

CHAPTER 560

(Senate Bill 3)

AN ACT concerning

Fallen Soldier Privacy Act of 2008

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

BY adding to

Article – Business Regulation

Section 19–401 through ~~19–403~~ 19–404 to be under the new subtitle “Subtitle 4.
Use of a Deceased Soldier's Identity”

Annotated Code of Maryland

(2004 Replacement Volume and 2007 Supplement)

Preamble

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

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

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

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

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

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

Article – Business Regulation

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

19-401.

IN THIS ~~SECTION~~ SUBTITLE, "SOLDIER" MEANS:

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

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

19-402.

THIS ~~SECTION~~ SUBTITLE DOES NOT APPLY TO:

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

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

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

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

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

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

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

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

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

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

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

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

Approved by the Governor, May 22, 2008.