

HOUSE BILL 64

C2

(8lr0394)

ENROLLED BILL

—*Economic Matters / Finance*—

Introduced by **Delegate Kipke**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Fallen Soldier Privacy Act of 2008**

3 FOR the purpose of prohibiting a person from knowingly using the name, portrait,
4 picture, or image of a certain deceased soldier for certain purposes without prior
5 consent from certain individuals; providing for the application of this Act;
6 defining a certain term; establishing a certain penalty; and generally relating to
7 the use of a deceased soldier's identity.

8 BY adding to

9 Article – Business Regulation

10 Section ~~19-401~~ through ~~19-403~~ 19-404 to be under the new subtitle “Subtitle 4.

11 Use of a Deceased Soldier's Identity”

12 Annotated Code of Maryland

13 (2004 Replacement Volume and 2007 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber / conference committee amendments.



1 Preamble

2 WHEREAS, The State of Maryland recognizes the tremendous dedication and
3 sacrifice of those men and women who served in the armed forces and their
4 willingness to defend the freedoms that we as individuals hold dear; and

5 WHEREAS, This legislation was inspired by the untimely death of Eric
6 Kavanagh, a 20-year-old soldier and resident of Maryland, who was killed in action in
7 Iraq on September 20, 2006, during Operation Iraqi Freedom, and dedicated to every
8 man and woman in our armed forces who died protecting our country; and

9 WHEREAS, We believe that special honor should be given to those brave
10 soldiers and surviving family members; and

11 WHEREAS, We also believe that it is imperative to protect the dignity of those
12 who have fallen while serving this great country and that no individual, group, or
13 organization should profit from the commercial use of a fallen soldier's name; and

14 WHEREAS, It is fitting that the State of Maryland enact legislation to ensure
15 that the privacy of these heroic soldiers be respected and maintained; now, therefore,

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
17 MARYLAND, That the Laws of Maryland read as follows:

18 **Article - Business Regulation**19 **SUBTITLE 4. USE OF A DECEASED SOLDIER'S IDENTITY.**20 **19-401.**21 **IN THIS ~~SECTION~~ SUBTITLE, "SOLDIER" MEANS:**

22 (1) AN ACTIVE DUTY MEMBER OF THE ARMED FORCES OF THE
23 UNITED STATES, INCLUDING THE ARMY, MARINE CORPS, NAVY, AIR FORCE,
24 COAST GUARD, NATIONAL GUARD, RESERVE FORCES, AND ANY OTHER
25 STANDARD UNITED STATES MILITARY AGENCY; OR

26 (2) A FEDERAL ACTIVE DUTY MEMBER OF THE STATE NATIONAL
27 GUARD OR RESERVE FORCE.

28 **19-402.**29 **THIS ~~SECTION~~ SUBTITLE DOES NOT APPLY TO:**

30 (1) THE USE OF A SOLDIER'S NAME, PORTRAIT, PICTURE, OR
31 IMAGE IN AN ATTEMPT TO PORTRAY, DESCRIBE, OR IMPERSONATE THAT

1 SOLDIER IN A LIVE PERFORMANCE, SINGLE AND ORIGINAL WORK OF FINE ART,
2 PLAY, BOOK, ARTICLE, FILM, MUSICAL WORK, RADIO OR TELEVISION
3 PROGRAMMING, OR OTHER AUDIO OR AUDIOVISUAL WORK, IF THE
4 PERFORMANCE, FINE ART, PLAY, BOOK, ARTICLE, FILM, MUSICAL WORK, RADIO
5 OR TELEVISION PROGRAMMING, OR OTHER AUDIO OR AUDIOVISUAL WORK DOES
6 NOT CONSTITUTE A COMMERCIAL ADVERTISEMENT FOR ANY PRODUCT, GOOD,
7 WARE, OR MERCHANDISE;

8 (2) THE USE OF A SOLDIER'S NAME, PORTRAIT, PICTURE, OR
9 IMAGE FOR NONCOMMERCIAL PURPOSES, INCLUDING ANY NEWS, PUBLIC
10 AFFAIRS, OR SPORTS BROADCAST OR ACCOUNT;

11 (3) THE USE OF A SOLDIER'S NAME IN TRUTHFULLY IDENTIFYING
12 THE SOLDIER AS THE AUTHOR OF A PARTICULAR WORK OR PROGRAM OR AS THE
13 PERFORMER IN A PARTICULAR PERFORMANCE;

14 (4) ANY PROMOTIONAL MATERIALS, ADVERTISEMENTS, OR
15 COMMERCIAL ANNOUNCEMENTS FOR A USE DESCRIBED IN ITEM (1), (2), OR (3)
16 OF THIS SECTION;

17 (5) UNLESS THE EXHIBITION IS CONTINUED BY THE
18 PROFESSIONAL PHOTOGRAPHER AFTER WRITTEN NOTICE OBJECTING TO THE
19 EXHIBITION BY A PERSON WITH THE AUTHORITY TO GRANT CONSENT FOR USE
20 UNDER § 19-403 OF THIS SUBTITLE, THE USE OF PHOTOGRAPHS, VIDEO
21 RECORDINGS, AND IMAGES BY A PERSON PRACTICING PROFESSIONAL
22 PHOTOGRAPHY TO EXHIBIT, IN OR ABOUT THE PROFESSIONAL
23 PHOTOGRAPHER'S PLACE OF BUSINESS OR PORTFOLIO, SAMPLES OF THE
24 PROFESSIONAL PHOTOGRAPHER'S WORK;

25 (6) THE USE OF A SOLDIER'S PICTURE, PORTRAIT, OR IMAGE
26 THAT IS NOT FACIALLY IDENTIFIABLE; AND

27 (7) A PHOTOGRAPH OF A MONUMENT OR A MEMORIAL THAT IS
28 PLACED ON ANY PRODUCT, GOOD, WARE, OR MERCHANDISE.

29 ~~19-402.~~ 19-403.

30 A PERSON MAY NOT KNOWINGLY USE THE NAME, PORTRAIT, PICTURE, OR
31 IMAGE OF A SOLDIER KILLED IN THE LINE OF DUTY WITHIN THE PREVIOUS 50
32 YEARS, ~~FOR THE PURPOSE OF GAINING A COMMERCIAL ADVANTAGE BY~~ IN
33 ADVERTISING FOR THE SALE OF A PRODUCT, GOOD, WARE, MERCHANDISE, OR
34 SERVICE, FOR THE PURPOSE OF GAINING A COMMERCIAL ADVANTAGE,
35 WITHOUT ~~FIRST~~ OBTAINING PRIOR CONSENT FOR USE FROM THE SOLDIER OR

1 THE SURVIVING SPOUSE, THE PERSONAL REPRESENTATIVE, OR THE MAJORITY
2 OF THE HEIRS OF THE DECEASED SOLDIER.

3 ~~19-403.~~ 19-404.

4 A PERSON ~~THAT~~ WHO VIOLATES § ~~19-402~~ 19-403 OF THIS SECTION
5 SUBTITLE IS GUILTY OF A MISDEMEANOR AND, ON CONVICTION, IS SUBJECT TO
6 A FINE NOT EXCEEDING \$2,500 OR IMPRISONMENT NOT EXCEEDING 1 YEAR OR
7 BOTH.

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
9 October 1, 2008.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.