

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

SENATOR GREENLEAF, JUDICIARY, AS AMENDED, NOVEMBER 20, 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~~ IS continued by the professional photographer after <—
26 written notice objecting to the exhibition by the ~~portrayed~~ <—
27 ~~soldier 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 ←
16 written notice objecting to the exhibition by the portrayed
17 soldier 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.