
A BILL FOR AN ACT

RELATING TO PUBLICITY RIGHTS.

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

1 SECTION 1. The purpose of this Act is to establish a
2 property right in the commercial use of a person's name, voice,
3 signature, or likeness. This right, generally called a
4 "publicity right," protects an individual or personality, as
5 well as successors-in-interest, assignees or other transferees
6 or licensees of the property right, from unauthorized
7 appropriation of names, voices, signatures, or likenesses with
8 respect to use on goods, merchandise, in connection with
9 services, and in certain types of advertising or endorsements.
10 This Act provides exemptions from the need for authorization to
11 use a name, voice, signature, or likeness with respect to
12 certain important and legitimate or constitutionally protected
13 activities.

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

17 "CHAPTER

18 PUBLICITY RIGHTS



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

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

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

15 "Fund-raising" means an organized activity to solicit
16 donations of money or other goods or services from persons or
17 entities by an organization, company, or public entity. A fund-
18 raising activity does not include a live, public performance by
19 an individual or group of individuals for which money is
20 received in solicited or unsolicited gratuities.

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



1 "Likeness" means an image, painting, sketching, model,
2 diagram, or other clear representation of an individual's face,
3 body, or of the distinctive appearance of an individual.

4 "Name" means the actual or assumed name, or nickname, of a
5 living or deceased individual that is intended to identify that
6 individual.

7 "Person" means any natural person, firm, association,
8 partnership, corporation, company, syndicate, receiver, common
9 law trust, conservator, statutory trust, or any other entity by
10 whatever name known or however organized, formed, or created,
11 and includes nonprofit corporations, associations, educational
12 and religious institutions, political parties, and community,
13 civic, or other organizations.

14 "Personality" means any individual whose name, voice,
15 signature, or likeness has commercial value, whether or not that
16 individual uses the individual's name, voice, signature, or
17 likeness on or in products, merchandise, goods, or for purposes
18 of advertising, selling, or soliciting the purchase of products,
19 merchandise, goods, or services.

20 "Signature" means a handwritten or otherwise legally
21 binding form of an individual's name, written or authorized by



1 that individual, that distinguishes the individual from all
2 other individuals.

3 § -2 **Property right in use of name, voice, signature, or**
4 **likeness.** Every individual or personality has a property right
5 in the use of the individual's or personality's name, voice,
6 signature, and likeness. The right shall continue to exist for
7 a fixed period of time after death, as prescribed in
8 section -4. This right shall be freely transferable,
9 assignable, and licensable, in whole or in part, by any
10 otherwise permissible form of inter vivos or testamentary
11 transfer, including without limitation a will or other
12 testamentary instrument, trust, contract, community property
13 agreement, or cotenancy with survivorship provisions or payable-
14 on-death provisions, whether the will or other testamentary
15 instrument, trust, contract, community property agreement, or
16 cotenancy document is entered into or executed by the deceased
17 individual or personality or by any subsequent owner of the
18 deceased individual's or personality's rights as recognized by
19 this chapter; or, if none is applicable, then the owner of the
20 rights shall be determined under the laws of intestate
21 succession applicable to interests in intangible personal
22 property. The right exists whether or not it was commercially



1 exploited by the individual or the personality during the
2 individual or the personality's lifetime. This chapter is
3 intended to apply to all individuals and personalities, living
4 and deceased, regardless of place of domicile or place of
5 domicile at time of death. In the case of a deceased individual
6 or personality, the rights recognized under this chapter shall
7 be deemed to exist at the time of death of any deceased
8 individual or personality or subsequent successor of their
9 rights for the purpose of determining the person or persons
10 entitled to these property rights as provided for in
11 section -3.

12 § -3 **Transfer, assignment, and license.** (a) A right
13 recognized by this chapter shall be freely transferable,
14 assignable, and licensable, in whole or in part, by contract or
15 inter vivos transfer. This right shall not expire upon the
16 death of the individual or personality, but shall be owned and
17 enforceable by the following successors, heirs, or other
18 transferees of living or deceased individuals or personalities:

19 (1) Except where a right recognized by this chapter was
20 transferred or assigned before the deceased
21 personality's death by means of any contract or trust
22 instrument, a right recognized by this section shall



1 be owned by the person entitled to the right under the
2 deceased individual's or personality's last will and
3 testament or, if none, then by the beneficiaries or
4 heirs under the laws of intestate succession
5 applicable to interests in intangible personal
6 property generally of the individual or personality's
7 domicile, regardless of whether the law of the
8 domicile of the deceased individual or personality, at
9 the time of death, or thereafter, recognizes a similar
10 or identical property right; or

11 (2) If the deceased individual or personality transferred
12 or assigned any interest in a right recognized by this
13 chapter during the individual or personality's life by
14 means of any contract or trust instrument, then the
15 interest so transferred or assigned shall be held as
16 follows:

17 (A) If the transferred or assigned interest was held
18 in trust, in accordance with the terms of the
19 trust;

20 (B) If the transferred or assigned interest is
21 subject to a cotenancy with any survivorship



1 provisions or payable-on-death provisions, in
2 accordance with those provisions;

3 (C) If the transferred or assigned interest is
4 subject to any contract, including without
5 limitation an exclusive license, assignment, or a
6 community property agreement, in accordance with
7 the terms of the applicable contract or
8 contracts; or

9 (D) If the interest has been transferred or assigned
10 to a third person in a form that is not addressed
11 in this section, by the individual or
12 personality, or the successor, heir, or other
13 valid transferee of the living or deceased
14 individual or personality, then the interest may
15 be transferred, assigned, or licensed by that
16 third person, in whole or in part, by any
17 otherwise permissible form of inter vivos or
18 testamentary transfer or, if none is applicable,
19 under the laws of intestate succession applicable
20 to interests in intangible personal property of
21 the third person's domicile, regardless of
22 whether the law of the domicile of the deceased



1 third party, at the time of death, or thereafter,
2 recognizes a similar or identical property right.

3 (b) A property right exists whether or not those rights
4 were commercially exploited by or under the authority of the
5 individual or the personality, or the individual or
6 personality's successors or transferees, during the individual
7 or the personality's lifetime.

8 § -4 **Right is exclusive for individuals and**

9 **personalities.** (a) For individuals, except to the extent that
10 the individual may have transferred, assigned, or licensed a
11 right recognized by this chapter, the rights protected in this
12 chapter are exclusive to the individual, and are exclusive to
13 the persons entitled to the rights under section -3 for a
14 period of years after the death of the individual,
15 including to the extent that the persons entitled to the rights
16 under section -3 may have transferred, assigned, or licensed
17 these rights to others.

18 (b) For personalities, except to the extent that the
19 personality may have transferred, assigned, or licensed a right
20 recognized by this chapter, the rights protected in this chapter
21 are exclusive to the personality, and are exclusive to the
22 persons entitled to the rights under section -3 for a period



1 of years after the death of the personality, including to
2 the extent that the persons entitled to the rights under section
3 -3 may have transferred, assigned, or licensed the rights to
4 others.

5 (c) The rights granted in this chapter may be exercised by
6 a personal representative, attorney-in-fact, parent of a minor
7 child, or guardian, or as authorized by a court of competent
8 jurisdiction. The terms "personal representative," "attorney-
9 in-fact," and "guardian" shall have the same meanings as in
10 chapter 560.

11 § -5 **Infringement of right; use without consent; profit**
12 **or not for profit.** Except as provided in section -7, any
13 person who uses or authorizes the use of a living or deceased
14 individual or personality's name, voice, signature, or likeness,
15 on or in goods, merchandise, or services entered into commerce
16 in this state, or for purposes of advertising products,
17 merchandise, goods, or services, or for purposes of fund-raising
18 or solicitation of donations, or if any person disseminates or
19 publishes advertisements in this state that contain a living or
20 deceased individual or personality's name, voice, signature, or
21 likeness, without written or oral, express or implied consent of
22 the owner of the right, has infringed a publicity right under



1 this chapter. An infringement may occur under this section
2 without regard to whether the use or activity is for profit or
3 not for profit.

4 § -6 **Infringement of right; circuit courts; injunctions;**
5 **liability for damages and profits; impoundment; destruction;**
6 **attorneys' fees.** (a) The circuit courts of this State may
7 grant injunctions on reasonable terms to prevent or restrain the
8 unauthorized use of a right recognized by this chapter.

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



1 (c) As part of a final judgment or decree, the court may
2 order the destruction or other reasonable disposition of all
3 materials found to have been made or used in violation of the
4 injured party's rights.

5 (d) The prevailing party may recover reasonable attorneys'
6 fees, expenses, and court costs incurred in recovering any
7 remedy or defending any claim brought under this section.

8 (e) The remedies provided for in this section are
9 cumulative and are in addition to any others provided for by
10 law.

11 § -7 Exemptions from use restrictions; when chapter does
12 not apply. (a) For purposes of section -5, the use of a
13 name, voice, signature, or likeness in connection with matters
14 of cultural, historical, political, religious, educational,
15 newsworthy, or public interest, including without limitation,
16 comment, criticism, satire, and parody relating thereto, shall
17 not constitute a use for which consent is required under this
18 chapter. A matter exempt from the requirement of advance
19 consent under this subsection does not cease to be exempt if it
20 appears in the form of a paid advertisement and the principal
21 purpose of the advertisement is to comment on the matter.



1 (b) This chapter shall not apply to the use or
2 authorization for use of an individual or personality's name,
3 voice, signature, or likeness, in any of the following:

4 (1) Single and original works of fine art, including
5 photographic, graphic, and sculptural works of art
6 that are not published in more than five copies;

7 (2) A literary work, theatrical work, musical composition,
8 film, radio, online or television program, magazine
9 article, news story, public affairs report, or sports
10 broadcast or account, or materials related to a
11 political campaign, when the use does not inaccurately
12 claim or state an endorsement by the individual or
13 personality;

14 (3) An advertisement or commercial announcement for a use
15 permitted by subsection (a) or (g) or paragraph (1) or
16 (2);

17 (4) An advertisement, commercial announcement, or
18 packaging for the authorized sale, distribution,
19 performance, broadcast, or display of a literary,
20 musical, cinematographic, or other artistic work using
21 the name, voice, signature, or likeness of the writer,
22 author, composer, director, actor, or artist who



1 created the work, where the individual or personality
2 consented in a writing signed by the individual or
3 personality or their successor-in-interest, to the use
4 of the individual or personality's name, voice,
5 signature, or likeness on or in connection with the
6 initial sale, distribution, performance, or display
7 thereof; and

8 (5) The advertisement or sale of a rare or fine product,
9 including books, which incorporates an original
10 signature of the author.

11 (c) It shall not constitute a defense to an infringement
12 action under this chapter that the use of an individual or
13 personality's name, voice, signature, or likeness includes more
14 than one individual or personality.

15 (d) Section -5 shall not apply to the owners or
16 employees of any medium used for advertising, including
17 newspapers, magazines, radio and television stations, online
18 service providers, billboards or other devices, who, without
19 prior notice that the use would constitute an infringement under
20 this chapter, have published or disseminated any advertisement
21 or solicitation that would constitute an infringement under this
22 chapter, unless the infringement was part of an advertisement or



1 solicitation promoting the services of the advertising medium
2 itself.

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

11 (f) This chapter shall not apply to the use of an
12 individual or personality's name, voice, signature, or likeness
13 when the use of the individual or personality's name, voice,
14 signature, or likeness is an insignificant, de minimis, or
15 incidental use.

16 (g) This chapter shall not apply to the distribution,
17 promotion, transfer, or license of a photograph or other
18 material containing an individual or personality's name, voice,
19 signature, photograph, or likeness to a third party for use in a
20 manner which is lawful under this chapter, or to a third party
21 for further distribution, promotion, transfer, or license for
22 use in a manner which is lawful under this chapter.



1 § -8 **Registration by transferees, licensees or assignees;**
2 **requirement to seek damages or relief.** (a) A person who has
3 been transferred, licensed, or assigned a right recognized by
4 this chapter may not bring an action or recover damages or other
5 relief for infringement under section -5, unless the
6 transfer, license, or assignment has been registered with the
7 department of commerce and consumer affairs in accordance with
8 this chapter, and the transferee may only recover damages or
9 relief for an infringement that occurred after the date of such
10 registration.

11 (b) The director of commerce and consumer affairs shall
12 maintain a registry of all transferees of publicity rights
13 recognized by this chapter, including a record of samples of
14 materials that reasonably identify, by photographic or
15 electronic or other means, the name, voice, signature, or
16 likeness that is claimed by the registering transferee as
17 subject to exclusive use protection granted by this chapter.
18 The director of commerce and consumer affairs shall cause such
19 registry and samples to be reasonably available for inspection
20 by the public.

21 (c) The department of commerce and consumer affairs may
22 adopt rules pursuant to chapter 91 to establish fees, adopt



1 forms, and otherwise further effectuate the purpose of this
2 section.

3 (d) A person commits an offense if the person signs a
4 document the person knows is false in any material respect with
5 the intent that the document be delivered to the director for
6 the purpose of registration under this section. An offense
7 under this subsection shall be a class C felony and may carry a
8 fine not to exceed \$10,000.

9 (e) A person commits a misdemeanor if the person
10 negligently and without intent to defraud signs a document that
11 is false in any material respect with intent that the document
12 be delivered to the director for filing. Commission of a
13 misdemeanor under this subsection may carry a fine not to exceed
14 \$2,000.

15 (f) Any person who knowingly makes a false or fraudulent
16 representation or declaration in registration pursuant to this
17 section shall be liable for all damages sustained as a result of
18 the registration documents as determined by a court of competent
19 jurisdiction.

20 § -9 **Common law rights; other rights.** Nothing in this
21 chapter shall adversely affect common law rights or other



1 statutory rights, whether derived from state or federal law, or
2 the enforcement of those rights."

3 SECTION 3. If any provision of this Act, or the
4 application thereof to any person or circumstance is held
5 invalid, the invalidity does not affect other provisions or
6 applications of the Act, which can be given effect without the
7 invalid provision or application, and to this end the provisions
8 of this Act are severable.

9 SECTION 4. This Act shall take effect on July 1, 2112.



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Report Title:

Publicity Rights; Commercial Uses

Description:

Establishes property rights in the commercial use of a person's name, voice, signature, or likeness. (SB1005 HD2)

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