

SENATE BILL 3

C2

(8lr0392)

ENROLLED BILL

—Finance/Economic Matters—

Introduced by **Senators Simonaire, Harris, Edwards, ~~and Greenip~~ Greenip, Astle, Brinkley, Brochin, Colburn, Conway, Currie, DeGrange, Della, Dyson, Forehand, Frosh, Garagiola, Gladden, Haines, Glassman, Harrington, Jacobs, Jones, Kasemeyer, King, Kittleman, Klausmeier, Kramer, Lenett, Madaleno, McFadden, Middleton, Miller, Mooney, Munson, Muse, Peters, Pinsky, Pipkin, Pugh, Raskin, Robey, Rosapepe, Stoltzfus, Stone, and Zirkin**

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.

President.

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

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 Article – Business Regulation
2 Section 19–401 through ~~19–403~~ 19–404 to be under the new subtitle “Subtitle 4.
3 Use of a Deceased Soldier’s Identity”
4 Annotated Code of Maryland
5 (2004 Replacement Volume and 2007 Supplement)

6 Preamble

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

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

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

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

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

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

23 **Article – Business Regulation**

24 **SUBTITLE 4. USE OF A DECEASED SOLDIER’S IDENTITY.**

25 **19–401.**

26 **IN THIS ~~SECTION~~ SUBTITLE, “SOLDIER” MEANS:**

27 **(1) AN ACTIVE DUTY MEMBER OF THE ARMED FORCES OF THE**
28 **UNITED STATES, INCLUDING THE ARMY, MARINE CORPS, NAVY, AIR FORCE,**
29 **COAST GUARD, NATIONAL GUARD, RESERVE FORCES, AND ANY OTHER**
30 **STANDARD UNITED STATES MILITARY AGENCY; OR**

31 **(2) A FEDERAL ACTIVE DUTY MEMBER OF THE STATE NATIONAL**
32 **GUARD OR RESERVE FORCE.**

1 19-402.

2 THIS SECTION SUBTITLE DOES NOT APPLY TO:

3 (1) THE USE OF A SOLDIER'S NAME, PORTRAIT, PICTURE, OR
4 IMAGE IN AN ATTEMPT TO PORTRAY, DESCRIBE, OR IMPERSONATE THAT
5 SOLDIER IN A LIVE PERFORMANCE, SINGLE AND ORIGINAL WORK OF FINE ART,
6 PLAY, BOOK, ARTICLE, FILM, MUSICAL WORK, RADIO OR TELEVISION
7 PROGRAMMING, OR OTHER AUDIO OR AUDIOVISUAL WORK, IF THE
8 PERFORMANCE, FINE ART, PLAY, BOOK, ARTICLE, FILM, MUSICAL WORK, RADIO
9 OR TELEVISION PROGRAMMING, OR OTHER AUDIO OR AUDIOVISUAL WORK DOES
10 NOT CONSTITUTE A COMMERCIAL ADVERTISEMENT FOR ANY PRODUCT, GOOD,
11 WARE, OR MERCHANDISE;

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

15 (3) THE USE OF A SOLDIER'S NAME IN TRUTHFULLY IDENTIFYING
16 THE SOLDIER AS THE AUTHOR OF A PARTICULAR WORK OR PROGRAM OR AS THE
17 PERFORMER IN A PARTICULAR PERFORMANCE;

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

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

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

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

33 ~~19-402.~~ 19-403.

1 A PERSON MAY NOT KNOWINGLY USE THE NAME, PORTRAIT, PICTURE, OR
2 IMAGE OF A SOLDIER KILLED IN THE LINE OF DUTY WITHIN THE PREVIOUS 50
3 YEARS, ~~FOR THE PURPOSE OF GAINING A COMMERCIAL ADVANTAGE BY IN~~
4 ADVERTISING FOR THE SALE OF A PRODUCT, GOOD, WARE, MERCHANDISE, OR
5 SERVICE, FOR THE PURPOSE OF GAINING A COMMERCIAL ADVANTAGE,
6 WITHOUT ~~FIRST~~ OBTAINING PRIOR CONSENT FOR USE FROM THE SOLDIER OR
7 THE SURVIVING SPOUSE, THE PERSONAL REPRESENTATIVE, OR THE MAJORITY
8 OF THE HEIRS OF THE DECEASED SOLDIER.

9 ~~19-403, 19-404.~~

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

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.