

JAN 25 2010

A BILL FOR AN ACT

RELATING TO PUBLICITY RIGHTS NAMES AS DISTINGUISHED FROM TRADE
NAMES AND SPECIFYING REGISTRATION PROCEDURES FOR PUBLICITY
RIGHTS NAMES BY AMENDING CHAPTER 482P.

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

1 SECTION 1. The purpose of this Act is to be to delete the
2 word "trade" from the name "publicity rights trade name" to
3 distinguish trade names and trademarks from the property rights
4 in names and personalities to be protected by the registration
5 procedures established by the department of commerce and
6 consumer affairs under chapter 482P, Hawaii Revised Statutes,
7 and to give the department of commerce and consumer affairs
8 discretion to implement the law in a manner that complies with
9 the law's legislative intent and that is both timely and
10 reasonable given available resources.

11 SECTION 2. Chapter 482P, Hawaii Revised Statutes, is
12 amended by adding a new section to be appropriately designated
13 and to read as follows:

14 "§482P- Recording, issuance, and effect of certificate.

15 (a) Any person desiring to register a publicity rights name may
16 obtain a certificate of registration of the publicity rights



1 name in the manner hereinafter provided. The director has the
2 power reasonably necessary to perform the duties required of the
3 director under this section, and to administer the section
4 efficiently.

5 (b) Before any person may receive a certificate of
6 registration of a publicity rights name, the person shall file
7 in the office of the director an application for the
8 registration. The application for registration shall include a
9 publicity rights name that consists of the assigning individual
10 or personality's full legal name. The application form for
11 registration shall include other information as prescribed by
12 the director.

13 (c) Upon filing the application form, the applicant shall
14 pay to the director a fee of \$50. A special handling fee of \$20
15 for expediting registration of a publicity rights name shall be
16 assessed by the director. All fees and special handling fees
17 shall be credited to the compliance resolution fund established
18 under section 26-9(o).

19 (d) Upon receiving the application form accompanied by the
20 fee, the director shall cause the publicity rights name to be
21 recorded and shall issue a certificate of registration to the
22 applicant.



1 (e) The term of registration of a publicity rights name
2 shall be five years beginning from the date of registration.
3 The registration may be renewed for additional five year periods
4 by filing a renewal application within six months prior to the
5 expiration of the current term and complying with the renewal
6 requirements prescribed by the director.

7 (f) If a document delivered to the director for filing
8 satisfies the requirements of this section, the director shall
9 file it.

10 (g) The director files a document by stamping or otherwise
11 endorsing the document including the date and time of receipt.

12 (h) If the director refuses to file a document, the
13 director shall return it to the applicant or its representative
14 together with a brief, written statement of the reason for the
15 director's refusal.

16 (i) The director's duty to file documents under this
17 section is ministerial. The director's filing or refusing to
18 file a document does not:

19 (1) Affect the validity or invalidity of the document in
20 whole or in part;

21 (2) Relate to the correctness or incorrectness of
22 information contained in the document; and



1 (3) Create a presumption that the document is valid or
2 invalid or that information contained in the document
3 is correct or incorrect.

4 In addition, disputes between applicants with respect to a
5 registered publicity rights name shall be determined by a court
6 of competent jurisdiction."

7 SECTION 3. Section 482P-1, Hawaii Revised Statutes, is
8 amended as follows:

9 1. By adding a new definition to be appropriately inserted
10 and to read:

11 "Director" means the director of commerce and consumer
12 affairs."

13 2. By amending the definition of "publicity rights trade
14 name registration" to read:

15 "~~Publicity rights [trade] name registration~~" means a
16 registration with the department of commerce and consumer
17 affairs [~~of a trade name under chapter 482, using the~~
18 ~~department's procedures for trade name registration, wherein the~~
19 ~~trade name shall consist of the assigning individual or~~
20 ~~personality's full legal name and the words "publicity rights",~~
21 ~~preferably in all capital letters~~ In administering publicity



1 ~~rights trade name registrations under this chapter, the~~
2 ~~department shall be exempt from:~~

- 3 ~~(1) Any liability in excess of that which the department~~
4 ~~would have for a trade name registration, other than a~~
5 ~~"publicity rights trade name registration";~~
- 6 ~~(2) Any duty to decide between competing registrants or~~
7 ~~the rights established by registration; and~~
- 8 ~~(3) Any duty to construe the meaning of any provision of~~
9 ~~this chapter;~~

10 ~~provided that the duties under paragraphs (2) and (3) shall be~~
11 ~~duties of the courts of competent jurisdiction.] in the manner~~
12 ~~provided under this chapter.~~"

13 SECTION 4. Section 482P-8, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "~~[†]~~§482P-8~~[†]~~ **Procedure for identifying transferees,**
16 **licensees, or assignees; requirement to seek damages or relief.**

17 (a) An assignee or transferee of publicity rights shall have
18 the right to make a publicity rights [~~trade~~] name registration.
19 [~~To obtain the benefit of the protection of this section, the~~
20 ~~assignee or transferee shall keep the publicity rights trade~~
21 ~~name registration in force and shall diligently maintain the~~



1 ~~accuracy of the information in the publicity rights trade name~~
2 ~~registration.]~~

3 (b) Publicity rights of a deceased person that were not
4 previously assigned or transferred shall be part of the deceased
5 person's estate and shall be administered by the personal
6 representative of the deceased person as personal property of
7 the deceased person. On or before closing of probate of a
8 deceased person's estate, the publicity rights of the deceased
9 person shall vest in the transferees of the personal property of
10 the estate in conformity with the deceased person's will or
11 probate order. If publicity rights are not expressly addressed
12 by the terms of the will or a probate order, and if a publicity
13 rights [~~trade~~] name registration is not in effect at the time of
14 the relevant assignment or license, after probate closes, any
15 one of the transferees of the personal property of the deceased
16 person's estate shall have the right to assign or license the
17 publicity rights of the deceased person, and a valid license
18 from any of the transferees of the personal property of the
19 deceased person's estate shall constitute a complete defense to
20 any infringement action under this section.

21 (c) Any person seeking to license publicity rights from a
22 living person shall have the right to presume that a living



1 individual or personality has the right to assign or license the
2 individual's or personality's publicity rights unless there is a
3 publicity rights [~~trade~~] name registration for that individual
4 or personality. If there is a publicity rights [~~trade~~] name
5 registration for that individual or personality, the person
6 seeking to license publicity rights shall inform the living
7 person in writing that an assignment or license shall be sought
8 from the holder of the publicity rights [~~trade~~] name
9 registration before entering into the assignment or license.

10 (d) If there is a publicity rights [~~trade~~] name
11 registration for a given individual or personality, any person
12 seeking to license publicity rights for that individual or
13 personality shall have the right to presume that the holder of
14 the publicity rights [~~trade~~] name registration has the right to
15 assign or license the individual's or personality's publicity
16 rights and a valid license from the registered holder of the
17 publicity rights [~~trade~~] name registration shall constitute a
18 complete defense to any infringement action under this
19 section[-]; provided that the assignee or transferee has kept
20 the publicity rights name registration active and in force and
21 maintained the accuracy of the information in the publicity
22 rights name registration filing.



1 (e) A person commits an offense if the person signs,
2 manually or via electronic means, a document the person knows is
3 false in any material respect with the intent that the document
4 be delivered or transmitted to the director [~~of commerce and~~
5 ~~consumer affairs~~] in connection with a publicity rights [~~trade~~]
6 name registration under this section. An offense under this
7 subsection shall be a class C felony and may carry a fine not to
8 exceed \$10,000.

9 (f) A person commits a misdemeanor if the person
10 negligently and without intent to defraud signs, manually or via
11 electronic means, a document that is false in any material
12 respect with intent that the document be delivered or
13 transmitted to the director [~~of commerce and consumer affairs~~]
14 in connection with a publicity rights [~~trade~~] name registration
15 under this section. Commission of a misdemeanor under this
16 subsection may carry a fine not to exceed \$2,000.

17 (g) Any person who knowingly makes a false or fraudulent
18 representation or declaration in connection with a publicity
19 rights [~~trade~~] name registration pursuant to this section shall
20 be liable for all damages sustained as a result of the false or
21 fraudulent publicity rights [~~trade~~] name registration as
22 determined by a court of competent jurisdiction."



1 SECTION 5. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 6. This Act shall take effect upon its approval.

4

INTRODUCED BY: Carol Fukumizu



Report Title:

Publicity Rights

Description:

Renames "publicity rights trade name registration" as "publicity rights name registration" under chapter 482P, Hawaii Revised Statutes; gives the department of commerce and consumer affairs discretion to implement the law in a manner that complies with the law's legislative intent.

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