

ACT 37

S.B. NO. 714

A Bill for an Act Relating to Publicity Rights.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that chapter 482P, Hawaii Revised Statutes, known as the Hawaii Publicity Rights Act, was enacted on July 15, 2009, to recognize the existence of the right of publicity, which is a property right in the commercial use of one's name, voice, signature, likeness, and other commercially valuable attributes. The legislature also finds that the Hawaii Publicity Rights Act, which prevents the unauthorized use of another individual's name, voice, signature, or likeness for commercial purposes, is an important law that allows the people of Hawaii to protect their legacy and rights that are not covered by federal copyright law and state and federal trademark laws.

The legislature further finds that the legislature's intent in enacting the Hawaii Publicity Rights Act in 2009 was to recognize the right of publicity held by all persons, living and dead, including those who predeceased the enactment of the Hawaii Publicity Rights Act.

The purpose of this Act is to clarify that the Hawaii Publicity Rights Act applies retroactively to protect the publicity rights of individuals who died before the date of its enactment.

SECTION 2. Section 482P-1, Hawaii Revised Statutes, is amended by amending the definitions of "deceased individual" and "deceased personality" to read as follows:

““Deceased individual” means any individual, regardless of the individual’s place of domicile, residence, or citizenship at the time of death or otherwise, who has died. “Deceased individual” includes individuals who died before the enactment of this chapter.”

“Deceased personality” means any individual, regardless of the personality’s place of domicile, residence, or citizenship at the time of death or otherwise, whose name, voice, signature, or likeness had commercial value at the time of the individual’s death, whether or not during the lifetime of that individual, the individual used the individual’s name, voice, signature, or likeness on or in products, merchandise, goods, or for purposes of advertising, selling, or soliciting the purchase or sale of products, merchandise, goods, or services. “Deceased personality” includes personalities who died before the enactment of this chapter.”

SECTION 3. Section 482P-2, Hawaii Revised Statutes, is amended to read as follows:

~~“[§482P-2] Property right in use of name, voice, signature, or likeness.~~ Every individual or personality has a property right in the use of the individual’s or personality’s name, voice, signature, and likeness. The right shall be deemed to have existed before the enactment of this chapter, including at and after the time of death of any deceased individual or deceased personality, and shall continue to exist for a fixed period of time after death, as prescribed in section 482P-4. This right shall be freely transferable, assignable, and licensable, in whole or in part, by any otherwise permissible form of inter vivos or testamentary transfer, including without limitation a will or other testamentary instrument, trust, contract, community property agreement, or cotenancy with survivorship provisions or payable-on-death provisions, whether the will or other testamentary instrument, trust, contract, community property agreement, or cotenancy document is entered into or executed by the deceased individual or deceased personality or by any subsequent owner of the deceased individual’s or deceased personality’s rights as recognized by this chapter; or, if none is applicable, then the owner of the rights shall be determined under the laws of intestate succession applicable to interests in intangible personal property. The right exists regardless of whether ~~[or not]~~ it was commercially exploited by the individual or the personality during the individual’s or the personality’s lifetime. The right does not expire upon the death of the individual or personality, regardless of whether the law of the domicile, residence, or citizenship of the individual or personality at the time of death or otherwise recognizes a similar or identical property right. This chapter is intended to apply to all individuals and personalities, living and deceased, including those who died before the enactment of this chapter, regardless of place of domicile or place of domicile at time of death. In the case of a deceased individual or deceased personality, the rights recognized under this chapter shall be deemed to exist at the time of death of any deceased individual or deceased personality or subsequent successor of their rights for the purpose of determining the person or persons entitled to these property rights as provided for in section 482P-3.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act, upon its approval, shall take effect retroactive to July 15, 2009.

(Approved June 7, 2021.)