

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND TOURISM

The meeting was called to order by Chairman Ben Vidricksen at 9:05 a.m. on February 17, 1998 in Room 254-E of the Capitol.

All members were present except:

Committee staff present: Hank Avila, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
Marian Holeman, Committee Secretary

Conferees appearing before the committee: Pam Scott, Ks Funeral Director & Embalmers Assn.
Mike Turnball, Chair, Legislative Affairs
Steve Dickerson, KS Trial Lawyers Assn.
Don Moler, KS League of Municipalities

Others attending: See attached list

SB 577: Regulation of funeral processions, lights, liability.

Bruce Kinzie, Revisor of Statutes, explained the bill provides for a purple flashing light on the lead vehicle in a procession, for law enforcement escorts to use current lights, for funeral processions to have right-of-way in going through intersections. The big change is in Section 5, page 2, which exempts funeral directors - establishments from liability in certain circumstances.

Pam Scott, Executive Director, Kansas Funeral Directors and Embalmers Association, appeared in support of SB 577. She explained the history and current conditions which prompted introduction of the bill (Attachment 1). Mike Turnball, owner of Roberts-Blue-Barnett Funeral Home in Emporia and Chairman of the Association's Legislative Affairs Committee provided additional information on the need for this bill (Attachment 2). He advised they are attempting to provide some uniformity for processions throughout the state. Questions about the liability areas of the bill were raised, especially regarding "reasonable care" and the apparent total immunity being provided certain people.

Steve Dickerson, Officer of the Kansas Trial Lawyers Association spoke in opposition to New Section 5(b) of SB 557 - relating to presumed due care. He pointed out this proposed a radical change to prevailing law and recommended striking all of New Section 5 (Attachment 3). He opined that the comparative negligence laws already in place should adequately deal with the liability issue. He also felt that perhaps law enforcement should speak to the "lights" issue. They do not oppose a narrow focused bill which would grant the right-of-way to funeral processions, but this bill does much more than that.

Don Moler, General Counsel, League of Kansas Municipalities, advised that although they reviewed this bill prior to its introduction the League could not reach any common ground. They have trouble with several section of the bill, but especially the preemption of local traffic regulations (Attachment 4). They do not believe this law is necessary and requested that it be not passed.

Discussed several issues related to the bill; i.e., escorts, lights, pedestrian right of way, emergency vehicle right of way, total immunity to liability, etc. Members were told of current litigation involving an accident that occurred during a funeral procession.

The Committee will return to this bill as soon as it can be rescheduled. SB-167 will also be rescheduled

Approval of minutes.

Senator Jordan moved to approve the minutes of January 29, 1998. Senator Gilstrap seconded the motion. Motion carried

The meeting adjourned at 10:00 a.m.

The next meeting is scheduled for February 23, 1998.

SENATE TRANSPORTATION AND TOURISM
COMMITTEE GUEST LIST

DATE: FEBRUARY 17, 1998

NAME	REPRESENTING
Pam Scott	Ks Funeral Directors Assn
Mark Purnell	KFDA
Jud Holroyd	Renual-Galul
Mark Smith	Kansas State Board of Mortuary Arts
Amy LIGNITZ	AP.
Tom Elliott	Elliott Mortuary, Hutchinson
Sheresa Sindenauer	KFDA
MARK BRUCE	KHP
JOHN EICHKORN	KHP
Jon Smith	Ks Bar Assn
Tom Whisaker	Ks Motor Carriers Assn
Don Moler	League of Ks Mun-
Gene Johnson	Ks. AS. AA. Coord. Assn
Mike Taylor	City of Wichita
Rd Meg	Senat
Norman Mann	ABATE of Ks Inc.
Ron Eisenbath	KADACA
Bill Stuckemst	KADACA
Gary Carter	KDOR



KANSAS FUNERAL DIRECTORS AND EMBALMERS ASSOCIATION, INC.

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Phone (913) 232-7789 • FAX (913) 232-7791

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SHIRLEY BROWN
Gardner

Date: February 17, 1998
To: Senate Committee on Transportation and Tourism
From: Pam Scott, Executive Director
Kansas Funeral Directors and Embalmers Association
Re: Senate Bill No. 557
Funeral Procession Law

Chairman Vidricksen and members of the Committee, I am Pam Scott, Executive Director of the Kansas Funeral Directors and Embalmers Association (KFDA). I appear before you today to urge your support of Senate Bill No. 557.

Kansas has no comprehensive law governing funeral processions. Rules concerning funeral processions are currently established on county-by-county or city-by-city basis, if they exist at all. Determining that a need existed for a comprehensive state law governing funeral processions, the KFDA reviewed the funeral procession laws of several states before deciding to recommend the law contained in Senate Bill No. 557 which is patterned after a recently passed Florida Funeral Procession Law. In Florida, the bill was referred to as the "Final Ride Bill" and was passed by the Florida House of Representatives on a vote of 112-1 and the Senate by a vote of 37-0. The only difference between the Florida law and the provisions of Senate Bill No. 557 is that in Florida, amber lights were required whereas in this bill, purple lights would be required to be used by non-law enforcement vehicles. There is a growing trend across the country for purple lights to be used with funeral processions.

I have with me today Mike Turnbull, a funeral director and owner of Roberts-Blue-Barnett Funeral Home of Emporia, Kansas. Mr. Turnbull is Chairman of the KFDA's Legislative Committee. He will provide testimony in support of Senate Bill No. 557.

Once Mr. Turnbull's testimony is complete, we would be happy to respond to any questions you may have concerning Senate Bill No. 557.

"1897-1997"

*Senate Transp. & Tourism
2-17-98
Attachment # 1*



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605 STATE • BOX 175 • EMPORIA, KANSAS 66801

(316) 342-2134

Testimony before the
Senate Committee on Transportation and Tourism

February 17, 1998

Mr. Chairman and members of the Committee, I am Mike Turnbull owner of Roberts-Blue-Barnett Funeral Home in Emporia, Kansas. I am a Kansas licensed funeral director and embalmer. I am here to speak to you in support of Senate Bill No. 557.

Senate Bill No. 557 would place into law the time honored tradition of honoring funeral processions. A funeral procession is defined in the bill as "two or more vehicles accompanying the body of a deceased person, or traveling to the church, chapel, or other location at which the funeral service is to be held, in the daylight hours." Typically a funeral procession will consist of a hearse, family limousines and cars driven by mourners, in that particular order. The funeral procession, which generally transports a deceased to the place of final rest, provides family and friends with a quiet time to reflect. It also affords the community a way to show its condolences by stopping and honoring the procession as it passes by.

The funeral procession law as proposed in Senate Bill No. 557 would:

- Provide that a funeral procession does have the right-of-way when passing through intersections and that all vehicles must yield the right-of-way to the funeral processions regardless of traffic control devices.
- Authorize the use of purple flashing lights by non-law enforcement funeral escort vehicles to be used when escorting a funeral procession.
- Provides that all vehicles comprising a funeral procession shall follow the proceeding vehicle in the funeral procession as closely as is practical and safe.
- Require the use of headlights for each vehicle in the procession and allow for the use of flashing hazard lights.
- Provide that liability for any death, personal injury or property damage suffered by any person in a funeral procession shall not be imposed upon the funeral director or funeral

*Senate Transp. & Tourism
2-17-98
Attachment # 2*

establishment or their employees or agents unless proximately caused by the negligent or intentional act of the funeral director or funeral establishment.

-Provides that a funeral director, funeral establishment, funeral escort or other participant that leads, organizes or participates in a funeral procession in accordance with the act shall be presumed to have acted with reasonable care.

-Provides that except for a grossly negligent or intentional act by a funeral director or funeral establishment, there shall be no liability on the part of a funeral director or funeral establishment for failing to use reasonable care in the planning or selection of the route to be followed in a funeral procession.

Funeral processions have been conducted as a matter of tradition for over 100 years. In the 1800's an undertaker was either a cabinet maker, a furniture dealer, a good carpenter, or a livery man who had wagons to take the "coffin" to the cemetery. In the 1800's family and friends followed the wagon or horse drawn hearse to the cemetery. People would stop to pay respect along the way. The horse drawn hearse has today been replaced by a hearse which is a motor vehicle, but family and friends still follow the vehicle carrying the body to its final place of rest. Cars rather than horses and horse drawn carriages stop along the road and at intersections to pay their respect and allow the family an uninterrupted, peaceful, reflective trip to the cemetery. Funeral processions also serve another purpose, preventing out-of-town mourners from getting lost on the way to the cemetery. This allows the graveside service to start without delay so that the grieving family will not have to wait while others find their way to the cemetery.

Although the time honored tradition of funeral processions remains, the safety of those escorting and participating in funeral processions has become less certain. Today's drivers are less cautious, less respectful, and more erratic. People have grown impatient in these hectic times and are less apt to stop and show respect for funeral processions, especially with no law in place requiring them to do so. Senate Bill No. 557 will place into law a requirement that motorists must stop and yield the right-of-way for funeral processions.

The law will also enable drivers to become better educated as to what they should do when a funeral procession approaches. The few rules that do exist concerning funeral processions are contained in city or county ordinances which drivers are often unaware of. There is no education provided to drivers. With a statewide law in place, education could be conducted through the State of Kansas Drivers Handbook that is given to drivers upon the renewal of their driver's licenses.

Also, there currently is no consistency as to what the rules are concerning funeral processions from one community to the next. This makes compliance difficult for out-of-town drivers. Senate Bill No. 557 will offer a uniform law across the state that the public and funeral homes can follow.

For funeral processions to continue to exist, the liability issue surrounding funeral processions must also be addressed. Senate Bill No. 557 has a section that speaks to the liability of the funeral director or funeral home when leading, organizing or participating in a funeral procession. Section 5(a) provides that liability for death, personal injury, or property damage suffered by any person in a funeral procession shall not be imposed upon the funeral director or funeral establishment or their employees or agents unless it is proximately caused by their negligent actions. Section 5, in subsection (b) goes on to provide that a funeral director, funeral home, funeral escort, or other participant that leads, organizes or participates in a funeral procession in accordance with the act will be presumed to have acted with reasonable care.

For funeral homes to continue to put themselves at risk of liability by offering funeral processions to the families they serve, they will need to have some degree of comfort that they will not be held liable for the actions of others for which they have no control. By enacting this statute, the State of Kansas is establishing rules and procedures by which funeral processions are to be conducted. Funeral directors must be able to rely on this law when leading or organizing a procession. It should be presumed that the funeral director and funeral home acted with reasonable care if the funeral procession was operated according to law. If a participant in the procession does not have its headlights lighted or does not follow the proceeding vehicle in the procession as closely as is practical or safe and an accident occurs, the funeral director should not be held responsible for the actions of that person. The funeral director or funeral home should be liable only if their own actions were the proximate cause of the accident, not if a participant's actions proximately caused the accident. The negligence of a participant in the procession should not be imputed on the funeral director or funeral home.

Last year in Kansas there was a fatality accident involving a funeral procession. A man participating in a funeral procession was killed when his car was hit by another car at an intersection. The man killed was at the rear of the procession. Although it is alleged that the man killed in the accident was not keeping up with the vehicle in front of him in the procession, the woman who hit him apparently admits that she noticed the funeral procession but after reaching for a drink proceeded through the intersection hitting the deceased's car. She did have a green light at the intersection. The funeral home is now being sued by the woman even though its action did not proximately cause the

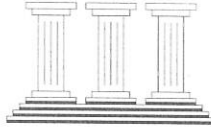
accident. The woman's attorney is attempting to attribute the actions of the participant to the funeral home because it led and organized the funeral procession. The funeral director who owns the funeral home is now facing the question of whether he will continue to carry the potential liability or will he discontinue offering funeral processions to the families he serves.

The Kansas Trial Lawyers Association has advised the Kansas Funeral Directors Association that they oppose Section 5 of the bill concerning liability. We would be willing to work with them to find language that might be acceptable to them however the membership of the KFDDA is not willing to remove the liability portion of the bill in its entirety.

In conclusion, for the tradition of funeral processions to continue for the next 100 years as they have for the past 100 years, it is imperative that we have a law in place setting forth how funeral processions are to be conducted. We must also have a law that will provide some degree of assurance to funeral homes that they will not be unreasonably held responsible for the actions of others especially when the funeral procession is conducted in the manner prescribed by law.

It has been said that to have reverence for the dead is to manifest an attitude and practice of sharing respect and honor to the dead in both thought and action. I hope you will allow funeral processions to continue as a practice of respecting and honoring the dead by supporting Senate Bill No. 557.

Thank you for the opportunity to address the committee. I would be happy to answer any question.



KANSAS TRIAL LAWYERS ASSOCIATION

Lawyers Representing Consumers

Testimony before the Senate Transportation and Tourism Committee
February 17, 1998

Mr. Chairman and Members of the Committee, I am Steve Dickerson from Kansas City appearing on behalf of the Kansas Trial Lawyers Association in opposition to Senate Bill 557.

The Kansas Trial Lawyers Association does not see a problem with the portion of the bill that narrowly speaks to the right-of-way issue. However we strongly oppose New Section 5(b) which creates a presumption that the funeral director, funeral establishment, funeral escort or other participant that leads, or organizes or participates in a funeral procession acted with reasonable care. Such a presumption is rare in the law and for good reason. While negligence is never presumed but must be proven, it does not follow that due care is presumed. In fact, under long standing Kansas rule a jury is never instructed to presume that a party acted with due care. See PIK 3d 102.71. The jury or fact finders should have the full opportunity to hear the facts and an explanation of right-of-way law, and determine liability unencumbered by any presumption.

KTLA also opposes New Section 5(c) which insulates a wrongdoer from liability except for a grossly negligent or intentional act. Everyone, whether a doctor, lawyer, product manufacturer, premises owner, driver, etc., should be accountable for their acts of ordinary negligence. Senate Bill 557 proposes a radical change to prevailing law to the extent it immunizes liability for ordinary negligence.

Finally we recommend that you strike all of New Section 5 from the bill.

Thank you for your attention to our concerns.

*Senate Transp. + Tourism
2-17-98
Attachment #3*

Terry Humphrey, Executive Director

3-1



League of
Kansas
Municipalities

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TESTIMONY

TO: Senate Transportation and Tourism Committee
FROM: Don Moler, General Counsel
DATE: February 17, 1998
RE: Opposition to SB 557

First I would like to thank the Committee for allowing the League to testify today in opposition to SB 557. We do appreciate the fact that the Kansas Funeral Directors and Embalmers Association gave us a copy of the proposed bill prior to the legislative session and allowed us to review it. Unfortunately, we were unable to reach any common ground and that is why the League appears today in opposition to this legislation.

First of all, it is unclear to the League that there is need for a uniform funeral procession law and do not believe that it will add to the safety of the public. We are further troubled by the fact that for all of its good intentions it appears to preempt local regulation in the area of traffic safety. Apparently, whenever there is a funeral procession all local ordinances and traffic regulations are to be suspended and the funeral procession law will take precedence over all of them.

It is especially troubling in that at its core, this bill preempts local regulation of traffic whenever there is a funeral procession and absolves all funeral directors of liability if they place a purple light on the roof of their hearse. It does not require and may in fact prohibit any local requirement that funeral escort vehicles be provided by the funeral director. Given the uniform nature of this enactment it is altogether possible that an argument can be made that no local ordinances may be passed which place further or greater requirements on a funeral director or funeral procession. Traditionally, and in current statute and local ordinance, pedestrians have the right-of-way in marked crosswalks. (K.S.A. 8-1533). Section 3 of this legislation would change that and would give funeral processions absolute rights above and beyond that of most other motor vehicle or pedestrian traffic.

It should also be noted that this legislation this would appear to conflict with Sections 119 and 120 of the Standard Traffic Ordinance for Kansas Cities. Section 119 requires that no funeral procession or a parade of persons or vehicles shall occupy, march or proceed along any highway unless the chief of police has been notified by the person in charge and the chief has made provision for such purpose together with a police escort if deemed necessary. Section 120 makes it unlawful for the driver of any vehicle to drive between the vehicles comprising a funeral or other authorized procession while they are in motion, provided that the vehicles are conspicuously so designated. The section does not apply to intersections where traffic is controlled by traffic control devices or police officers.

*Senate Transp. & Tourism
2-17-98
Attachment #4*

For the above mentioned reasons, the League raises what we believe to be serious questions concerning this legislation. We believe that those sections of the legislation which preempt local regulation should be stricken from the bill and we would question at its root whether a state statute designating how funeral processions are to be conducted is, in fact, necessary as a matter of public policy matter.

We would like to thank the Committee for allowing us to appear today and we would be happy to answer any questions the Committee may have.