
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:

16 "CHAPTER
17 PUBLICITY RIGHTS

1 § -1 **Property right in use of name, voice, signature,**
2 **photograph, or likeness.** Every individual or personality has a
3 property right in the use of the individual's or personality's
4 name, voice, signature, photograph, or likeness. This right
5 exists in the name, voice, signature, photograph, or likeness of
6 individuals or personalities living or deceased. This right
7 shall be freely transferable, assignable, and licensable, in
8 whole or in part, by any otherwise permissible form of inter
9 vivos or testamentary transfer, including without limitation a
10 will or other testamentary instrument, trust, contract,
11 community property agreement, or cotenancy with survivorship
12 provisions or payable-on-death provisions, whether the will or
13 other testamentary instrument, trust, contract, community
14 property agreement, or cotenancy document is entered into or
15 executed by the deceased individual or personality or by any
16 subsequent owner of the deceased individual's or personality's
17 rights as recognized by this chapter; or, if none is applicable,
18 then the owner of the rights shall be determined under the laws
19 of intestate succession applicable to interests in intangible
20 personal property. The property right does not expire upon the
21 death of the individual or personality, regardless of whether
22 the law of the domicile, residence, or citizenship of the

1 individual or personality at the time of death or otherwise
2 recognizes a similar or identical property right. The right
3 exists whether or not it was commercially exploited by the
4 individual or the personality during the individual or the
5 personality's lifetime. This chapter is intended to apply to
6 all individuals and personalities, living and deceased,
7 regardless of place of domicile or place of domicile at time of
8 death. In the case of a deceased individual or personality, the
9 rights recognized under this chapter shall be deemed to exist at
10 the time of death of any deceased individual or personality or
11 subsequent successor of their rights for the purpose of
12 determining the person or persons entitled to these property
13 rights as provided for in section -3.

14 § -2 **Definitions.** As used in this chapter, unless the
15 context clearly requires otherwise:

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

19 "Deceased personality" means any individual, regardless of
20 the personality's place of domicile, residence, or citizenship
21 at the time of death or otherwise, whose name, voice, signature,
22 photograph, or likeness had commercial value at the time of the

1 individual's death, whether or not during the lifetime of that
2 individual, the individual used the individual's name, voice,
3 signature, photograph, or likeness on or in products,
4 merchandise or goods, or for purposes of advertising or selling,
5 or soliciting the purchase or sale of, products, merchandise,
6 goods, or services.

7 "Fund-raising" means an organized activity to solicit
8 donations of money or other goods or services from persons or
9 entities by an organization, company, or public entity. A fund-
10 raising activity does not include a live, public performance by
11 an individual or group of individuals for which money is
12 received in solicited or unsolicited gratuities.

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

14 "Likeness" means an image, painting, sketching, model,
15 diagram, or other clear representation, other than a photograph,
16 of an individual's face, body, or parts thereof, or the
17 distinctive appearance, gestures, or mannerisms of an
18 individual.

19 "Name" means the actual or assumed name, or nickname, of a
20 living or deceased individual that is intended to identify that
21 individual.

1 "Person" means any natural person, firm, association,
2 partnership, corporation, joint stock company, syndicate,
3 receiver, common law trust, conservator, statutory trust, or any
4 other concern by whatever name known or however organized,
5 formed, or created, and includes nonprofit corporations,
6 associations, educational and religious institutions, political
7 parties, and community, civic, or other organizations.

8 "Personality" means any individual whose name, voice,
9 signature, photograph, or likeness has commercial value, whether
10 or not that individual uses the individual's name, voice,
11 signature, photograph, or likeness on or in products,
12 merchandise, or goods, or for purposes of advertising or
13 selling, or solicitation of purchase of, products, merchandise,
14 goods, or services.

15 "Photograph" means any photograph or photographic
16 reproduction, still or moving, or any videotape, online or live
17 television transmission, of any individual, in which the
18 individual is readily identifiable.

19 "Signature" means the one handwritten or otherwise legally
20 binding form of an individual's name, written or authorized by
21 that individual, that distinguishes the individual from all
22 others.

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

10 (1) Except where rights were transferred or assigned
11 before the deceased personality's death by means of
12 any contract or trust instrument, the right shall be
13 owned by the person entitled to the rights under the
14 deceased individual's or personality's last will and
15 testament or, if none, then by the beneficiaries or
16 heirs under the laws of intestate succession
17 applicable to interests in intangible personal
18 property generally of the individual or personality's
19 domicile, regardless of whether the law of the
20 domicile of the deceased individual or personality, at
21 the time of death, or thereafter, recognizes a similar
22 or identical property right; or

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

7 (A) If the transferred or assigned interest was held
8 in trust, in accordance with the terms of the
9 trust;

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

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

18 (D) If the interest has been transferred or assigned
19 to a third person in a form that is not addressed
20 in this section, by the individual or
21 personality, or the successor, heir, or other
22 transferee of the living or deceased individual

1 or personality, then the interest may be
2 transferred, assigned, or licensed by that third
3 person, in whole or in part, by any otherwise
4 permissible form of inter vivos or testamentary
5 transfer or, if none is applicable, under the
6 laws of intestate succession applicable to
7 interests in intangible personal property of the
8 third person's domicile, regardless of whether
9 the law of the domicile of the deceased third
10 party, at the time of death, or thereafter,
11 recognizes a similar or identical property right.

12 (b) A property right exists whether or not those rights
13 were commercially exploited by or under the authority of the
14 individual or the personality, or the individual or
15 personality's successors or transferees, during the individual
16 or the personality's lifetime.

17 (c) The rights recognized under this chapter shall be
18 deemed to have existed before the effective date of this
19 chapter, but causes of action, and related damages, inter alia,
20 relating to misappropriation of the rights established by this
21 chapter may only be enforced as of the effective date of this
22 chapter.

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

16 § -6 **Infringement of right; circuit courts; injunctions;**
17 **liability for damages and profits; impoundment; destruction;**
18 **attorneys' fees.** (a) The circuit courts of this State may
19 grant injunctions on reasonable terms to prevent or restrain the
20 unauthorized use of the rights in a living or deceased
21 individual or personality's name, voice, signature, photograph,
22 or likeness.

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

15 (c) At any time while an action under this chapter is
16 pending, the court may order the impounding, on reasonable
17 terms, of all materials or any part thereof claimed to have been
18 made or used in violation of the injured party's rights, and the
19 court may enjoin the use of all plates, molds, matrices,
20 masters, tapes, film negatives, master recordings, copies of
21 recordings, optical disk stampers, or other articles by means of
22 which these materials may be reproduced.

1 (d) 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, and of all plates, molds, matrices,
5 masters, tapes, film negatives, master recordings, copies of
6 recordings, optical disk stampers, or other articles by means of
7 which these materials may be reproduced.

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

11 (f) The remedies provided for in this section are
12 cumulative and are in addition to any others provided for by
13 law.

14 § -7 **Exemptions from use restrictions; when chapter does**
15 **not apply.** (a) For purposes of section -5, the use of a
16 name, voice, signature, photograph, or likeness in connection
17 with matters of cultural, historical, political, religious,
18 educational, newsworthy, or public interest, including without
19 limitation, comment, criticism, satire, and parody relating
20 thereto, shall not constitute a use for which consent is
21 required under this chapter. A matter exempt from consent under
22 this subsection does not lose its exempt status because it

1 appears in the form of a paid advertisement if it is clear that
2 the principal purpose of the advertisement is to comment on the
3 matter.

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

8 (1) Single and original works of fine art, including but
9 not limited to photographic, graphic, and sculptural
10 works of art that are not published in more than five
11 copies;

12 (2) A literary work, theatrical work, musical composition,
13 film, radio, online or television program, magazine
14 article, news story, public affairs report, or sports
15 broadcast or account, or with any political campaign
16 when the use does not inaccurately claim or state an
17 endorsement by the individual or personality;

18 (3) An advertisement or commercial announcement for a use
19 permitted by subsection (a) or (g) or paragraph (1) or
20 (2);

21 (4) An advertisement, commercial announcement, or
22 packaging for the authorized sale, distribution,

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

12 (5) The advertisement or sale of a rare or fine product,
13 including but not limited to books, which incorporates
14 the signature of the author.

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

21 (d) Section -5 shall not apply to the owners or
22 employees of any medium used for advertising, including but not

1 limited to newspapers, magazines, radio and television stations,
2 online service providers, billboards, and transit ads, who,
3 without prior notice that the use would be in violation of this
4 chapter, have published or disseminated any advertisement or
5 solicitation in violation of this chapter, unless the
6 advertisement or solicitation was intended to promote the medium
7 itself.

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

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

21 (g) This chapter does not apply to the distribution,
22 promotion, transfer, or license of a photograph or other

1 material containing an individual or personality's name, voice,
2 signature, photograph, or likeness to a third party for use in a
3 manner which is lawful under this chapter, or to a third party
4 for further distribution, promotion, transfer, or license for
5 use in a manner which is lawful under this chapter."

6 SECTION 3. This Act shall take effect on July 1, 2050.

Report Title:

Publicity Rights; Commercial Uses

Description:

Establishes property rights in the commercial use of a person's name voice, signature, photograph, or likeness. Effective 7/1/2050. (SD1)