restrictions; when chapter does**
18 **not apply.** (a) For purposes of section -5, the use of a
19 name, voice, signature, photograph, or likeness in connection
20 with matters of cultural, historical, political, religious,
21 educational, newsworthy, or public interest, including without
22 limitation, comment, criticism, satire, and parody relating



1 thereto, shall not constitute a use for which consent is
2 required under this chapter. A matter exempt from consent under
3 this subsection does not lose its exempt status because it
4 appears in the form of a paid advertisement if it is clear that
5 the principal purpose of the advertisement is to comment on the
6 matter.

7 (b) This chapter does not apply to the use or
8 authorization for use of an individual or personality's name,
9 voice, signature, photograph, or likeness, in any of the
10 following:

- 11 (1) Single and original works of fine art, including
12 photographic, graphic, and sculptural works of art
13 that are not published in more than five copies;
- 14 (2) A literary work, theatrical work, musical composition,
15 film, radio, online or television program, magazine
16 article, news story, public affairs report, or sports
17 broadcast or account, or with any political campaign
18 when the use does not inaccurately claim or state an
19 endorsement by the individual or personality;
- 20 (3) An advertisement or commercial announcement for a use
21 permitted by subsection (a) or (g) or paragraph (1) or
22 (2);



1 (4) An advertisement, commercial announcement, or
2 packaging for the authorized sale, distribution,
3 performance, broadcast, or display of a literary,
4 musical, cinematographic, or other artistic work using
5 the name, voice, signature, photograph, or likeness of
6 the writer, author, composer, director, actor, or
7 artist who created the work, where the individual or
8 personality consented in a writing signed by the
9 individual or personality or their successor-in-
10 interest, to the use of the individual or
11 personality's name, voice, signature, photograph, or
12 likeness on or in connection with the initial sale,
13 distribution, performance, or display thereof; and

14 (5) The advertisement or sale of a rare or fine product,
15 including books, which incorporates the signature of
16 the author.

17 (c) It is no defense to an infringement action under this
18 chapter that the use of an individual or personality's name,
19 voice, signature, photograph, or likeness includes more than one
20 individual or personality so identifiable; provided that the
21 individuals or personalities complaining of the use shall not
22 bring their cause of action as a class action.



1 (d) Section -5 shall not apply to the owners or
2 employees of any medium used for advertising, including
3 newspapers, magazines, radio and television stations, online
4 service providers, billboards, and transit ads, who, without
5 prior notice that the use would be in violation of this chapter,
6 have published or disseminated any advertisement or solicitation
7 in violation of this chapter, unless the advertisement or
8 solicitation was intended to promote the medium itself.

9 (e) This chapter shall not apply to a use or authorization
10 for use of an individual or personality's name that is merely
11 descriptive and used fairly and in good faith only to identify
12 or describe something other than the individual or personality,
13 such as, without limitation, to describe or identify a place, a
14 legacy, a style, a theory, an ownership interest, or a party to
15 a transaction, or to accurately describe the goods or services
16 of a party.

17 (f) This chapter shall not apply to the use of an
18 individual or personality's name, voice, signature, photograph,
19 or likeness when the use of the individual or personality's
20 name, voice, signature, photograph, or likeness is an
21 insignificant, de minimis, or incidental use.



1 (g) This chapter shall not apply to the distribution,
2 promotion, transfer, or license of a photograph or other
3 material containing an individual or personality's name, voice,
4 signature, photograph, or likeness to a third party for use in a
5 manner which is lawful under this chapter, or to a third party
6 for further distribution, promotion, transfer, or license for
7 use in a manner which is lawful under this chapter."

8 SECTION 3. This Act shall take effect on July 1, 2112.



S.B. NO. 1005
S.D. 2
H.D. 1

Report Title:

Publicity Rights; Commercial Uses

Description:

Establishes property rights in the commercial use of a person's name voice, signature, photograph, or likeness. (SB1005 HD1)

SB1005 HD1 HMS 2009-3226

