

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:*

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

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

**"§482P- Recording, issuance, and effect of certificate.** (a) Any person desiring to register a publicity rights name may obtain a certificate of registration of the publicity rights name as provided in this section. The director shall have the power reasonably necessary to perform the duties required of the director under this section, and to administer the section efficiently.

(b) To receive a certificate of registration of a publicity rights name, a person shall file in the office of the director an application for registration. The application for registration shall include a publicity rights name that consists of the assigning individual or personality's full legal name. The application for registration form shall include other information as prescribed by the director.

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

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

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

Disputes between applicants with respect to a registered publicity rights name shall be determined by a court of competent jurisdiction.”

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

1. By adding a new definition to be appropriately inserted and to read:  
 ““Director” means the director of commerce and consumer affairs.”

2. By amending the definition of “publicity rights trade name registration” to read:

““Publicity rights [trade] name registration” means a registration with the department of commerce and consumer affairs [of a trade name under chapter 482, using the department’s procedures for trade name registration, wherein the trade name shall consist of the assigning individual or personality’s full legal name and the words “publicity rights”, preferably in all capital letters. In administering publicity rights trade name registrations under this chapter, the department shall be exempt from:

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

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

~~“[§482P-8] Procedure for identifying transferees, licensees, or assignees; requirement to seek damages or relief. (a) An assignee or transferee of publicity rights shall have the right to make a publicity rights [trade] name registration. [To obtain the benefit of the protection of this section, the assignee or transferee shall keep the publicity rights trade name registration in force and shall diligently maintain the accuracy of the information in the publicity rights trade name registration.]~~

(b) Publicity rights of a deceased person that were not previously assigned or transferred shall be part of the deceased person’s estate and shall be administered by the personal representative of the deceased person as personal property of the deceased person. On or before closing of probate of a deceased person’s estate, the publicity rights of the deceased person shall vest in the transferees of the personal property of the estate in conformity with the deceased person’s will or probate order. If publicity rights are not expressly addressed by the terms of the will or a probate order, and if a publicity rights [trade] name registration is not in effect at the time of the relevant assignment or license, after probate closes, any one of the transferees of the personal property of the deceased person’s estate shall have the right to assign or license the publicity rights of the deceased person, and a valid license from any of the transferees of the personal property of the deceased person’s estate shall constitute a complete defense to any infringement action under this section.

(c) Any person seeking to license publicity rights from a living person shall have the right to presume that a living individual or personality has the right to assign or license the individual's or personality's publicity rights unless there is a publicity rights [trade] name registration for that individual or personality. If there is a publicity rights [trade] name registration for that individual or personality, the person seeking to license publicity rights shall inform the living person in writing that an assignment or license shall be sought from the holder of the publicity rights [trade] name registration before entering into the assignment or license.

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

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

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

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

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

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

(Approved April 25, 2010.)

**Note**

1. Edited pursuant to HRS §23G-16.5.