

## MINUTES OF THE SENATE TRANSPORTATION &amp; TOURISM COMMITTEE.

The meeting was called to order by Chairperson Senator Ben Vidricksen at 9:05 a.m. on January 28, 1999 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 F. Holeman, Committee Secretary

Conferees appearing before the committee: Senator Stan Clark  
Kenneth McNeal, ABATE  
Pam Scott, KS Funeral Directors  
Mike Turnball, KS Funeral Directors  
Don Moler, League of Municipalities

Others attending: See attached list

**Introduction of bill(s)**

Former Governor Mike Hayden asked this committee to introduce a bill naming a portion of Highway 254 the Senator Bill Morris Memorial Highway. Senator Huelskamp moved to introduce the bill. Senator Tyson seconded the motion. Motion carried.

**SCR 1608: A Resolution urging the U. S. Congress to repeal social security requirements on driver's license**

Senator Stan Clark provided testimony in support of **SCR-1608 (Attachment 1)**. It was pointed out that **SCR-1603** (p.14 of attachment), addresses some of the same issues. Members discussed the impact of Social Security number usages. Also considered the possibility of combining **SCR-1608** and **SCR-1603**. Kenneth McNeil, ABATE, also spoke in support of **SCR-1608**. Committee Chairman Vidricksen appointed a sub-committee composed Senators Nick Jordan, Mark Gilstrap and Harry Stephens to consider **SCR-1608** in accordance with this discussion and report back to the Committee.

**SB 66: Regulation of funeral processions**

Pam Scott, Executive Director, Kansas Funeral Directors and Embalmers Association, Inc. appeared before the committee seeking support for a new bill regulating funeral processions. She advised they have worked with those organizations who opposed some of the provisions in last year's bill and believe everyone is satisfied with the present form (Attachment 2). Mike Turnbull, Chairman of the Kansas Funeral Directors and Embalmers Association's (KFDA) Legislative Committee also testified in support of the bill (Attachment 3) providing additional rationale regarding the need for this bill.

Don Moler, General Counsel, League of Kansas Municipalities ad raised some objections to provisions in this bill, especially regarding language which he felt was unclear as it relates to "failure to follow closely" (Attachment 4). This issue had not been presented to the bill requesters and they have not had an opportunity to address this concern. Committee Chairman Vidricksen asked that all interested parties meet to work out their differences on this bill and bring back to committee as soon as possible.

**Minutes - approval of**

Senator Nancey Harrington moved to approve minutes of the January 26, 1999 meeting. Senator Tyson seconded the motion. Motion carried.

The meeting adjourned at 10:05 a.m.

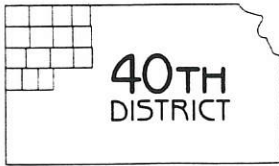
The next meeting is scheduled for February 1, 1999.

SENATE TRANSPORTATION & TOURISM COMMITTEE

GUEST LIST

DATE: JANUARY 28, 1999

NAME	REPRESENTING
Debby Hemming	Federico Consulting
Ken B. MENFILL	ABATE OF KS INC.
Norris Mann	ABATE OF KS
Stan Clark	Legislature
Pam Scott	Ks Funeral Directors Assn
Mack Smith	K.S. Mortuary Arts Bd
Ken Bahr	Economic Lifeline
Tom Whitaker	Ks Motor Carriers Assn.
Ross T. Hendrickson	Secretary of State's Office
Mike Taylor	City of Wichita
Venesa Sittenauer	KFDA
Dan Miley	Associated Press
Ken Hunkler	KTLA
Burt Indell	Legislature
Dick Bayman	KDOT
Mike Wendell	KFDA



**Stan Clark**

**COMMITTEE ASSIGNMENTS**

- VICE CHAIR UTILITIES
- COMPUTERS & TELECOMMUNICATIONS
- MEMBER AGRICULTURE
- FINANCIAL INSTITUTIONS & INSURANCE
- RULES & REGULATIONS

**Senate Transportation and Tourism Committee  
Senate Concurrent Resolution 1608  
January 28, 1999**

Chairman Ben and members of the committee-

Thank you for introducing and holding hearings on this important resolution.

The Social Security Act became law in 1935, and the Treasury Department was ordered to enforce it. A year later Treasury invented the Social Security Number; in 1962 the IRS began to require it; in 1970 all banks were required to obtain it; in 1977 food stamp applicants were required to give it and in 1982 all government loan recipients were required to relinquish it. Since 1935 nearly 40 congressionally authorized uses of the Social Security number have been passed, and not one of them has been for Social Security purposes.

We face a fundamental challenge to our system of self-government, one that has even more serious implications for the liberties of our children and grandchildren. Alexis de Tocqueville warned us 150 years ago when he warned of potential power that “covers the surface of society with a network of small complicated rules, minute and uniform... The will of man is not shattered, but softened, bent and guided; men are seldom forced by it to act, but they are constantly restrained from acting. Such a power does not destroy, but it prevents existence; it does not tyrannize, but it compresses, enervates, extinguishes and stupefies a people till each nation is reduced to nothing better than a flock of timid and industrious animals, of which the government is the shepherd. It would be like the authority of a parent if, like that authority, its object was to prepare men for manhood; but it seeks, on the contrary, to keep them in perpetual childhood.”

It really takes no intelligence whatsoever to break the law; anyone can do that. But to repeal these incremental spider webs that rob us of our mental

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SEN. TRANSPORTATION & TOURISM COMM.

January 28, 1999

ATTACHMENT #1

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and emotional humanity takes all the wit, skill and wisdom we can muster. We have no choice but to start restoring the individual freedoms that our forefathers fought and died for.

Section 656 of public law 104-208 relates to the federal take over of birth certificates, death certificates and drivers licenses (**see attachment 1**). The resolution before us today relates only to the drivers license provisions – section (b). Section (b) which starts on page 6 of the attachment requires either your Social Security number to be on the License or for each of us to submit our social security number when we apply for our driver's license and the state of Kansas would have to verify the number as valid with the Social Security Administration before they could issue the license. After October 1, 2000 we would need this license to:

- Board a plane
- Use any governmental service
- Be eligible for Medicare
- Conduct bank transactions

In other words, we would need an internal passport to do everyday things we take for granted.

This past summer the U.S. Department of Transportation issued the implementing regulations. In October the 3000 plus page Omnibus Appropriations Bill included Section 362 which prohibited the use of funds to implement this law in the current fiscal year (October 1998- September 1999). (**see attachment 2**)

Australia recently rejected a national ID after a lengthy debate, spurred along by a widely cited government memo that admitted, "It will be important to minimize any adverse public reaction to implementation of the system. One possibility would be to use a staged approach for implementation, whereby less sensitive data are held in the system initially with the facility to input additional data at a later stage when public acceptance may be forthcoming more readily."

The ghost of de Tocqueville haunts us. A "society with a network of small complicated rules, minute and uniform... The will of man is not shattered, but softened, bent and guided."

The citizens of Kansas want:

- minimal data collection,

- minimal linkages with other data collections and too often our Social Security number is that link
- the right to see and correct our records
- notice before our records are shared with others
- the right to know which data banks exist

Last session we changed the law relating to driver's license identification numbers. Formerly, you were asked what your Social Security number was and if you refused they gave you a generic "K" number. Now when citizens get their driver's license you are given a "K" number unless you sign an authorization asking that your social security number be your driver's license. (see **attachment 3**)

**Attachment 4** is a copy of SCR 1603 which was assigned to the Senate Federal and State Affairs Committee. Since both 1603 and 1608 address the same issue. I would ask that you compare the two and select the best parts of both. Personally, I would encourage you to add lines 23 through 26. Also, you might consider changing the phrase, "President of the Senate" to "the Majority and Minority leaders of the Senate" and I would add, "the Minority leader of the House after "the Speaker".

I ask you to pass this resolution to continue the path we started on last year. This won't be the last time we address privacy issues this session. My **attachment 5** is an article about South Carolina officials selling the digital photographs on our driver's license for an ID database. Robert Smith, publisher of the Privacy Journal, and NCSL's privacy expert witness who appeared before the Information Management Interim committee this summer is quoted in the article as: "It contributes to an atmosphere where people feel they are being watched. What you create is a mug file of law-abiding citizens." Revisors are reviewing Kansas Statutes and hopefully if legislation is needed it will be assigned to your committee.

Also yesterday I was asked by members of the executive branch of government for my reaction to a proposal to reveal the last 4 digits of our Social Security number to participate in a Constitutionally guaranteed right – the right to vote.





of Army, Navy, and Air Force shall be deemed the departments succeeding the Executive Departments of Army, Navy, and Air Force.''

This section was part of title IV of the Revised Statutes. The Act of July 26, 1947, ch. 343, Sec. 201(d), as added Aug. 10, 1949, ch. 412, Sec. 4, 63 Stat. 579 (former 5 U.S.C. 171-1), which provides ''Except to the extent inconsistent with the provisions of this Act (National Security Act of 1947), the provisions of title IV of the Revised Statutes as now or hereafter amended shall be applicable to the Department of Defense'' is omitted from this title but is not repealed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

#### IMPROVEMENTS IN IDENTIFICATION-RELATED DOCUMENTS

Pub. L. 104-208, div. C, title VI, Sec. 656, Sept. 30, 1996, 110 Stat. 3009-716, provided that:

''(a) Birth Certificates. -

''(1) Standards for acceptance by federal agencies. -

''(A) In general. -

''(i) General rule. - Subject to clause (ii), a Federal agency may not accept for any official purpose a certificate of birth, unless the certificate -

''(I) is a birth certificate (as defined in paragraph (3)); and

''(II) conforms to the standards set forth in the regulation promulgated under subparagraph (B).

''(ii) Applicability. - Clause (i) shall apply only to a certificate of birth issued after the day that is 3 years after the date of the promulgation of a final regulation under subparagraph (B). Clause (i) shall not be construed to prevent a Federal agency from accepting for official purposes any certificate of birth issued on or before such day.

''(B) Regulation. -



"(i) Consultation with government agencies. - The President shall select 1 or more Federal agencies to consult with State vital statistics offices, and with other appropriate Federal agencies designated by the President, for the purpose of developing appropriate standards for birth certificates that may be accepted for official purposes by Federal agencies, as provided in subparagraph (A).

"(ii) Selection of lead agency. - Of the Federal agencies selected under clause (i), the President shall select 1 agency to promulgate, upon the conclusion of the consultation conducted under such clause, a regulation establishing standards of the type described in such clause.

"(iii) Deadline. - The agency selected under clause (ii) shall promulgate a final regulation under such clause not later than the date that is 1 year after the date of the enactment of this Act (Sept. 30, 1996).

"(iv) Minimum requirements. - The standards established under this subparagraph -

"(I) at a minimum, shall require certification of the birth certificate by the State or local custodian of record that issued the certificate, and shall require the use of safety paper, the seal of the issuing custodian of record, and other features designed to limit tampering, counterfeiting, and photocopying, or otherwise duplicating, the birth certificate for fraudulent purposes;

"(II) may not require a single design to which birth certificates issued by all States must conform; and

"(III) shall accommodate the differences between the States in the manner and form in which birth records are stored and birth certificates are produced from such records.

"(2) Grants to states. -

"(A) Assistance in meeting federal standards. -

''(i) In general. - Beginning on the date a final regulation is promulgated under paragraph (1)(B), the Secretary of Health and Human Services, acting through the Director of the National Center for Health Statistics and after consulting with the head of any other agency designated by the President, shall make grants to States to assist them in issuing birth certificates that conform to the standards set forth in the regulation.

''(ii) Allocation of grants. - The Secretary shall provide grants to States under this subparagraph in proportion to the populations of the States applying to receive a grant and in an amount needed to provide a substantial incentive for States to issue birth certificates that conform to the standards described in clause (i).

''(B) Assistance in matching birth and death records. -

''(i) In general. - The Secretary of Health and Human Services, acting through the Director of the National Center for Health Statistics and after consulting with the head of any other agency designated by the President, shall make grants to States to assist them in developing the capability to match birth and death records, within each State and among the States, and to note the fact of death on the birth certificates of deceased persons. In developing the capability described in the preceding sentence, a State that receives a grant under this subparagraph shall focus first on individuals born after 1950.

''(ii) Allocation and amount of grants. - The Secretary shall provide grants to States under this subparagraph in proportion to the populations of the States applying to receive a grant and in an amount needed to provide a substantial incentive for States to develop the capability described in clause (i).

''(C) Demonstration projects. - The Secretary of Health and

Human Services, acting through the Director of the National Center for Health Statistics, shall make grants to States for a project in each of 5 States to demonstrate the feasibility of a system under which persons otherwise required to report the death of individuals to a State would be required to provide to the State's office of vital statistics sufficient information to establish the fact of death of every individual dying in the State within 24 hours of acquiring the information.

''(3) Birth certificate. - As used in this subsection, the term 'birth certificate' means a certificate of birth -

''(A) of -

''(i) an individual born in the United States; or

''(ii) an individual born abroad -

''(I) who is a citizen or national of the United States at birth;  
and

''(II) whose birth is registered in the United States; and

''(B) that -

''(i) is a copy, issued by a State or local authorized custodian of record, of an original certificate of birth issued by such custodian of record; or

''(ii) was issued by a State or local authorized custodian of record and was produced from birth records maintained by such custodian of record.

''(b) State-Issued Drivers Licenses and Comparable Identification Documents. -

''(1) Standards for acceptance by federal agencies. -

''(A) In general. - A Federal agency may not accept for any identification-related purpose a driver's license, or other comparable identification document, issued by a State, unless the license or document satisfies the following requirements:

''(i) Application process. - The application process for the license or document shall include the presentation of



''(2) Grants to states. - Beginning on the date final regulations are promulgated under paragraph (1), the Secretary of Transportation shall make grants to States to assist them in issuing driver's licenses and other comparable identification documents that satisfy the requirements under such paragraph.

''(3) Effective dates. -

''(A) In general. - Except as otherwise provided in this paragraph, this subsection shall take effect on the date of the enactment of this Act (Sept. 30, 1996).

''(B) Prohibition on federal agencies. - Subparagraphs (A) and (B) of paragraph (1) shall take effect beginning on October 1, 2000, but shall apply only to licenses or documents issued to an individual for the first time and to replacement or renewal licenses or documents issued according to State law.

''(c) Report. - Not later than 1 year after the date of the enactment of this Act (Sept. 30, 1996), the Secretary of Health and Human Services shall submit a report to the Congress on ways to reduce the fraudulent obtaining and the fraudulent use of birth certificates, including any such use to obtain a social security account number or a State or Federal document related to identification or immigration.

''(d) Federal Agency Defined. - For purposes of this section, the term 'Federal agency' means any of the following:

''(1) An Executive agency (as defined in section 105 of title 5, United States Code).

''(2) A military department (as defined in section 102 of such title).

''(3) An agency in the legislative branch of the Government of the United States.

''(4) An agency in the judicial branch of the Government of the United States.''

EQUAL OPPORTUNITY IN FEDERAL EMPLOYMENT

*1-11*

**From:** Mary Torrence <MaryT@rs01.wpo.state.ks.us>  
**To:** sclark@ink.org <sclark@ink.org>  
**Date:** Thursday, January 14, 1999 5:43 PM  
**Subject:** Summary of HR 4328

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The summary is attached. Section 362 deals with the social security number issue. A copy of the summary of that section is below.

(Sec. 362) Prohibits the use of funds appropriated under this Act to issue a final standard under docket number NHTSA 98-3945 (relating to certain requirements for State-issued drivers licenses and comparable identification documents under the Illegal Immigration Reform and Responsibility Act of 1996).

**STATE OF KANSAS**  
*Bill Graves, Governor*

**DEPARTMENT OF REVENUE**  
*John D. LaFaver, Secretary*

Kansas Department of Revenue  
915 SW Harrison St.  
Topeka, KS 66626-0001



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FAX (785) 296-0691  
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**Division of Vehicles**

**SSN Authorization**

**I authorize the State of Kansas, Driver License department to use my Social Security number as my Driver License/ID number.**

\_\_\_\_\_ DL Number

\_\_\_\_\_ Printed Name

\_\_\_\_\_ Date of Birth

\_\_\_\_\_ Signature

DE-98 (6/98)

1-13

## Senate Concurrent Resolution No. 1603

By Special Committee on Information Management

1-11

9 A CONCURRENT RESOLUTION urging Congress to pass the Free-  
10 dom and Privacy Restoration Act of 1998.

11  
12 WHEREAS, The Federal Illegal Immigration Reform and Immigra-  
13 tion Responsibility Act requires that state issued drivers' licenses and  
14 nondriver identification cards must contain the holder's social security  
15 number or that the state must verify with the Social Security Administra-  
16 tion the social security number of each applicant for a license or identi-  
17 fication card; and

18 WHEREAS, This requirement violates the rights protected by the  
19 Tenth Amendment to the Constitution of the United States and violates  
20 Section 7 of the Privacy Act of 1974 (P.L. 93-579); and

21 WHEREAS, The costs to the states to implement this requirement is  
22 an unfunded federal mandate; and

23 WHEREAS, This requirement of the Federal Illegal Immigration Re-  
24 form and Immigration Responsibility Act raises serious concerns regard-  
25 ing establishment of a system of national identification numbers and na-  
26 tional identification cards; and

27 WHEREAS, The Freedom and Privacy Restoration Act of 1998 would  
28 prohibit this grievous and onerous requirement: Now, therefore,

29 *Be it resolved by the Senate of the State of Kansas, the House of Rep-*  
30 *resentatives concurring therein:* That the Legislature of the State of  
31 Kansas strongly urges the Congress of the United States to enact the  
32 Freedom and Privacy Restoration Act of 1998; and

33 *Be it further resolved:* That the Secretary of State is directed to send  
34 enrolled copies of this resolution to each member of the Kansas Con-  
35 gressional Delegation.



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## Posing a Privacy Problem?

### Driver's-License Photos Used in Anti-Fraud Database

By Robert O'Harrow Jr.  
Washington Post Staff Writer  
Friday, January 22, 1999; Page A01

For the first time since authorities began snapping photographs of drivers for licenses, state officials have begun selling the images wholesale, another example of the growing availability of rich troves of personal information via modern technology.

In the past several months, South Carolina has released 3.5 million digital photographs, Florida has started the process of transferring 14 million images in its files and other states have expressed interest in doing the same.

The buyer is Image Data LLC, a small New Hampshire company that wants to build a national database of photos and personal information to help retailers prevent identity theft -- a fast-growing crime in which fraud artists use victims' personal information to run up bills in their names or empty their bank accounts.

Image Data's computers can flash the photo of person named on a credit card or a check to a small screen near a cash register when a transaction begins. Company officials say the service could head off billions of dollars in fraud by giving clerks an instant, tamper-proof way to verify the identity of customers.

The company's desire for the personal data contained in motor vehicle files is far from novel. Such records are routinely sold by many states and have become a computerized staple for direct marketers, information services and others in recent years.

But by adding photographs into the mix, Image Data has crossed into new territory, raising on the one hand the possibility of improved security for consumers and retailers and, on the other, new questions about personal privacy.

While it has long been customary or a legal requirement to restrict access to driver photos to law enforcement authorities, company officials pledged to handle their new storehouse of digital pictures carefully. "What we're looking for is security of the entire process," said Image Data spokeswoman Lorna Christie. "This is a great example of how technology can be used to protect citizens and business."

1-15  
1/22/00

The nascent service, already operating on a limited basis in South Carolina, is part of a growing number of surveillance and identification systems that take advantage of computers, electronic networks, personal information, video images, fingerprints and other identifying data, generally in the quest for security.

Law enforcement authorities, for example, now use computer-assisted cameras to "read" license plates of cars that have run through red lights. Casinos use such cameras to watch for faces of con artists or card sharps in their digital picture files, and police in Britain are trying them out in public areas to automatically scan for known criminal suspects.

Some automated teller machines now require users to offer a finger for scanning rather than a bank card to get access. And growing numbers of banks, including First Union, require some people to provide a thumbprint before cashing their checks.

Some critics worry that Image Data's plans will create a sense of unwanted surveillance for many people. Privacy activists fear that once photos are released by authorities in digital form, they will be used for other purposes by private detectives or telemarketers who want to match a face to other personal information.

"It contributes to an atmosphere where people feel they are being watched," said Robert Smith, publisher of the Privacy Journal. "What you create is a mug file of law-abiding citizens."

Consumer advocates complain that drivers in Florida and South Carolina were not asked permission for their images to be sold, even though those states had long restricted access to such photos.

Image Data bought the photographs for about a penny each. Those images will be cross-referenced to personal information gleaned from public and private sources. In addition to a name and address, the company's databases will hold an individual's Social Security number, age, sex, race and other details from a driver's file, as well as limited information about each transaction.

That database will come into play whenever a customer at a participating retailer attempts to use a credit card or check. Identifying data will be sent to Image Data computers, which will respond by sending a photo back to a small screen mounted discreetly near a cash register. The transaction will proceed only after a clerk verifies the customer's identity.

Christie said the new service has already deterred some fraud at stores in South Carolina, where a pilot program is being used to confirm the identities of people using checks. The program in Florida is scheduled to begin later this year. She said Image Data has taken pains to protect privacy, noting the company employs encryption and other secure technology to prevent clerks from capturing and preserving the images.

Christie said other personal information in the company's database will not accompany the photographs. In addition, she said, contracts with the states also prohibit the company from using the data for any purpose other than fraud prevention.

Officials in the District, Maryland and Virginia have no plans to sell driver photographs, and rules in all three jurisdictions restrict who can see the images.

Reaction to the idea has been mixed where it has become public. Florida state Rep. Tom Feeney, a Republican who sponsored the legislation making the sale of images possible, said the Image Data service will deter fraud and related crimes. "Once the word gets out to the criminal element, you'll probably have less wallets ripped off and purses stolen," Feeney said. "I think nine out of 10 people will think of that as a positive."

But officials in New Hampshire and Louisiana firmly rejected initial efforts by Image Data to acquire state data two years ago after expressing privacy concerns and complaining that photos taken for one purpose should not be used for another.

"The New Hampshire legislators said no to what we considered an unacceptable invasion of people's privacy," said state Rep. Neal Kurk, a Republican who said the opposition to True ID was bipartisan. "This is one step beyond information. It is the essence of who I am."

A Columbia, S.C., retailer, Bill Yancey, manager of the Belk Department Store, described identity fraud as "an ongoing problem" and said True ID "sounds like it has some merit" for helping. But he worries that customers, especially those loyal to the store, might be put off. His store is not among those testing the service. Image Data declined to provide names of retailers that are.

"All of the sudden seeing your photo flashing up there, as though you did something wrong? . . . I could see a negative reaction," Yancey said. "Although the idea has some merit for a retailer, I'm not sure it would go over."

The Florida Retail Federation also is keeping an open mind about the service. But spokeswoman Lori Elliott said some members worry it may be too expensive. Leaders of the group have just begun a campaign promoting the use of thumbprints on checks to help ward off fraud.

Others said few people in Florida and South Carolina have had a chance to object. In South Carolina, state officials approved the sale with little fanfare. In Florida, which previously had sharply restricted the use of driver photographs, legislation enabling the sale was approved after little debate.

Sandy Lambert, the director of Florida's division of driver licenses, said she didn't know about the change until after it was already approved. "It all happened right at the end of the session," Lambert

said.

Image Data's Christie acknowledged that neither the company nor the states have told drivers how their photographs would be collected and used. But she and state officials noted the arrangement is perfectly legal, even under the new federal Driver's Privacy Protection Act, which took effect last year.

That law, which has come under fire in federal courts as possibly unconstitutional, imposed new restrictions on the use of state driver records. Exemptions include anti-fraud initiatives and do not require the states to allow drivers to opt out.

Christie said concerned drivers can call the company and request that their photographs not be circulated to stores in the new network.

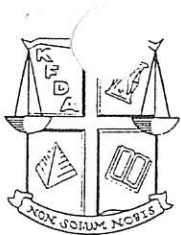
That's not good enough for Robert Biggerstaff of South Carolina. He's angry that no one asked if his driver's photograph could be used. Biggerstaff, a computer specialist and engineer, said such systems are often vulnerable to hackers. He believes it would take relatively little for someone to tamper with the system and begin downloading photographs at will. "If it shows up on a screen, I can capture it," he said. "Yes, there are definitely good things that could come out of [the service]. But why don't we do it with consent? Why don't we have a choice?"

Jim Hatchell, president of the South Carolina Merchants Association, saw a demonstration of the service and believes it will catch on in the state. "It's very impressive," he said, adding the screen showing the photographs is about the size of a business card.

As for privacy concerns, he doesn't think most people will care. "There'll be a few letters to the editor. There'll be a few calls to the radio shows, talking about Big Brother and all that," he said. "I don't think it will be a problem."

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# KANSAS FUNERAL DIRECTORS AND EMBALMERS ASSOCIATION, INC.

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## EXECUTIVE DIRECTOR

**PAM SCOTT**  
Topeka

Date: January 28, 1999  
To: Senate Committee on Transportation and Tourism  
From: Pam Scott, Executive Director  
Re: Senate Bill No. 66

Mr. Chairman and members of the Committee, I am Pam Scott, Executive Director of the Kansas Funeral Directors and Embalmers Association (KFDA). The KFDA would like to thank you for the opportunity to appear before you today in support of Senate Bill No. 66.

We appear before you again this year seeking passage of a funeral procession bill. The bill before you is similar to Senate Bill No. 557 introduced last year. We have incorporated into Senate Bill No. 66 the amendments added to last year's bill at the request of the Kansas Trial Lawyers Association. We have also added the amendments requested last session by the Kansas League of Municipalities. Also added is a provision which would allow the alternative use of amber in addition to purple lights.

Senate Bill No. 66 defines a funeral procession 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..." A funeral procession will typically consist of a hearse, family limousines, and cars driven by mourners.

The provisions of Senate Bill No. 66 will:

- 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 procession regardless of traffic control devices.
- Authorizes the use of purple or amber flashing lights by non-law enforcement funeral escort vehicles to be used when escorting a funeral procession. Last year, Senate Bill No. 557 only provided for the use of purple lights.
- Provide 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 which arises out of a funeral procession shall not be imposed upon the funeral director, funeral establishment, their employee or agent unless it results from their negligence or the intentional act or negligence of the funeral home, its employees, or

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agents. This language differs from that originally found in last year's bill. It was changed pursuant to a compromise reached with the Kansas Trial Lawyers Association last legislative session.

-Provide for a penalty of \$20 for failure to yield right-of-way to funeral processions and for failure to follow closely or have headlights on in a funeral procession.

-Provisions were also added to this years bill to reflect changes requested last session by the Kansas League of Municipalities. Language was added to New Section 3 which would require compliance with K.S.A. 8-1535 which requires a driver to "...exercise due care to avoid colliding with any pedestrian and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or obviously confused or incapacitated person." New Section 5 was also added which allows a city or county to require that prior notice of a procession be given to the police or sheriff's office. It also requires compliance with any other city or county traffic law not in conflict with this act.

We have attempted to eliminate all concerns raised by parties who opposed the bill last year. Compromises were reached last year, but they were reached too late in the session to save the bill.

Mr. Mike Turnbull, the KFDA Legislative Chairman, will also present testimony on behalf of the KFDA in support of Senate Bill No. 66.

After this testimony we would be happy to address any questions or concerns you may have. Your support of Senate Bill No. 66 would be greatly appreciated.



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## ROBERTS-BLUE-BARNETT FUNERAL HOME

J. MICHAEL TURNBULL

605 STATE • BOX 175 • EMPORIA, KANSAS 66801

(316) 342-2134

Testimony before the  
Senate Committee on Transportation and Tourism

January 28, 1999

Mr. Chairman and members of the Committee, I am Mike Turnbull, owner of Roberts-Blue-Barnett Funeral Home of Emporia, Kansas. I am a licensed Kansas funeral director and embalmer. I appear before you today, as Chairman of the Kansas Funeral Directors and Embalmers Association's (KFDA) Legislative Committee, in support of Senate Bill No. 66.

Kansas currently has no comprehensive law governing the time-honored tradition of honoring funeral processions. Rules concerning funeral processions, if they exist at all, are currently established on a county-by-county or city-by-city basis. Funeral homes in Kansas have become concerned about conducting funeral processions without a law setting forth the rules under which processions are to be conducted. The KFDA believes a funeral procession law would improve the safety of funeral processions by setting forth a clear set of rules that must be followed by funeral directors and the public. Such a law would also reduce the potential liability to funeral homes resulting from conducting funeral processions.

In drafting this piece of legislation, the KFDA reviewed the funeral procession laws of several states before deciding to recommend this legislation. Senate Bill No. 66 is patterned after a funeral procession law passed in Florida in 1997. The only differences between the Florida bill and Senate Bill No. 66 are the addition of purple lights and amendments added at the request of the Kansas Trial Lawyers Association and the Kansas League of Municipalities.

For as long as there has been death, people all over the world have shown their respect and reverence for the dead by honoring and showing courtesy to the funeral procession as it passes by. In the 1800's family and friends followed the wagon or horse drawn hearse carrying the coffin to the cemetery. People along the route would stop to pay their respects along the way. This tradition continues today. The horses and horse drawn carriages have been replaced by motor vehicles, but family and friends still follow the body to its final resting-place. People and automobiles, rather than horses and horse drawn carriages, still stop or pull over along the road to honor the deceased. The tradition continues even with the more hectic and impatient society we live in today. Importance is still given to honoring the dead and providing the family with a peaceful, uninterrupted, reflective trip to the cemetery. It also serves the purpose of assuring that out-of-town mourners don't get lost along the way to the cemetery so that the service can start without delay and the grieving family will not be kept waiting.

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The importance to the public of a funeral procession was never so evident than with the recent death of Princess Diana. The public demanded that they be afforded the opportunity to pay their last respects. Thousands waited as the funeral procession passed by.

While funeral processions continue to be an important tradition, the safety of those escorting and participating in funeral processions has become less certain. Drivers in today's rush-rush society are less patient, less cautious and less respectful. Drivers are less apt to stop and show respect for funeral processions especially with no law in force requiring them to do so. Senate Bill No. 66 would place into a law a requirement that the motorist must stop at intersections and yield the right-of-way to funeral processions. Many drivers who want to show respect are not sure what they are suppose to do when a funeral procession approaches because there currently are no clear guidelines in place. A law would allow the public to be better educated on what the rules of the road are concerning funeral processions. Provisions could be placed in the State of Kansas Drivers Handbook to educate the public. It would also provide consistency from one jurisdiction to another.

Funeral homes are presently facing the issue of whether to continue to offer funeral processions to the families they serve because of the threat of potential liability. Recently a lawsuit was filed against a funeral home in Kansas by an insurance company in a subrogation action to recover damages it had paid to a woman injured in an automobile accident involving a funeral procession. The woman's car was hit by a participant in a funeral procession who was not keeping up with the vehicle in front of him. The judge found no liability on the part of the funeral home but the filing of the case shows that the potential for lawsuits exists. New Section 6 of the bill would protect the funeral home from being held liable for the negligence of those participating in the funeral procession but would not absolve them from liability for their own negligence or for the negligence of their agents.

To have reverence for the dead is to manifest an attitude and practice of sharing respect and honor for the dead both in thought and action. We hope that you act to assure that the practice of respecting and honoring our dead through funeral processions be allowed to continue in a safe and responsible manner by supporting Senate Bill No. 66.

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





**League of  
Kansas  
Municipalities**

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**TESTIMONY**

**TO:** Senate Transportation and Tourism Committee  
**FROM:** Don Moler, General Counsel  
**DATE:** January 28, 1999  
**RE:** Comments on SB 66

First I would like to thank the Committee for allowing the League to testify today concerning SB 66. As you may recall, the League appeared last year concerning this legislation and it has returned for 1999 in a somewhat revised form.

Initially it is unclear to the League that there is need for a uniform funeral procession law and do not believe that the bill as written 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.

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 or amber light on the roof of their hearse. 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.

There appears to be an internal inconsistency in SB 66 in that "Failure to follow closely...in a funeral procession" is designated a traffic infraction by Section 8, but the bill continues to give the right-of-way at intersections to all vehicles in a funeral procession, whether they are following the law or not. Thus, a driver could be violating one aspect of the law, but still have the right to proceed through a signal-controlled intersection, regardless of the light. We believe this is a dangerous policy to follow, and would strongly urge the committee to fix this problem.

To summarize, the League suggests that the bill be amended to provide that if a car falls back from the funeral procession, it no longer has the right-of-way at controlled intersections, and the typical right-of-way rules must be observed. To take any other approach would seem to invite tragedy.

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

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