

MAR 10 2023

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# SENATE RESOLUTION

URGING THE ESTABLISHMENT OF A NATIVE HAWAIIAN INTELLECTUAL  
PROPERTY WORKING GROUP TO DISCUSS POLICIES AND LEGISLATION  
WITH RESPECT TO NATIVE HAWAIIAN INTELLECTUAL PROPERTY.

1           WHEREAS, the Native Hawaiian people's collective  
2 intellectual property rights are based upon the traditional,  
3 cultural knowledge developed over thousands of years and passed  
4 down from generation to generation; and

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6           WHEREAS, the value of Native Hawaiian cultural expressions  
7 and art forms are exhibited in many forms, including the use of  
8 ka 'ōlelo Hawai'i, hula, mele, mo'olelo, lei making, kapa making,  
9 kākau, weaving, feather work, carving, and wayfinding; and

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11           WHEREAS, the western intellectual property system was  
12 developed to protect the rights of creators and inventors  
13 against plagiarism and to reward and encourage new inventions  
14 and was not developed to protect the rights of indigenous  
15 peoples to their collective, traditional knowledge, cultural  
16 expressions, and art forms; and

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18           WHEREAS, existing western intellectual property laws  
19 recognizing patents, registered trademarks, designs, and  
20 copyright often facilitate the theft, misuse, and  
21 misappropriation of indigenous knowledge by researchers,  
22 authors, scientists, biotechnology corporations, universities,  
23 the fashion industry, and others; and

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25           WHEREAS, disputes between indigenous peoples and third-  
26 party users of indigenous knowledge resources over ownership and  
27 control have steadily increased in the last ten years; and

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29           WHEREAS, a non-Hawaiian food chain that originated in  
30 Chicago, Aloha Poke Co., issued cease-and-desist letters  
31 threatening small poke food businesses in Hawai'i and across the



1 nation from using the words "Aloha" and "Poke", in essence  
2 claiming ownership of these cultural expressions; and

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4 WHEREAS, issues relating to indigenous intellectual  
5 property rights have been addressed in many international  
6 forums, including the World Intellectual Property Organization's  
7 Intergovernmental Committee on Intellectual Property and Genetic  
8 Resources, Traditional Knowledge and Folklore; the United  
9 Nations Commission on Human Rights; the United Nations  
10 Declaration on Rights of Indigenous Peoples; in relation to the  
11 environment in Agenda 21 of the Rio de Janeiro Earth Summit; and  
12 the Convention on Biological Diversity; and

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14 WHEREAS, other indigenous people have developed strategies  
15 and sui generis legal frameworks or systems to protect their  
16 collective intellectual property rights and knowledge, including  
17 the Indian Arts and Crafts Board federally funded through the  
18 United States Department of the Interior, the Toi Iho registered  
19 trademark for the Maori art and artists funded through a  
20 charitable trust, and the Alaska State Council on the Arts  
21 Silver Hand Program for Alaska Native artists funded through the  
22 state; and

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24 WHEREAS, the Association of Hawaiian Civic Clubs previously  
25 adopted Resolution Nos. 02-08, 03-13, and 17-57 to protect  
26 Native Hawaiian cultural intellectual property and resources and  
27 urge the Legislature to enact legislation, in consultation with  
28 Native Hawaiians, that recognizes and protects the Native  
29 Hawaiian people's collective intellectual property rights; and

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31 WHEREAS, the laws of the State recognize the traditional  
32 customary rights of Native Hawaiians but do not expressly  
33 recognize and protect the collective intellectual property  
34 rights of the Native Hawaiian peoples; now, therefore,

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36 BE IT RESOLVED by the Senate of the Thirty-second  
37 Legislature of the State of Hawaii, Regular Session of 2023,  
38 that this body urges the establishment of a Native Hawaiian  
39 Intellectual Property Working Group to discuss policies and  
40 legislation with respect to Native Hawaiian intellectual  
41 property; and  
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1 BE IT FURTHER RESOLVED that the Native Hawaiian  
2 Intellectual Property Working Group consist of nine members who  
3 are experts in Native Hawaiian law, indigenous intellectual  
4 property, or Native Hawaiian cultural customs and art or are  
5 Native Hawaiian cultural practitioners; provided that the  
6 Governor, Speaker of the House of Representatives, and Senate  
7 President each appoint three members to the working group, as  
8 nominated by the following organizations and entities:

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- 10 (1) The Office of Hawaiian Affairs;
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  - 12 (2) The Hawaii State Foundation on Culture and the Arts;
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  - 14 (3) The Native Hawaiian Legal Corporation;
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  - 16 (4) The Ka Huli Ao Center for Excellence in Native  
17 Hawaiian Law;
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  - 19 (5) Kāhuli Leo Le‘a;
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  - 21 (6) The ‘Ihikapalaumaewa Foundation; and
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  - 23 (7) The Kawaihuelani Center for Hawaiian Language; and
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25 BE IT FURTHER RESOLVED that the members of the Native  
26 Hawaiian Intellectual Property Working Group select a  
27 chairperson from among its members; and

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29 BE IT FURTHER RESOLVED that the Native Hawaiian  
30 Intellectual Property Working Group is requested to create and  
31 develop solutions to prevent Native Hawaiian intellectual  
32 property from being incorrectly appropriated; and

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34 BE IT FURTHER RESOLVED that the Native Hawaiian  
35 Intellectual Property Working Group is requested to meet at  
36 least once a month; and

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38 BE IT FURTHER RESOLVED that the Native Hawaiian  
39 Intellectual Property Working Group is requested to submit its  
40 recommendations, including any proposed legislation, to the  
41 Legislature no later than twenty days prior to the convening of  
42 the Regular Session of 2025; and



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BE IT FURTHER RESOLVED that certified copies of this Resolution be transmitted to the Governor, Chief Executive Officer of the Office of Hawaiian Affairs, Dean of the University of Hawai'i at Mānoa William S. Richardson School of Law, Director of the Ka Huli Ao Center for Excellence in Native Hawaiian Law, Dean of the Kawaihuelani Center for Hawaiian Language, Interim Executive Director of the Hawaii State Foundation on Culture and the Arts, Executive Director of the Native Hawaiian Legal Corporation, Board of Directors of Kāhuli Leo Le'a, and President of the 'Ihikapalaumaewa Foundation.

OFFERED BY:  \_\_\_\_\_

