

SENATE BILL 3

C2

(PRE-FILED)

8lr0392
CF HB 64

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

Requested: July 17, 2007

Introduced and read first time: January 9, 2008

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 11, 2008

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)

14 Preamble

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.



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

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

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

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

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

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

17 **Article - Business Regulation**

18 **SUBTITLE 4. USE OF A DECEASED SOLDIER'S IDENTITY.**

19 **19-401.**

20 **IN THIS SECTION, "SOLDIER" MEANS:**

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

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

27 **19-402.**

28 **THIS SECTION DOES NOT APPLY TO:**

29 **(1) THE USE OF A SOLDIER'S NAME, PORTRAIT, PICTURE, OR**
30 **IMAGE IN AN ATTEMPT TO PORTRAY, DESCRIBE, OR IMPERSONATE THAT**
31 **SOLDIER IN A LIVE PERFORMANCE, SINGLE AND ORIGINAL WORK OF FINE ART,**
32 **PLAY, BOOK, ARTICLE, FILM, MUSICAL WORK, RADIO OR TELEVISION**

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

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

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

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

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

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

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

27 ~~19-402.~~ 19-403.

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

1 ~~19-403.~~ 19-404.

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

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.