

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2125 Session of
2007

INTRODUCED BY PERRY, ADOLPH, ARGALL, BAKER, BEAR, BENNINGHOFF,
BEYER, BOYD, BRENNAN, CAPPELLI, CAUSER, CLYMER, CREIGHTON,
CRUZ, DENLINGER, DePASQUALE, EVERETT, FAIRCHILD, FLECK,
GEIST, GILLESPIE, GINGRICH, GODSHALL, GOODMAN, GRUCELA,
HARHAI, HARPER, HARRIS, HENNESSEY, HERSHEY, HESS, HORNAMAN,
HUTCHINSON, JAMES, KULA, LEACH, MACKERETH, MAJOR, MANN,
MARSHALL, McILHATTAN, MELIO, R. MILLER, MOYER, MURT, NAILOR,
O'NEILL, PAYNE, PETRI, PETRONE, PHILLIPS, PICKETT, PYLE,
QUINN, RAPP, READSHAW, REED, REICHLEY, ROAE, ROHRER, SAYLOR,
SCHRODER, SEIP, SIPTROTH, SOLOBAY, SONNEY, STERN, SWANGER,
THOMAS, TRUE, VULAKOVICH, WALKO, WOJNAROSKI AND YOUNGBLOOD,
DECEMBER 13, 2007

REFERRED TO COMMITTEE ON JUDICIARY, DECEMBER 13, 2007

AN ACT

1 Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and
2 Judicial Procedure) of the Pennsylvania Consolidated
3 Statutes, prohibiting the use of name, portrait or picture of
4 a soldier in certain cases.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Title 18 of the Pennsylvania Consolidated
8 Statutes is amended by adding a section to read:

9 § 6713. Unauthorized use of name, portrait or picture of
10 deceased soldier.

11 (a) Offense.--A person who knowingly uses the name, portrait
12 or picture of a deceased soldier for the purpose of advertising
13 for the sale of any goods, wares or merchandise or for the
14 solicitation of patronage for any business without having

1 obtained prior consent to the use by the soldier or by the
2 soldier's spouse, immediate family member, trustee if the
3 soldier is a minor or legally designated representative, commits
4 a misdemeanor of the first degree.

5 (b) Exceptions.--Subsection (a) does not apply to the
6 following:

7 (1) The use of a soldier's name, portrait or picture in
8 an attempt to portray, describe or impersonate that soldier
9 in a live performance, a single and original work of fine
10 art, a play, book, article, musical work or film or on radio,
11 television or other audio or audiovisual work if the
12 performance, musical work, play, book, article or film does
13 not itself constitute a commercial advertisement for any
14 goods, wares or merchandise.

15 (2) The use of a soldier's name, portrait or picture for
16 noncommercial purposes, including any news, public affairs or
17 sports broadcast or account.

18 (3) The use of a soldier's name in truthfully
19 identifying the soldier as the author of a particular work or
20 program or as the performer in a particular performance.

21 (4) Any promotional materials, advertisements or
22 commercial announcements for a use described in paragraph
23 (1), (2) or (3).

24 (5) The use of photographs, video recordings and images
25 by a person, firm or corporation practicing the profession of
26 photography to exhibit, in or about the professional
27 photographer's place of business or portfolio, specimens of
28 the professional photographer's work, unless the exhibition
29 in continued by the professional photographer after written
30 notice objecting to the exhibition by the portrayed soldier

1 or a person who may enforce the soldier's rights and
2 remedies.

3 (6) A soldier's picture or portrait that is not facially
4 identifiable.

5 (7) A photograph of a monument or a memorial that is
6 placed on any goods, wares or merchandise.

7 (c) Definition.--For the purposes of this section, "soldier"
8 means any active duty member or former member of the Armed
9 Forces of the United States, including any member who was killed
10 in the line of duty.

11 Section 2. Title 42 is amended by adding a section to read:
12 § 8316.1. Unauthorized use of name, portrait or picture of
13 soldier.

14 (a) Right of soldier.--The right to control and to choose
15 whether and how to use a soldier's name, portrait or picture for
16 commercial purposes is recognized as each soldier's right of
17 publicity.

18 (b) Liability.--A person is liable for using the name,
19 portrait or picture of any soldier without having obtained prior
20 consent to the use by the soldier or by the soldier's spouse,
21 immediate family member, trustee if the soldier is a minor or
22 legally designated representative, if the person uses the name,
23 portrait or picture for any of the following purposes:

24 (1) Advertising for the sale of any goods, wares or
25 merchandise.

26 (2) Soliciting patronage for any business.

27 (3) Receiving consideration for the sale of any goods,
28 wares or merchandise.

29 (c) Remedies.--A person who uses the name, portrait or
30 picture of a soldier for a prohibited purpose without prior

consent from the soldier or a person who may enforce the soldier's rights and remedies is subject to the following:

(1) Injunctive relief to prevent or restrain the unauthorized use.

(2) Compensatory and punitive or exemplary damages.

(3) Attorney fees and costs.

(d) Damages.--In calculating damages, any profits from the unauthorized use that are attributable to that use shall be taken into account.

(e) Supplemental rights.--The rights and remedies provided in this section supplement any other rights and remedies provided by law, including the right of privacy.

(f) Limitation of action.--Any claim for relief that is requested pursuant to this section shall be brought within five years after the unauthorized publication.

(g) Rights of action.--The right of publicity is a property right that survives a soldier's death. On the soldier's death, only the following individuals may enforce the soldier's rights and remedies in the following order:

(1) The soldier's legally designated representative.

(2) The soldier's spouse.

(3) The soldier's parents.

(4) The soldier's children.

(5) The soldier's grandchildren.

(h) Exceptions.--This section does not apply to the following:

(1) The use of a soldier's name, portrait or picture in an attempt to portray, describe or impersonate that soldier in a live performance, a single and original work of fine art, a play, book, article, musical work or film or on radio,

1 television or other audio or audiovisual work if the
2 performance, musical work, play, book, article or film does
3 not itself constitute a commercial advertisement for any
4 goods, wares or merchandise.

5 (2) The use of a soldier's name, portrait or picture for
6 noncommercial purposes, including any news, public affairs or
7 sports broadcast or account.

8 (3) The use of a soldier's name in truthfully
9 identifying the soldier as the author of a particular work or
10 program or as the performer in a particular performance.

11 (4) Any promotional materials, advertisements or
12 commercial announcements for a use described in paragraph
13 (1), (2) or (3).

14 (5) The use of photographs, video recordings and images
15 by a person, firm or corporation practicing the profession of
16 photography to exhibit, in or about the professional
17 photographer's place of business or portfolio, specimens of
18 the professional photographer's work, unless the exhibition
19 is continued by the professional photographer after written
20 notice objecting to the exhibition by the portrayed soldier
21 or a person who may enforce the soldier's rights and
22 remedies.

23 (6) A soldier's picture or portrait that is not facially
24 identifiable.

25 (7) A photograph of a monument or a memorial that is
26 placed on any goods, wares or merchandise.

27 (i) Definition.--For the purposes of this section, "soldier"
28 means any active duty member or former member of the Armed
29 Forces of the United States, including any member who was killed
30 in the line of duty.

1 Section 3. This act shall take effect in 60 days.