

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE
Revised

House Bill 64
Economic Matters

(Delegate Kipke)

Finance

Fallen Soldier Privacy Act of 2008

This bill prohibits the knowing commercial use of the name, portrait, picture, or image of an active duty military member who has been killed in the line of duty within the past 50 years, without prior consent of the soldier, surviving spouse, personal representative, or majority of heirs of the deceased soldier.

Fiscal Summary

State Effect: Potential increase in general fund revenues and expenditures due to the bill's penalty provisions.

Local Effect: Potential increase in revenues and expenditures due to the bill's penalty provisions.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: A violator is guilty of a misdemeanor and, on conviction, is subject to maximum penalties of a fine of \$2,500, imprisonment for one year, or both.

The bill's provisions do not apply to • 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, work of fine art, play, book, article, film, musical work, radio or television programming, or other audio or audiovisual work if it does not constitute a commercial advertisement; • the use of a soldier's name, portrait, picture, or image for

noncommercial purposes; • the use of a soldier's name in truthfully identifying the soldier as the author of a particular work or a performer in a particular performance; • any promotional materials for a use described in the preceding exceptions; • the use of a soldier's portrait, picture, or image that is not facially identifiable; or • a photograph of a monument or a memorial that is placed on any product. The bill's provisions also do not apply to the use of photographs, images, and video used by a person practicing professional photography to exhibit samples of his or her work, unless the exhibition is continued by the person after written notice of objection by a person with the authority to consent under the bill.

Current Law/Background: There are currently no State laws regulating the commercial use of the name, portrait, picture, or image of deceased military members. Courts generally recognize claims for invasion of privacy due to the appropriation, for a defendant's commercial advantage, of the plaintiff's name, image, or likeness. This common law cause of action is usually not available after a plaintiff's death. Several states including Arizona, Louisiana, Oklahoma, and Texas have enacted statutes prohibiting the commercial use of a deceased service member's name, image, or likeness without the consent of specific parties.

The bill was inspired by events related to the combat death of 20-year-old U.S. Army Private First Class Eric M. Kavanagh, who was awarded a Purple Heart and a Bronze Star posthumously for his sacrifice in Operation Iraqi Freedom on September 20, 2006.

State Revenues: General fund revenues could increase minimally as a result of the bill's monetary penalty provision, from cases heard in the District Court.

State Expenditures: General fund expenditures could increase minimally as a result of the bill's incarceration penalty due to increased payments to counties for reimbursement of inmate costs and more people being committed to Division of Correction (DOC) facilities. The number of people convicted of this proposed crime is expected to be minimal.

Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2009 are estimated to range from \$19 to \$71 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in a DOC facility. Currently, the DOC average total cost per inmate, including overhead, is estimated at \$2,600 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including medical

care and variable costs) is \$526 per month. Excluding medical care, the average variable costs total \$148 per month.

The Attorney General's Office confirms that it will experience no fiscal impact if it receives fewer than 50 complaints per year regarding the subject matter of this bill.

Local Revenues: Revenues could increase minimally as a result of the bill's monetary penalty provision from cases heard in the circuit courts.

Local Expenditures: Expenditures could increase as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$40 to \$129 per inmate in fiscal 2009.

Additional Information

Prior Introductions: None.

Cross File: SB 3 (Senator Simonaire, *et al.*) – Finance.

Information Source(s): Office of the Attorney General (Consumer Protection),
Department of Legislative Services

Fiscal Note History: First Reader - January 14, 2008
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