

HOUSE Substitute for SENATE BILL No. 244

AN ACT concerning the Kansas funeral privacy act; amending K.S.A. 21-4015 and 60-2102 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 21-4015 is hereby amended to read as follows: 21-4015. (a) This section shall be known and may be cited as the Kansas funeral ~~picketing~~ *privacy act*.

(b) The legislature finds that:

~~(1) It is generally recognized that families have a substantial interest in organizing and attending funerals for deceased relatives; and~~

~~(2) the interests of families in privately and peacefully mourning the loss of deceased relatives are violated when funerals are targeted for picketing and other public demonstrations; and~~

~~(3) picketing of funerals causes emotional disturbance and distress to grieving families who participate in funerals; and~~

(1) *Family members have a personal stake in honoring and mourning their dead and objecting to unwarranted public exploitation that, by intruding upon their own grief, tends to degrade the rites and respect they seek to accord to the deceased person who was once their own.*

(2) *The state has a substantial interest in protecting the legitimacy of funerals and ensuring freedom from disturbance.*

(3) *Due to the nature of funerals, the funeral attendees constitute a captive audience.*

(4) Full opportunity exists under the terms and provisions of this section for the exercise of freedom of speech and other constitutional rights at times other than within one hour prior to, ~~during and two hours following the commencement of funerals~~ *the scheduled commencement of a funeral, during a funeral, or within two hours following the completion of a funeral.*

(c) The purposes of this section are to:

(1) Protect the privacy of grieving families ~~within one hour prior to, during and two hours following the commencement of funerals; and~~

(2) preserve the ~~peaceful character of cemeteries, mortuaries and churches within one hour prior to, during and two hours following the commencement of~~ *substantial privacy interest in funerals.*

(d) As used in this section:

(1) "Funeral" means the ceremonies, processions and memorial services held in connection with the burial or cremation of ~~the dead~~ *a person.*

(2) "Picketing" means ~~protest activities engaged in by a person or persons stationed before or about a cemetery, mortuary or church within one hour prior to, during and two hours following the commencement of a funeral.~~ *"Public demonstration" means:*

(A) *any picketing or similar conduct, or*

(B) *any oration, speech, use of sound amplification equipment or device, or similar conduct that is not part of a funeral.*

(e) It is unlawful for any person to:

(1) Engage in ~~picketing before or about~~ *a public demonstration at any public location within 150 feet of any entrance to any cemetery, church or mortuary or other location where a funeral is held or conducted, within one hour prior to, during and two hours following the commencement of a funeral* *the scheduled commencement of a funeral, during a funeral or within two hours following the completion of a funeral;*

(2) *knowingly obstruct, hinder, impede or block another person's entry to or exit from a funeral; or*

(3) *knowingly impede vehicles which are part of a funeral procession.*

(f) A violation of subsection (e) is a class B person misdemeanor. Each day on which a violation of subsection (e) occurs shall constitute a separate offense.

(g) Notwithstanding the penalties provided in subsection (f), any district court may enjoin conduct proscribed by this section and may in any such proceeding award damages, including punitive damages, attorney fees or other appropriate relief against the persons found guilty of actions made unlawful by subsection (e).

(h) If any provision of this section or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this section which can be given effect without the invalid provisions or application. To this end the provisions of this section are severable.

(i) *Amendments by this act to this section shall be applicable on and after whichever of the following dates is applicable:*

(1) *If the action authorized by section 3, and amendments thereto, is decided in Kansas state court, amendments by this act to this section shall be applicable from and after the date the Kansas supreme court upholds the constitutionality thereof.*

(2) *If the action authorized by section 3, and amendments thereto, is decided in federal court, amendments by this act to this section shall be applicable from and after the date of the judgment of the court upholding the constitutionality thereof.*

New Sec. 2. (a) Notwithstanding the provisions of K.S.A. 60-1802, and amendments thereto, if an act of libel or slander is committed at a funeral and the person defamed is the deceased at such funeral or any living relative of the deceased, an action for libel or slander brought by the estate of such deceased person on behalf of such deceased person or by or on behalf of any living relative of such deceased person may be sustained if brought within one year after such funeral.

New Sec. 3. In accordance with K.S.A. 75-702, and amendments thereto, the attorney general shall seek judicial determination of the constitutionality of K.S.A. 21-4015, as amended by section 1, and amendments thereto. If the action authorized by this section is brought in a district court of this state, then the judgment of that district court shall be appealed directly to the Kansas supreme court as a matter of right.

Sec. 4. K.S.A. 60-2102 is hereby amended to read as follows: 60-2102. (a) ~~As~~ *Appeal to court of appeals as matter of right.* Except for any order or final decision of a district magistrate judge, the appellate jurisdiction of the court of appeals may be invoked by appeal as a matter of right from:

(1) An order that discharges, vacates or modifies a provisional remedy.

(2) An order that grants, continues, modifies, refuses or dissolves an injunction, or an order that grants or refuses relief in the form of mandamus, quo warranto or habeas corpus.

(3) An order that appoints a receiver or refuses to wind up a receivership or to take steps to accomplish the purposes thereof, such as directing sales or other disposal of property, or an order involving the tax or revenue laws, the title to real estate, the constitution of this state or the constitution, laws or treaties of the United States.

(4) A final decision in any action, except in an action where a direct appeal to the supreme court is required by law. In any appeal or cross appeal from a final decision, any act or ruling from the beginning of the proceedings shall be reviewable.

(b) *Appeal to supreme court as matter of right.* The appellate jurisdiction of the supreme court may be invoked by appeal as a matter of right from: (1) A preliminary or final decision in which a statute of this state has been held unconstitutional as a violation of Article 6 of the Kansas constitution pursuant to K.S.A. 2006 Supp. 72-64b03, and amendments thereto. Any appeal filed pursuant to this ~~subsection~~ *paragraph* shall be filed within 30 days of the date the preliminary or final decision is filed; or

(2) *a preliminary or final decision in an action brought pursuant to section 3, and amendments thereto. Any appeal filed pursuant to this paragraph shall be filed within 30 days of the date the preliminary or final decision is filed.*

(c) *Other appeals.* When a district judge, in making in a civil action an order not otherwise appealable under this section, is of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, the judge shall so state in writing in such order. The court of appeals may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within 10 days after the entry of the order under such terms and conditions as the supreme court fixes by rule. Application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or an appellate court or a judge thereof so orders.

Sec. 5. K.S.A. 21-4015 and 60-2102 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE concurred in
HOUSE amendments _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.