

THE GENERAL ASSEMBLY OF PENNSYLVANIA

**SENATE BILL**

**No. 1125** Session of  
2007

INTRODUCED BY ORIE, SCARNATI, PILEGGI, PUNT, FONTANA, COSTA,  
RAFFERTY, LOGAN, ROBBINS, MUSTO, ERICKSON, BAKER, GREENLEAF,  
ARMSTRONG, CORMAN, KITCHEN, DINNIMAN, WAUGH, PIPPY, STACK AND  
BROWNE, OCTOBER 25, 2007

REFERRED TO JUDICIARY, OCTOBER 25, 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  
15 obtained prior consent to the use by the soldier or by the  
16 soldier's spouse, immediate family member, trustee if the  
17 soldier is a minor or legally designated representative, commits  
18 a misdemeanor of the first degree.

1 (b) Exceptions.--Subsection (a) does not apply to the  
2 following:

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

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

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

17 (4) Any promotional materials, advertisements or  
18 commercial announcements for a use described in paragraph  
19 (1), (2) or (3).

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

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

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

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

7           Section 2. Title 42 is amended by adding a section to read:

8           § 8316.1. Unauthorized use of name, portrait or picture of  
9           soldier.

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

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

20                (1) Advertising for the sale of any goods, wares or  
21                merchandise.

22                (2) Soliciting patronage for any business.

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

25          (c) Remedies.--A person who uses the name, portrait or  
26          picture of a soldier for a prohibited purpose without prior  
27          consent from the soldier or a person who may enforce the  
28          soldier's rights and remedies is subject to the following:

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

1           (2) Compensatory and punitive or exemplary damages.

2           (3) Attorney fees and costs.

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

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

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

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

16           (1) The soldier's legally designated representative.

17           (2) The soldier's spouse.

18           (3) The soldier's parents.

19           (4) The soldier's children.

20           (5) The soldier's grandchildren.

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

23           (1) The use of a soldier's name, portrait or picture in  
24 an attempt to portray, describe or impersonate that soldier  
25 in a live performance, a single and original work of fine  
26 art, a play, book, article, musical work or film or on radio,  
27 television or other audio or audiovisual work if the  
28 performance, musical work, play, book, article or film does  
29 not itself constitute a commercial advertisement for any  
30 goods, wares or merchandise.

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

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

7           (4) Any promotional materials, advertisements or  
8 commercial announcements for a use described in paragraph  
9 (1), (2) or (3).

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

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

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

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

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