

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:30 a.m. on February 21, 2006 in Room 231-N of the Capitol.

All members were present.

Committee staff present:

Dennis Hodgins, Kansas Legislative Research Department
Mary Ann Torrence, Revisor of Statutes Office
Diana Lee, Revisor of Statutes Office
Connie Burns, Committee Secretary

Conferees appearing before the committee:

Senator Huelskamp
Joe Nold
Phillip Cosby
Joe Jenkins

Others attending:

See attached list.

SB 519 - Restricting sexually-oriented signs from state highways

Chairman Brungardt opened the hearing on **SB 519**.

Senator Huelskamp, spoke in support of the bill. (Attachment 1) The bill would regulate signage for sexually-oriented businesses and adult cabarets and prohibit signs or outdoor advertising from being located within one mile of any state highway.

Joe Nold, appeared in favor of the bill. (Attachment 2) The bill would regulate the size, height, and location of these signs which tend to be garish and obtrusive and could help regulate signage located outside the local governments' area of control.

Joe Jenkins, spoke in favor of the bill. (Attachment 3) Provided the committee with a Federal case that was heard in District Court of the Western District of Missouri, but has not been heard before the US Supreme Court; also the case has a three year moratorium that expires in 2007.

Phillip Cosby, appeared in support of the bill. (Attachment 4) He stated that Interstate highways are explicitly an integral part of the bill and offered community strategies and legal remedies to confront the growing epidemic in an effort to protect Kansas families.

Chairman Brungardt closed the hearing on **SB 519**.

Final Action:

SB 421 - Unlawful picketing or protest march at funeral or memorial service

Staff provided a balloon on the bill. (Attachment 5) The balloon defines funeral on line 39 page one, expands the location, and defines public forum, area where protestors or picketers may reside, and subsection 3 deals with the type of behavior.

Senator Reitz moved the balloon language without subsection 3. Senator Vratil seconded the motion. The motion carried.

Senator Vratil made the motion to move the bill out favorably as amended. Senator Reitz seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE Senate Federal and State Affairs Committee at 10:30 a.m. on February 21, 2006 in Room 231-N of the Capitol.

SB 533 - Separation of powers, study of

There was no interest to work this bill at this time.

SB 567 - Law enforcement training act revision; funding

The committee felt that this bill needs further study to look at the possibility of splitting out the funding source, policy decision, and capital improvement portion of the bill, and the Chairman will consult leadership on the possibility of an interim study or another committee to review.

The Chairman asked for any introductions.

Senator Brownlee requested an introduction of a Senate Concurrent Resolution, concerning funeral picketing. (Attachment 6)

Senator Wilson made the motion that the request should be introduced as a committee bill. Seconded by Senator Reitz. The motion carried.

Committee minutes for January 24, 25, 26, 31; February 1, 2, 7 and 8 distributed on February 14, 2006 were approved.

The meeting was adjourned at 11:30 am. The next scheduled meeting is March 1, 2006.

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STATE OF KANSAS

Senator Tim Huelskamp, Ph.D.

Committee Assignments

Elections & Local Government,
Chairman
Information Technology, Co-Chairman
Kansas Legislative Education &
Research, Past President
Agriculture
Medicaid Reform Task Force
Natural Resources
Natural Resources Legacy Alliance

Testimony by Senator Tim Huelskamp
Senate Federal & State Affairs Committee SB 519
Tuesday, February 20, 2006

A handwritten signature in black ink, appearing to read 'THU', written over the printed name and committee information.

Mr. Chairman and fellow committee members:

Thank you for the opportunity to visit with you about SB 519 – legislation directed at signage requirements for sexually-oriented businesses.

Much research has demonstrated the destructive impacts that these businesses have on property values and crime rates, and I will leave discussion of these impacts for later conferees.

Instead, I would like to discuss the impact of sexually-oriented businesses upon Kansas families. Together with my wife Angela, we work hard to protect our three children -- ages 4, 9 and 10 – from the negative influences of our society. We carefully monitor what they watch on television, listen to on the radio and read from books, magazines and the Internet.

While there once was a day that our family could travel down Kansas highways without our children being exposed to suggestive and sometimes lurid advertising – that day is no longer. Signs advertising sexually-oriented businesses – some of them sexually explicit – are able to continue to line Kansas highways.

Instead of leaving tender and private discussions to the times that a mother and father deem appropriate, exposure to these graphic billboards violates our family hopes and standards.

Please allow my family – and our many hoped-for tourists and visitors to this beautiful state – to drive Kansas highways free from the smut that pollutes so many other places in our society.

TESTIMONY OF JOE NOLD
BEFORE THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
IN SUPPORT OF SB 519, REGULATION SEXUALLY ORIENTED SIGNAGE
February 21, 2006

Chairman Brungardt and members of the Senate Federal and State Affairs Committee:

My name is Joe Nold. I live in rural Dickinson County, midway between the communities of Abilene and Solomon.

I serve the citizens of Dickinson County and the county's District 3 as a county commissioner. A sexually oriented business, The Lion's Den, is located in District 3.

Dickinson County has established zoning regulations intended to regulate sexually oriented business in our county. We have defended those regulations against challenges heard in Federal District Court in Kansas City. Dickinson County prevailed on summary judgment in a ruling handed down on December 1, 2005. We have resolved our decision to defend those SOB zoning regulations in the Federal Court of Appeals in Denver. The current and former boards of county commissioners have made their positions clear with respect to addressing the negative effects of sexually oriented businesses.

I am speaking in support of SB 519.

We want to attract new businesses, new residents and tourists to Dickinson County and its included communities. Our county has teamed up with the City of Abilene to support the renovation and expansion of Old Abilene Town, an attraction designed around our rich western heritage. We continue to build upon the presence of the Eisenhower Library and Museum, an attraction that displays the life and works of our county's premier citizen, hero of WWII, and the nation's former president. Our county government is working hand in hand with the communities in the county to effectively respond to the opportunities afforded by the expansion of Fort Riley. Further, we're positioning ourselves to respond to the action now being taken in Topeka to attract new businesses to Kansas and to fortify the performance of those businesses already in our state.

How disappointing it is, then, to have our county and county seat of Abilene benchmarked by huge 450 sq. ft. sexually oriented business billboards placed along Interstate 70. In our judgment, the magnitude and quantity of the existing SOB signage places the established negative effects of a sexually oriented business on an equal footing with our proud heritage, our most famous citizen and the positive makeup and direction of our county and its communities.

We could use SB 519's help in regulating the size, height, and location of these signs which tend to be garish and obtrusive. We could use 519's help in the regulation of sexually oriented business signage targeting our county and located outside our local governments' areas of control. The negative secondary effects of sexually oriented businesses have been documented time and again, and SB 519 is a step in the right direction to help communities address these negative secondary effects.

Given the action we've already taken, you can depend upon our participation and cooperation with the State of Kansas if SB 519 becomes law. We're confident that control of sexually oriented business signage will be just as important to other counties, municipalities and the state as it would be for Dickinson County.

We trust that our actions in developing and defending SOB zoning controls will benefit the other 104 Kansas counties and their communities in their efforts to regulate sexually oriented businesses and we solicit your support in that effort through the passage of SB 519.

Thank you for your time and attention.

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(2) "Semi-nudity", a state of dress in which opaque clothing fails to cover the genitals, anus, anal cleft or cleavage, pubic area, vulva, nipple and areola of the female breast below a horizontal line across the top of the areola at its highest point. Semi-nudity shall include the entire lower portion of the female breast, but shall not include any portion of the cleavage of the human female breast exhibited by wearing apparel provided the areola is not exposed in whole or part;

(3) "Sexually-oriented business", any business which offers its patrons goods of which a substantial portion are sexually-oriented materials. Any business where more than ten percent of display space is used for sexually-oriented materials shall be presumed to be a sexually-oriented business;

(4) "Sexually-oriented materials", any textual, pictorial, or three dimensional material that depicts nudity, sexual conduct, sexual excitement, or sadomasochistic abuse in a way which is patently offensive to the average person applying contemporary adult community standards with respect to what is suitable for minors.

2. No billboard or other exterior advertising sign, for an adult cabaret or sexually-oriented business shall be located within one mile of any state highway except if such business is located within one mile of a state highway then the business may display a maximum of two exterior signs on the premises of the business, consisting of one identification sign and one sign solely giving notice that the premises are off limits to minors. The identification sign shall be no more than forty square feet in size and shall include no more than the following information: name, street address, telephone number, and operating hours of the business.

3. Signs existing at the time of the effective date of this section, which did not conform to the requirements of this section, may be allowed to continue as a nonconforming use, but should be made to conform within three years from August 28, 2004.

4. Any owner of such a business who violates the provisions of this section shall be guilty of a class C misdemeanor. Each week a violation of this section continues to exist shall constitute a separate offense.

5. This section is designated to protect the following public policy interests of this state, including but not limited to: to mitigate the adverse secondary effects of sexually oriented businesses, to improve traffic safety, to limit harm to minors, and to reduce prostitution, crime, juvenile delinquency, deterioration in property values, and lethargy in neighborhood improvement efforts."

The plaintiffs are adult oriented businesses impacted by the statutes in question. Plaintiff Passions Video, Inc. is a sexually-oriented business and plaintiff Gala Entertainment of KC, Inc. is an adult cabaret as defined by § 226.531, RSMo 2000. Plaintiffs operate businesses located within one mile of a state highway and maintain signs advertising their business within one mile of a state highway. Plaintiffs argue first that the statutes in question impermissibly burden their First Amendment right to free speech.

A law that does not seek to ban the material within an adult business or the business altogether, but seeks to regulate the time, place and manner of an establishment doing business is content neutral and is permissible so long as there is a substantial governmental interest served by regulation focused on the adverse or negative effects secondary to adult businesses. *City of Renton v. Playtime Theatres*, 475 U.S. 41, 47 (1986), *Young v. American Mini Theaters*, 427 U.S. 50, 71-73 (1976). Such regulations must also be narrowly tailored to meet the governmental interest and leave open ample alternative channels for communication of the information. *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293 (1984). Furthermore, when speech is expression related solely to the economic interests of the speaker and its audience, it is considered commercial speech and the constitutional protection available turns on the nature of both the expression and of the governmental interests served by the regulation. *Central Hudson Gas & Electric Corp. v. Public Service Comm'n*, 447 U.S. 557, 563 (1980).

Section 226.531.2, RSMo 2000 relates to commercial speech as it regulates only billboards or other exterior advertising for an adult cabaret or sexually-oriented business.¹ In *Central Hudson*, the U.S. Supreme Court established a four-part test to determine when a statute or regulation violates a right to free commercial speech. The test is as follows: (1) the court must determine if the First Amendment protects the speech in question; (2) if the First Amendment does afford the speech protection, the court must determine whether the state's governmental interest is substantial; (3) if the first two elements are established, the court then must determine whether the statute or regulation directly advances the government's claimed interest; and (4) the court must determine whether the statute or regulation is more extensive than necessary. *Id.* at 566.

In order to be protected under the first prong of the *Central Hudson* test, plaintiffs' "speech" must concern lawful activity and it must not be misleading. *Georgia v. Café Erotica, Inc.*, 507 S.E.2d 732, 734 (Ga. 1998). The parties do not dispute that plaintiffs have met this test.

Under the second prong of the *Central Hudson* test, the court must consider whether Missouri's governmental interest is substantial. As set forth in § 226.531.5, RSMo 2000, the stated purpose of this legislation is to address the adverse secondary effects of sexually-oriented businesses, to improve traffic safety, to limit harm to minors, and to reduce prostitution, crime, juvenile delinquency, deterioration in property values, and lethargy in neighborhood improvement efforts.

¹Plaintiffs argue that § 226.531, RSMo 2000 also prohibits them from engaging in signs reflecting political speech. However, the plain language of the statute reflects that it poses no prohibition on political speech as long as there is not a commercial component to that speech.

A governmental entity is entitled to rely on the experience of other jurisdictions in determining the needs to be addressed in relation to adult businesses. New studies and independent evidence are not needed so long as the evidence relied upon is reasonably believed to be relevant to the problem sought to be addressed. *See City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41, 51-52 (1986). In this regard, in drafting, proposing, and passing Senate Bill 870, State Senator Matt Bartle relied upon the experiences of other jurisdictions, including New Jersey, Minnesota, California, and St. Louis, Missouri. The governmental interest and public policy issues set forth under § 226.531.5, RSMo 2000 are well established in case law of these jurisdictions. *See e.g., Hamilton Amusement Center v. Verniero*, 716 A.2d 1137 (N.J. 1998), *cert. denied* 119 S.Ct. 2365 (1999) (holding that there is a material consensus regarding the secondary effects of sexually oriented businesses which include that such businesses promote juvenile delinquency, contribute to an overall increase in crime, create an environment that leads to the general deterioration of neighborhoods, and lower property values); *Id.* at 1145; *Excalibur Group, Inc. v. City of Minneapolis*, 116 F.3d 1216 (8th Cir. 1997) (holding that as a matter of settled law, regulations aimed at minimizing the secondary effects of sexually oriented businesses serve a significant and substantial governmental interest and finding that studies considered and information gathered by the City of Minneapolis support the City's regulation of signs of such businesses in its effort to minimize secondary adverse impact); *Id.* at 1218, 1221; *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002) (finding that the City of Los Angeles was entitled to rely on a study showing that a concentration of adult businesses are associated with higher rates of prostitution, robbery, assaults, and thefts in surrounding communities); *Id.* at 430; *City of Ladue v. Gilleo*, 512 U.S. 43 (1994) (acknowledging that signs pose distinct problems such as obstructing views

and distracting motorists and government's interest in traffic safety and preventing visual clutter can justify regulation); *Id.* at 49. The experience of these jurisdictions is sufficient to establish that Missouri's governmental interest is substantial in relation to the regulations of § 226.531, RSMo 2000.

Under the third prong of *Central Hudson*, in order to constitutionally regulate commercial speech, the legislated restriction must "directly and materially advance the asserted governmental interest." *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 555 (2001). In order to prevail in establishing that § 226.531, RSMo 2000 directly advances the state's interest, the state must demonstrate that "the harms it recites are real and that its restrictions will in fact alleviate them to a material degree." *Id.*; see also *Greater New Orleans Broadcasting Assoc., Inc. v. United States*, 527 U.S. 173, 188 (1999).

By relying on the experience of other jurisdictions, Missouri has sufficiently demonstrated that the harm it seeks to address is real. Furthermore, law makers are entitled to apply common sense to determine that control of billboards can be an enhancement to traffic safety. *Metromedia*, 453 U.S. at 509. Subdued signage will be less of a distraction to drivers (particularly teenagers), and less of a nuisance for the curiosity of children. When traveling on a highway, motorists often do not have the choices of alternative routes to avoid exposure of them and their families to signs for adult businesses as might be available when motorists are traveling on city streets. *FCC v. Pacifica Foundation*, 438 U.S. 726, 749 (1978) ("government's interest in the 'well-being of its youth' . . . justified the regulation of otherwise protected expression."). If their exterior signage is diminished, sexually-oriented businesses will exert a less dehumanizing influence on children attending schools and persons attending functions in the vicinity or simply returning to their residences. Also, the subdued signage will likewise

lessen the impairment of the character and quality of residential neighborhoods, and diminish the diminution of property values. *See State v. Miller*, 416 A.2d 824-5 (N.J. 1980). Missouri's interests as claimed are advanced by the enactment of § 261.531, RSMo 2000.

The fourth prong of *Central Hudson* requires that the regulation not be more extensive than necessary. Narrow tailoring requires the restriction to “affect only that category of [business] shown to produce the unwanted secondary effects.” *St. Louis County v. B.A.P., Inc.*, 18 S.W.3d 397, 406 (Mo. E.D. 2000). A restriction is narrowly tailored “as long as the regulation promotes a substantial government interest, that absent the regulation, would be achieved less effectively, and the chosen means does not burden more speech than necessary to further that government interest.” *Id.* at 414. In *B.A.P., Inc.*, an operator of an adult business brought a First Amendment challenge to location restrictions on adult-oriented businesses set forth in county zoning and licensing ordinances. *Id.* at 401. St. Louis County prevailed because its interests preserving its quality of life was achieved more effectively with the ordinances. *Id.* at 414-5.

The more deferential standard of review applicable to statutes whose predominant purpose is the amelioration of secondary effects of sexually-oriented businesses means that the “narrowly tailored” requirement is satisfied so long as the law “promotes a substantial government interest that would be achieved less effectively absent the law;” in other words, “the cloth need not be cut quite so close” as it must be under the strict standard of review normally allotted to First Amendment cases. *Mitchell v. Comm'n on Adult Entertainment Est.*, 10 F.3d 123, 137 (3d Cir. 1993).

In *Georgia v. Café Erotica, Inc.*, 507 S.E.2d 732 (Ga. 1998), the Georgia Supreme Court struck down as unconstitutional a Georgia statute that prohibited off-premises outdoor advertising of

businesses where nudity is exhibited. The Georgia court struck down that law, in part, because it was not narrowly tailored enough to address the state's interest in improving traffic safety and upholding property values. *Id.* at 735. Georgia's statute prohibited "any outdoor advertising" including worded signs that advertised the location of the business. *Id.*

Section 226.531, RSMo 2000 is narrowly tailored. It only restricts adult business billboard advertisements within one mile of a state highway and it allows those businesses located within one mile of a state highway to utilize outdoor signage for identification purposes. Additionally, other channels of advertisement or communication are not limited and there is no limitation of the materials within the businesses. There is no unconstitutional infringement of plaintiffs' First Amendment rights.

In addition to their First Amendment argument, plaintiffs argue that the amortization provisions of § 226.531, RSMo 2000 violate their equal protection rights and are an unconstitutional taking of property rights without compensation.

The record reflects that plaintiffs do not own any billboard structures and there are no leasehold interests that will be impacted given the three year amortization period of § 226.531, RSMo 2000. Even though plaintiffs may have on-premise signs that could be impacted, plaintiffs' continued use of their property for their existing business is not prohibited. Furthermore, there is no evidence before the court as to any asserted property interest for which the state has refused compensation. There is no evidence to support an unconstitutional taking without compensation.

Plaintiffs argue that § 226.531, RSMo 2000 violates their equal protection rights because it "singles out" owners of adult cabarets and sexually-oriented businesses by prohibiting them from having billboards or other exterior advertising within one mile of a state highway based on the content of their

advertising. The Equal Protection Clause of the Fourteenth Amendment commands that no State shall “deny to any person within its jurisdiction the equal protection of the laws,” which is essentially a direction that all persons similarly situated should be treated alike. *City of Cleburne, Texas v. Cleburne Living Center*, 473 U.S. 432, 439 (1985) (quoting *Plyler v. Doe*, 457 U.S. 202, 216 (1982)). The general rule is that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest. *Id.* at 440 (citations omitted). When social or economic legislation is at issue, the Equal Protection Clause allows the States wide latitude. *Id.* As discussed previously herein, a law that does not seek to ban the material within an adult business or the business altogether, but seeks to regulate the time, place, and manner of an establishment doing business is content neutral and is permissible so long as there is a substantial governmental interest served by the regulation focused on the adverse or negative effects secondary to adult businesses. *City of Renton v. Playtime Theaters*, 475 U.S. at 47. Section 226.531, RSMo 2000 is a content-neutral time, manner and place regulation aimed at ameliorating the adverse secondary effects of sexually-oriented businesses. As discussed herein, ameliorating these adverse secondary effects is a legitimate state interest. The fact that § 226.531, RSMo 2000 treats signs of adult cabarets and sexually-oriented businesses “differently” than other businesses does not violate plaintiffs’ equal protection rights.

Plaintiffs also argue without any evidence or authority in support that because § 226.531.1(3), RSMo 2000 provides that “Any business where more than ten percent of display space is used for sexually-oriented materials shall be presumed to be sexually-oriented business” that the statutory language is not narrowly tailored because it could be applied to a number of establishments such as

TESTIMONY OF PHILLIP COSBY
BEFORE THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
IN SUPPORT OF SB 519, REGULATION SEXUALLY ORIENTED SIGNAGE
February 21, 2006

Chairman Brungardt and honorable members of the Senate Federal and State Affairs Committee, my name is Phillip Cosby of Abilene, Kansas. I am honored to have the privilege to speak to you in support of SB 519.

In the past two and one half years I have spoken to thousands of Kansans concerning the negative effects the sex industry imposes upon communities and individuals. I also present to the communities strategies and legal remedies to confront this growing epidemic in an effort to protect Kansas families.

Central to the issue of Sexually Oriented Businesses (S.O.B.s) are the deleterious effects of the Sex Industry on communities. For decades the courts consistently have upheld the right of communities to protect themselves from the proven “**negative secondary effects**” of the sex industry through the implementation of S.O.B. zoning ordinances.

The state wide S.O.B. billboard statute in Missouri was upheld on the very same compelling evidence of “Negative Secondary Effects”.

At this point I want to briefly go through the package of evidence I have provided you.

- **Criminal law concerning pornography / obscenity. Kansas Statute 21-4301**
- **Zoning Law and definitions Kansas Statute 12-770**
- **Negative Secondary Effects (Increased Crime, Increased STDs, Property Devaluation & General Blight)**
- **Progression of pornography addiction and descent into criminal behavior**
- **Congressional testimonies to pornography’s addictive nature.**
- **Political and popular support on both sides of the isle.**

In Summation:

* Concerning SB 519 verbiage, the only thing I would want clarified is that Interstate highways are explicitly an integral part of this bill, not just implied.

The documented and court upheld harms of “Negative Secondary Effects” **are not conjecture but real!**

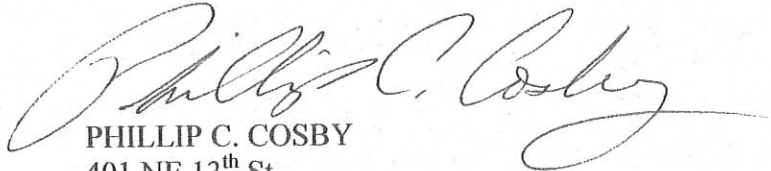
Real victims - Real crimes – A real quality of life issue and A real tax burden that concerns Kansas.

Your "Oath of Office" to uphold the Constitution includes:

"to provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity"...,

Mitigating the negative secondary effects of sexually oriented businesses through signage regulation in Kansas is **a compelling governmental interest.**

Thank you for your time and attention,



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KANSAS STATUTE 12-770

Chapter 12.--CITIES AND MUNICIPALITIES

Article 7.--PLANNING AND ZONING

12-770. Nonconforming uses; sexually oriented businesses; definitions. (a)

When used in this section:

(1) The words and phrases used in this section shall have the same meaning ascribed thereto by K.S.A. 12-742, and amendments thereto;

(2) "**adult arcade**" means any place to which the public is permitted or invited in which coin-operated, slug-operated or for any form of consideration, electronically, electrically or mechanically controlled still or motion picture machines, projectors, video or laser disc players or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of specified sexual activities or specified anatomical areas.

(3) "**adult bookstore**", "adult novelty store" or "adult video store" means a commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration any one or more of the following:

(A) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides or other visual representations which are characterized by the depiction or description of specified sexual activities or specified anatomical areas; or

(B) instruments, devices or paraphernalia which are designed for use in connection with specified sexual activities;

(4) "**adult cabaret**" means a nightclub, bar, restaurant or similar commercial establishment which regularly features:

(A) Persons who appear in a state of nudity or semi-nudity; or

(B) live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities; or

(C) films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas;

(5) "**adult motel**" means a hotel, motel or similar commercial establishment which:

(A) offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas and has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions; or

(B) offers a sleeping room for rent for a period of time that is less than 10 hours; or

(C) allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than 10 hours;

(6) "**adult motion picture theater**" means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are regularly shown which are characterized by the depiction or description of specified sexual activities or specified anatomical areas;

(7) "**adult theater**" means a theater, concert hall, auditorium or similar commercial establishment which regularly features persons who appear in a state of

nudity or semi-nudity, or live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities;

(8) **"escort"** means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person;

(9) **"escort agency"** means a person or business association who furnishes, offers to furnish or advertises to furnish escorts as one of its primary business purposes for a fee, tip or other consideration;

(10) **"nude model studio"** means any place where a person who appears semi-nude, in a state of nudity, or who displays specified anatomical areas and is provided to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay money or any form of consideration. Nude model studio shall not include a college, community college or university supported entirely or in part by public money; a private college or university which maintains and operates educational programs in which credits are transferable to a college, community college or university supported entirely, partly by public money or in a structure or private studio:

(A) That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing;

(B) where, in order to participate in a class, a student must enroll at least three days in advance of the class; and

(C) where no more than one nude or semi-nude model is on the premises at any one time;

(11) **"nudity"** or a **"state of nudity"** means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple or the showing of the covered male genitals in a discernibly turgid state.

(12) **"sexual encounter center"** means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

(A) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

(B) activities between either male and female persons or persons of the same sex, or both, when one or more of the persons is in a state of nudity or semi-nude;

(13) **"semi-nude"** or in a **"semi-nude condition"** means the showing of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. Such term shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit or other wearing apparel provided the areola is not exposed in whole or in part;

(14) **"sexually oriented business"** means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio or sexual encounter center;

(15) **"specified anatomical areas"** means:

(A) The human male genitals in a discernibly turgid state, even if completely and opaquely covered; or

(B) less than completely and opaquely covered human genitals, pubic region, buttocks or a female breast below a point immediately above the top of the areola.

(b) The governing body may adopt, in the manner provided by K.S.A. 12-741 et seq., and amendments thereto, reasonable regulations for the gradual elimination of sexually oriented businesses which constitute nonconforming uses.

History: L. 1997, ch. 147, § 10; May 1.

Approx:
15' x 30' ft.
450 \$



SENATE BILL No. 421

By Senators Schodorf and McGinn, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Francisco, Gilstrap, Goodwin, Haley, Hensley, Jordan, Journey, Kelly, Lee, Morris, Ostmeyer, Petersen, Pine, D. Schmidt, V. Schmidt, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wilson and Wysong

1-23

13 AN ACT concerning the Kansas funeral picketing act; amending K.S.A.
14 21-4015 and repealing the existing section.

15
16 *Be it enacted by the Legislature of the State of Kansas:*

17 Section 1. K.S.A. 21-4015 is hereby amended to read as follows: 21-
18 4015. (a) This section shall be known and may be cited as the Kansas
19 funeral picketing act.

20 (b) The legislature finds that:

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

23 (2) the interests of families in privately and peacefully mourning the
24 loss of deceased relatives are violated when funerals are targeted for pick-
25 eting and other public demonstrations; and

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

28 (4) full opportunity exists under the terms and provisions of this sec-
29 tion for the exercise of freedom of speech and other constitutional rights
30 at times other than within one hour prior to, during and two hours fol-
31 lowing the commencement of funerals.

32 (c) The purposes of this section are to:

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

35 (2) preserve the peaceful character of cemeteries, mortuaries and
36 churches within one hour prior to, during and two hours following the
37 commencement of funerals.

38 (d) As used in this section:

39 (1) "Funeral" means ~~the ceremonies, processions and memorial serv-~~
40 ~~ices held in connection with the burial or cremation of the decedent~~

41 (2) "Picketing" means protest activities engaged in by a person or
42 persons stationed before or about a cemetery, mortuary or church within
43 one hour prior to, during and two hours following the commencement of

any ceremony,
procession or memorial
service in connection
with the death of a
person

, church or other
location where a
funeral is held or
conducted

1 a funeral.

2 (e) It is unlawful for any person to engage in picketing ~~before or about~~
3 ~~or a directed protest march at any public location within 300 feet of any~~
4 ~~entrance to any cemetery, church or mortuary~~ within one hour prior to,
5 during and two hours following the commencement of a funeral ~~or me-~~
6 ~~morial service.~~

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

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

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

20 Sec. 2. K.S.A. 21-4015 is hereby repealed.

21 Sec. 3. This act shall take effect and be in force from and after its
22 publication in the statute book.

(1)

, mortuary or other location where a funeral is held or conducted

, except on public streets, public sidewalks or other public spaces;

(2) obstruct or prevent the intended uses of a public street, public sidewalk or other public space while engaged in picketing or a directed protest, as described in subsection (1); or

(3) engage in any behavior that tends to disquiet, obstruct or denigrate a funeral.

PROPOSED SENATE CONCURRENT RESOLUTION NO. _____

By Committee on Federal and State Affairs

A CONCURRENT RESOLUTION concerning funeral picketing.

WHEREAS, Funerals are private, solemn events which should provoke expressions of respect;

WHEREAS, Military funerals should be events reflecting the dignity and honor of the deceased;

WHEREAS, The First Amendment right of free speech is a hallowed American right;

WHEREAS, Fred Phelps and his followers of Westboro Baptist Church are entitled to their exercise of this right;

WHEREAS, The message of Mr. Phelps and his followers is held by most to be extremely egregious and offensive and even more so when presented at a military or other funeral; and

WHEREAS, The American Legion Riders and Patriot Guard of Kansas are particularly helpful in protecting the mourners from the impact of Phelps and his followers: Now, therefore,

Be it resolved by the Senate of the State of Kansas, the House of Representatives concurring therein: That the Kansas Legislature commends the Patriot Guard and the American Legion Riders for their positive intervention at funerals where Mr. Phelps and his followers are picketing; and

Be it further resolved: That the Kansas Legislature condemns in the strongest manner possible the hateful activities of Mr. Phelps and his followers; and

Be it further resolved: That the Kansas Legislature wishes it to be known throughout the nation that the people of Kansas largely embrace a true Christian message of love for one's neighbors, rejoicing with those who rejoice and weeping with those who weep and that Mr. Phelps and his followers do not reflect the true spirit of the people of Kansas.

drug stores and mainstream bookstores. Given that there is no evidence to support this argument, no indication of any intent to apply the law to anything other than an adult business and that plaintiffs admit that they are adult businesses to which the statutes apply this argument is without merit. It is not necessary to speculate as to whether a challenged law might be applicable to others when it is clearly applicable to the parties at hand. *See Young v. American Mini Theatres, Inc.*, 427 U.S. 50, 58-59 (1976).

WHEREFORE, for the reasons stated herein, plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction, as well as plaintiffs' request for permanent injunction, are denied.

/s/ Gary A. Fenner
GARY A. FENNER, JUDGE
United States District Court

DATED: February 11, 2005