

JAN 25 2010

5.B. NO. 2696

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# A BILL FOR AN ACT

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RELATING TO DISTINGUISHING PUBLICITY RIGHTS TRADE NAMES FROM  
OTHER TYPES OF TRADE NAMES BY RENAMING THEM AS PUBLICITY  
RIGHTS NAMES AND SPECIFYING THE REGISTRATION PROCEDURES  
APPLICABLE TO PUBLICITY RIGHTS NAMES.

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

1       SECTION 1. The purpose of this Act is to make technical  
2 amendments to rename a "publicity rights trade name  
3 registration" as a "publicity rights name registration" under  
4 chapter 482P, Hawaii Revised Statutes, and to give the  
5 department of commerce and consumer affairs discretion to  
6 implement the law in a manner that complies with the law's  
7 legislative intent. This Act does not substantively amend  
8 publicity rights under chapter 482P, Hawaii Revised Statutes.

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

12       "§482P-       Record, issuance and effect of certificate. (a)  
13 Any person desiring to register a publicity rights name may  
14 obtain a certificate of registration of the publicity rights  
15 name under this chapter. The director shall have all powers  
16 reasonably necessary to administer this chapter efficiently.

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1        (b) Before any person may receive a certificate of  
2        registration of a publicity rights name, the person shall file  
3        an application in the office of the director. The application  
4        shall contain a publicity rights name that consists of the  
5        assigning individual's or personality's full legal name. The  
6        application form shall contain other information prescribed by  
7        the director.

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

14       (d) Upon receiving the application form accompanied by the  
15       fee, the director shall cause the publicity rights name to be  
16       recorded and shall issue a certificate of registration to the  
17       applicant.

18       (e) The term of registration of a publicity rights name  
19       shall be five years beginning from the date of registration.  
20       The registration may be renewed for additional five-year periods  
21       by filing a renewal application within six months prior to the

expiration of the current term and complying with the renewal  
requirements prescribed by the director.

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

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

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

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

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

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

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

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

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

6 (1) By adding a new definition to be appropriately  
7 inserted and to read as follows:

8 "Director" means the director of commerce and consumer  
9 affairs."

10 (2) By amending the definition of "publicity rights trade  
11 name registration" to read as follows:

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

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

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

12             **"[+]§482P-8[+] Procedure for identifying transferees,**  
13     **licensees, or assignees; requirement to seek damages or relief.**

14     (a) An assignee or transferee of publicity rights shall have  
15     the right to make a publicity rights [trade] name registration.

16     ~~[To obtain the benefit of the protection of this section, the~~  
17     ~~assignee or transferee shall keep the publicity rights trade~~  
18     ~~name registration in force and shall diligently maintain the~~  
19     ~~accuracy of the information in the publicity rights trade name~~  
20     ~~registration.]~~

21     (b) Publicity rights of a deceased person that were not  
22     previously assigned or transferred shall be part of the deceased

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

17 (c) Any person seeking to license publicity rights from a  
18 living person shall have the right to presume that a living  
19 individual or personality has the right to assign or license the  
20 individual or personality's publicity rights unless there is a  
21 publicity rights [~~trade~~] name registration for that individual  
22 or personality. If there is a publicity rights [~~trade~~] name

1 registration for that individual or personality, the person  
2 seeking to license publicity rights shall inform the living  
3 person in writing that an assignment or license shall be sought  
4 from the holder of the publicity rights [~~trade~~] name  
5 registration before entering into the assignment or license.

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

19 (e) A person commits an offense if the person signs,  
20 manually or via electronic means, a document the person knows is  
21 false in any material respect with the intent that the document  
22 be delivered or transmitted to the director [~~of commerce and~~

1 ~~consumer affairs~~] in connection with a publicity rights [~~trade~~]  
2 name registration under this section. An offense under this  
3 subsection shall be a class C felony and may carry a fine not to  
4 exceed \$10,000.

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

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

19 SECTION 5. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.



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

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INTRODUCED BY:

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BY REQUEST

**Report Title:**

Publicity Rights Names

**Description:**

Clarifies registration procedures for publicity rights names.

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO DISTINGUISHING PUBLICITY RIGHTS TRADE NAMES FROM OTHER TYPES OF TRADE NAMES BY RENAMING THEM AS PUBLICITY RIGHTS NAMES AND SPECIFYING THE REGISTRATION PROCEDURES APPLICABLE TO PUBLICITY RIGHTS NAMES.

PURPOSE: To clarify business registration procedures for publicity rights names that were established by Act 28, First Special Session Laws of Hawaii 2009.

MEANS: Add a new section to chapter 482P and amend sections 482P-1 and 482P-8, Hawaii Revised Statutes (HRS).

JUSTIFICATION: During the 2009 First Special Session, S.B. No. 1005, S.D. 2, H.D. 2, C.D. 1, Relating to Publicity Rights, became Act 28. While the main intent of Act 28 was to establish laws governing intellectual property known as publicity rights, the act also contemplated business registration with the Department of Commerce and Consumer Affairs (DCCA). The act required DCCA to implement the registration of a "publicity rights trade name" through its current trade name system. The act seemed to require that "publicity rights trade names" be treated like actual trade names. The two types of filings, however, are legally different in every manner. The attempt to merge two legally distinct concepts into one filing causes confusion to the public and to DCCA, and threatens to corrupt the DCCA data systems. Exacerbating the confusion, inclusion of the term "trade name" within the term "publicity rights trade name" encourages conflation of two separate and unrelated concepts: trade names and publicity rights.

Moreover, the act did not contain many of the provisions that Hawaii's other business registration laws contain and, therefore, lacked clarity in the areas described below.

This bill proposes to make technical amendments to change "publicity rights trade names" to simply "publicity rights names" in order to establish a registration category separate and distinct from trade name registrations under chapter 482, HRS. The intent of the name change is to prevent confusion of those who wish to register publicity rights names instead of trade names. To accomplish this delineation between the two different types of registrations, this bill also: (1) inserts language to establish the technical provisions of a stand alone publicity rights name registration; (2) clarifies that DCCA's role is purely ministerial in nature and that the Director has discretion to implement the registration procedures in an efficient manner; and (3) deletes language that refers to trade name registrations under chapter 482, HRS, which is separate and distinct from publicity rights name registration.

Impact on the public: Applicants will not perceive any changes to the registration system for publicity rights that DCCA has already established to administer Act 28. However, this bill will provide clarity for applicants who wish to register publicity rights names.

Impact on the department and other agencies: The bill will provide DCCA with some flexibility to administer the new law in a timely and reasonable manner given DCCA's available resources, instead of requiring DCCA to implement the law in the same manner as trade names.

GENERAL FUND:

None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: CCA-111.

OTHER AFFECTED  
AGENCIES: None.

EFFECTIVE DATE: Upon approval.