

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Arlen Siegfroid at 1:30 P.M. on March 18, 2008, in Room 313-S of the Capitol.

All members were present except: Representative Michael Peterson-excused  
Representative Henderson-excused  
Representative Faust-Goudeau-excused  
Representative Hodge

Committee staff present:

Kathie Sparks, Kansas Legislative Research Department  
Dennis Hodgins, Kansas Legislative Research Department  
Mike Heim, Revisor of Statutes Office  
Jason Long, Revisor of Statutes Office  
Jeannie Dillon, Committee Assistant

Conferees:

Representative Raj Goyle  
Jared Maag, Deputy Solicitor General  
Jason Chaika  
Donnie Behrens, American Legion  
Senator David Haley

Others attending:

See attached list.

Chairman Siegfroid opened the meeting by asking for bill introductions. Hearing none, the Chair opened the public hearing on **HB 2970 - Kansas funeral privacy act** by asking Mike Heim, Revisor of Statutes, to give the Committee an overview of the bill. (Attachment 1)

Representative Raj Goyle testified as a proponent for the bill. He stated that the legislature unanimously passed the Arkansas Funeral Privacy Act which enacted a 150-foot buffer zone around a funeral in which protestors could not engage in a public demonstration. Included in the bill was a provision that required the Attorney General to sue to determine the constitutionality of the Act before it became effective. This so-called "judicial trigger" was not essential to the bill, but was a cautionary step to ensure its passage by both chambers of the Legislature. The Kansas Supreme Court ruled the "judicial trigger" provision unconstitutional and consequently struck down the law. He explained that the bill before the Committee now, simply removes the "judicial trigger" from the bill. The substantive provisions remain the same. (Attachment 2)

Jared Maag, Deputy Solicitor General, Office of the Attorney General, stood as a proponent of the bill. Mr. Maag stated that the Attorney General supports the legislature's efforts to address and legally reconcile restrictions on outrageous and provocative speech during funeral proceedings. He stated that the Attorney General's office has reviewed the speech restrictions as well as the time and distance limitations set forth in **HB 2970** and believes that each provision will withstand any constitutional challenge which might arise after codification. (Attachment 3)

Jason Chaika, Kansas Equality Coalition of Topeka, stood in favor of **HB 2970**. Mr. Chaika stated that the Phelps' clan has been picketing funerals for 17 years. First they picketed the funerals of gay people and the people who died of AIDS. He suggested that the buffer zone be amended from 150 feet to 500 feet. (Attachment 4)

The Chair welcomed Donnie Behrens, Assistant Adjutant, American Legion Department of Kansas, who spoke in favor of **HB 2970**. Mr. Behrens stated that no one should have to endure insults, harassment, jeers and signs displaying hateful messages during their time of mourning. He stated that in its present form **HB 2970** requires those who picket and protest during funerals do so from not less than 150 feet. He noted that on election day, voters are protected from those participating in electioneering by a distance of

CONTINUATION SHEET

MINUTES OF THE House Federal and State Affairs Committee at 1:30 P.M. on March 18, 2008, in Room 313-S of the Capitol.

250 feet. He asked the Committee which is more sacred, the right to vote in peace or the sanctity of a funeral. (Attachment 5)

With no one else wishing to speak to the bill, Chairman Siegfried closed the public hearing on **HB 2970**.

Chairman Siegfried entertained a motion to remove the contents of SB 226 and insert the language of House Substitute for HB 2970. Moved by Representative Swenson, seconded by Representative Huebert, the motion carried.

Moved by Representative Dillmore, seconded by Representative Ruiz, House Substitute for SB 226 was passed out of committee favorably by a unanimous vote.

Jason Long, Revisor of Statutes, gave an overview of **SB 46** to the Committee. He explained the difference in the class B nonperson misdemeanor to the severity of level 10, nonperson felony.

Chairman Siegfried opened the public hearing on **SB 46** - Defacing identification marks of a firearm, increase from class B nonperson misdemeanor to a severity level 10, nonperson felony.

Senator Journey spoke as a proponent to the bill. He stated that **SB 46** is a simple piece of legislation that changes the severity level of the crime of defacing the identification marks of a firearm which under current law is a Class B misdemeanor punishable by up to six months in custody and a \$1,000 fine to a severity level 10, non- person felony. While the amount of time the defendant might serve on a sentence when convicted under state law as proposed would be similar to a Class B misdemeanor, it would still have the sanctions of felony conviction imposed upon the defendant. He hoped that the Committee sees the rationale behind this modification of this criminality of current Kansas Law. (Attachment 6)

The Chair closed the public hearing on **SB 46**.

Kathie Sparks, Kansas Research Department gave an overview of **SB 397**. The bill allows for alcohol to be consumed at Kansas armories with national guard and the military approval. She stated that the second provision corrects language in current law that states that the ID "containing a photograph" be changed to "that reasonable appears to contain."

Chairman Siegfried opened the public hearing on **SB 397 - Consumption of alcohol at national guard armories.**

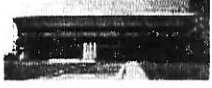
Senator David Haley came before the Committee to offer his support for **SB 397**. Senator Haley stated that this bill intends to restore to our law the long standing practice of the leasing of a guard armory for groups that furnish their own alcoholic beverages. He believed this was not the legislature's intent and that due to a drafting error, the legislature erroneously assumed all training centers to be armories which is not the case. (Attachment 7)

Written testimony was submitted by Philip Bradley, Kansas Licensed Beverage Assn. (Attachment 8)

The Chair closed the public hearing on **SB 397**.

Having no further business, the meeting was adjourned. The next meeting will be March 19, 2008, at 1:30 in room 313-S.





## IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 98,691

STATE OF KANSAS *ex rel.* PAUL J. MORRISON,

Attorney General of the State of Kansas,

*Petitioner,*

v.

THE HONORABLE KATHLEEN SEBELIUS,

Governor of the State of Kansas,

*Respondent.*

## SYLLABUS BY THE COURT

1. Quo warranto is an extraordinary remedy available when any person usurps, intrudes into, or unlawfully holds or exercises any public office, and a writ of quo warranto may issue when it is alleged that the separation of powers doctrine has been violated.
2. The separation of powers doctrine requires a court to presume a statute to be constitutional. All doubts must be resolved in favor of its validity, and before a statute may be stricken down, it must clearly appear the statute violates the constitution.
3. When considering if there has been a violation of the separation of powers doctrine, a court must examine the specific facts and circumstances presented and search for a usurpation by one branch of government of the powers of another branch of government.
4. A usurpation of powers exists when there is a significant interference by one branch of government with operations of another branch of government.
5. A court determining whether there has been a significant interference by one branch of government should consider (a) the essential nature of the power being exercised; (b) the degree of control by one branch over another; (c) the objective sought to be attained; and (d) the practical result of the blending of powers as shown by actual experience over a period of time.
6. The Kansas Constitution designates the attorney general as an executive officer in Article 1, § 1 but does not define the attorney general's duties. In the absence of constitutional definition of powers, the legislature has the power to define the attorney general's duties.
7. The legislature obligated the attorney general to give his or her opinion in writing, without fee, upon all

questions of law submitted to him or her by the legislature, or either house thereof. This power is consistent with the long-held view that the giving of advisory opinions is an executive, not a judicial, power.

8. The legislature has imposed a duty upon the attorney general to file and defend lawsuits involving the State when directed to do so by the governor or either house of the legislature.

9. The legislature lacks constitutional authority to intrude into the attorney general's duties as an officer of the court. The legislature cannot override an attorney's ethical duties to the court or direct the attorney general to file an action if the attorney general has a good faith belief that the action seeks an unconstitutional remedy.

10. Courts have the power to determine whether a statute is constitutional. This power arises only when the question is presented in an actual case or controversy between parties.

11. Courts do not have the constitutional power to issue advisory opinions.

12. The lawsuit contemplated in the judicial trigger provision of the Kansas Funeral Privacy Act, K.S.A. 21-4015(i), would not satisfy federal standards used to determine whether an actual case or controversy exists and under federal law would be considered a provision calling for an impermissible advisory opinion from the courts.

13. State courts are not bound by the prohibition against advisory opinions found in the Constitution of the United States or by federal justiciability requirements.

14. Kansas courts have recognized a constitutional case-or-controversy requirement arising solely from the separation of powers doctrine embodied in the Kansas constitutional framework.

15. As part of the Kansas case-or-controversy requirement, courts require: (a) parties must have standing; (b) issues cannot be moot; (c) issues must be ripe, having taken fixed and final shape rather than remaining nebulous and contingent; and (d) issues cannot present a political question.

16. The judicial power granted by Article 3 of the Kansas Constitution does not include the power to give advisory opinions. A Kansas court issuing an advisory opinion would violate the separation of powers doctrine by exceeding its constitutional authority.

17. Article 2 of the Kansas Constitution gives the legislature the exclusive power to pass, amend, and repeal statutes.

18. The separation of powers doctrine prohibits either the executive or judicial branches from assuming the role of the legislature.

19. Power is shifted away from the legislature when the legislature does not reach its own independent conclusion, albeit preliminary, regarding the constitutionality of a statute. Consequently, the giving of a judicial opinion regarding the constitutionality of pending legislation is unconstitutional on the ground that it violates the principle of separation of powers.

20. A power or duty forbidden by the constitution cannot be conferred on the court by the legislature, and it cannot be exercised by a court or its members.



21. Mandamus is a proceeding to compel some person to perform a specified duty, which duty results from the office, trust, or official station of the party to whom the order is directed, or from operation of law. Mandamus provides the remedy of compelling a public officer to perform a clearly defined duty, one imposed by law and not involving the exercise of discretion, and it is an appropriate avenue to obtain an authoritative interpretation of the law for the guidance of public officials in their administration of public business.

22. When a private person brings an action in mandamus, there must be a showing of actual, specific, and peculiar injury.

23. When a mandamus action is brought on relation of the attorney general or another government officer, there is no requirement of actual injury. In such a case, it must be shown: (1) there is a question relating to a specified duty imposed by law and not involving discretion; (2) the question must be of great public importance and concern sufficient to warrant the court exercising its discretionary jurisdiction; and (3) the question must arise from an actual controversy, meaning a situation must have arisen which implicates the official's duty.

24. The judicial trigger provision of the Kansas Funeral Privacy Act, K.S.A. 21-4015(i), seeks an unconstitutional remedy that would violate the separation of powers doctrine in two respects. First, a lawsuit filed pursuant to the provision would not present an actual case or controversy. It would seek an advisory opinion, and a court would not have the judicial power to grant the remedy. Second, the provision purports to make the Kansas Supreme Court an advisor to the legislature on whether inoperative funeral protest provisions are facially constitutional and should be allowed to become operative. A court issuing such an opinion would usurp the legislature's duty to make a preliminary judgment on the constitutionality of inoperative legislative provisions.

25. The Kansas Funeral Privacy Act states an explicit standard for how suspended provisions will become operative. Activation of the inoperative provisions under other circumstances would violate the express statement of the legislature, broaden the scope of the Act in a manner not authorized by the legislature, and violate the separation of powers doctrine.

Original action in quo warranto. Opinion filed March 11, 2008. Judgment for the petitioner is granted in part and denied in part.

*Stephen R. McAllister*, solicitor general, argued the cause, and *Jared S. Maag*, deputy solicitor general, *Kristofer R. Ailslieger*, assistant solicitor general, and *Paul J. Morrison*, attorney general, were with him on the briefs for petitioner.

*Jay P. Warren*, of Bryan Cave LLP, of New York, New York, argued the cause, and *Lynn S. McCreary* and *Kristi K. Wilhelmy*, of Bryan Cave LLP, of Kansas City, Missouri, were on the briefs for respondent.

*Megan E. Jennings*, of Kansas City, Missouri, was on the brief for *amicus curiae* Representative Raj Goyle and Representative Jeff Whitham.

The opinion of the court was delivered by

LUCKERT, J.: During the 2007 Kansas legislative session, the legislature passed and the governor signed House Substitute for Senate Bill No. 244 (H. Sub. S.B. 244), which substantially amended K.S.A. 21-4015 (Furse 1995), formerly known as the Kansas Funeral Picketing Act, and now, as amended, known as the Kansas Funeral Privacy Act, K.S.A. 21-4015. L. 2007, ch. 111, secs. 1-6. Although the legislature repealed the Kansas Funeral Picketing Act, it did not make operative those substantive provisions of the

**Attorney General's Opinions:**

Use of tobacco in public school buildings prohibited. 88-140.  
Powers of county commission board; smoking in a public place. 92-33.  
Powers of board of county commissioners to designate smoking areas in courthouse. 95-15.

**21-4010. Same; smoking in public place prohibited, exceptions; designated smoking areas.** (a) No person shall smoke in a public place or at a public meeting except in designated smoking areas.

(b) Smoking areas may be designated by proprietors or other persons in charge of public places, except in passenger elevators, school buses, public means of mass transportation and any other place in which smoking is prohibited by the fire marshal or by other law, ordinance or regulation.

(c) Where smoking areas are designated, existing physical barriers and ventilation systems shall be used to minimize the toxic effect of smoke in adjacent nonsmoking areas.

**History:** L. 1987, ch. 110, § 2; July 1.

**Attorney General's Opinions:**

Statutes are penal, subject to strict construction; designated smoking area is not limited, subject to existing local regulation. 87-89.

Powers of county commission board; smoking in a public place. 92-33.

Powers of board of county commissioners to designate smoking areas in courthouse. 95-15.

**21-4011. Same; posting smoking prohibited signs and designated smoking area signs; proprietor or person in charge of public place authorized to establish designated smoking area.** The proprietor or other person in charge of the premises of a public place shall post or cause to be posted in a conspicuous place signs clearly stating that smoking is prohibited by state law. The person in charge of the premises shall also post or cause to be posted in any designated smoking area, signs stating that smoking is permitted in such room or area. The proprietor or person in charge of the public place shall have the authority to establish the percentage of area in the public place which shall be posted and designated as a smoking area.

**History:** L. 1987, ch. 110, § 3; July 1.

**Attorney General's Opinions:**

Powers of county commission board; smoking in a public place. 92-33.

**21-4012. Same; unlawful acts; penalties; action to enjoin repeated violations.** Any person found guilty of smoking in violation of this act

is guilty of a misdemeanor punishable by a fine of not more than \$20 for each violation. Any person found guilty of failing to post signs as required by this act, is guilty of a misdemeanor punishable by a fine of not more than \$50. In addition, the department of health and environment, or local department of health, may institute an action in any court of competent jurisdiction to enjoin repeated violations of this act.

**History:** L. 1987, ch. 110, § 4; July 1.

**21-4013. Same; local regulation of smoking.** Nothing in this act shall prevent any city or county from regulating smoking within its boundaries, so long as such regulation is at least as stringent as that imposed by this act. In such cases the more stringent local regulation shall control to the extent of any inconsistency between such regulation and this act.

**History:** L. 1987, ch. 110, § 5; July 1.

**Attorney General's Opinions:**

Powers of board of county commissioners to designate smoking areas in courthouse. 95-15.

**21-4014. Same; severability.** If any provision of this act or the application thereof to any person, thing or circumstance is held invalid, such invalidity shall not affect the provisions of application of this act that can be given effect without the invalid provision or application, and to this end the provisions of the act are declared to be severable.

**History:** L. 1987, ch. 110, § 6; July 1.

**21-4015. Funeral privacy; unlawful acts; penalty; effective date determined by court action; other relief. [See Revisor's Note]** (a) This section shall be known and may be cited as the Kansas funeral privacy act.

(b) The legislature finds that:

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

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

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

(4) Full opportunity exists under the terms and provisions of this section for the exercise of freedom of speech and other constitutional rights

at times other than within one hour prior to, the scheduled commencement of a funeral, during a funeral, or within two hours following the completion of a funeral.

(c) The purposes of this section are to:

(1) Protect the privacy of grieving families; and  
(2) preserve the substantial privacy interest in funerals.

(d) As used in this section:

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

(2) "Public demonstration" means:

(A) Any picketing or similar conduct, or

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

(e) It is unlawful for any person to:

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

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

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

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

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

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

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

(1) If the action authorized by K.S.A. 2007 Supp. 75-702a, and amendments thereto, is decided in Kansas state court, amendments by this act to this section shall be applicable from and after the date the Kansas supreme court upholds the constitutionality thereof.

(2) If the action authorized by K.S.A. 2007 Supp. 75-702a, and amendments thereto, is decided in federal court, amendments by this act to this section shall be applicable from and after the date of the judgment of the court upholding the constitutionality thereof.

**History:** L. 1992, ch. 210, § 4; L. 1993, ch. 291, § 138; L. 1995, ch. 265, § 1; L. 2007, ch. 111, § 1; July 1.

**Revisor's Note:**

**CAUTION:** 2007 amendments to 21-4015 were contingent upon an upholding of the constitutionality thereof. Following is the text of 21-4015 prior to the 2007 amendments.

21-4015. Funeral picketing; unlawful acts; penalty; other relief. (a) This section shall be known and may be cited as the Kansas funeral picketing act.

(b) The legislature finds that:

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

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

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

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

(c) The purposes of this section are to:

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

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

(d) As used in this section:

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

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

(e) It is unlawful for any person to engage in picketing before or about any cemetery, church or mortuary within one hour prior to, during and two hours following the commencement of a funeral.

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



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

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

#### CASE ANNOTATIONS

1. Whether Kansas funeral picketing act (21-4105) violates plaintiff's free speech and free exercise of religion examined. *Phelps v. Hamilton*, 840 F.Supp. 1442, 1462 (1993).

2. Trial court abused discretion by not deciding amount of reasonable attorney fees to be awarded to prevailing party. *Phelps v. Hamilton*, 120 F.3d 1126, 1127 (1997).

**21-4016. Smoking in the state capitol prohibited, exceptions.** Prior to July 1, 1995, no person shall smoke in any area, room or hallway in the state capitol except in offices occupied as office space by state officers and employees which have been designated as smoking areas in accordance with K.S.A. 21-4009 *et seq.* and amendments thereto. On and after July 1, 1995, no person shall smoke in any area, room, hallway, or other place in the state capitol and no area of the state capitol shall be established as a designated smoking area under K.S.A. 21-4010 and amendments thereto.

**History:** L. 1993, ch. 220, § 1; July 1.

**21-4017. Smoking in a medical care facility, exceptions; penalties.** (a) As used in this section:

(1) "Medical care facility" means a general hospital, special hospital, ambulatory surgery center or recuperation center, as defined by K.S.A. 65-425 and amendments thereto, and any psychiatric hospital licensed under K.S.A. 75-3307b and amendments thereto; and

(2) "Smoking" means possession of a lighted cigarette, cigar, pipe or burning tobacco in any other form or device designed for the use of tobacco.

(b) On and after July 1, 1994, smoking in a medical care facility is hereby prohibited except that a smoking area may be established within a licensed long-term care unit of a medical care facility if such smoking area is well-ventilated. On and after July 1, 1994, the chief administrative officer of each medical care facility shall cause to be posted in conspicuous places signs stating that smoking in the medical care facility is prohibited by state law.

(c) Any person found guilty of smoking in violation of subsection (b) of this section is guilty of a misdemeanor punishable by a fine of not more than \$20 for each violation. Any person found guilty of failing to post signs as required by subsection (b) of this section, is guilty of a misdemeanor punishable by a fine of not more than \$50. In addition, the department of health and environment, or local department of health, may institute an action in any court of competent jurisdiction to enjoin repeated violations of subsection (b) of this section.

**History:** L. 1993, ch. 220, § 2; July 1.

#### **21-4018. Identity theft; identity fraud.**

(a) Identity theft is knowingly and with intent to defraud for any benefit, obtaining, possessing, transferring, using or attempting to obtain, possess, transfer or use, one or more identification documents or personal identification number of another person other than that issued lawfully for the use of the possessor.

(b) "Identification documents" has the meaning provided in K.S.A. 21-3830, and amendments thereto.

(c) Except as provided further, identity theft is a severity level 8, nonperson felony. If the monetary loss to the victim or victims is more than \$100,000, identity theft is a severity level 5, nonperson felony.

(d) Identity fraud is:

(1) Willfully and knowingly supplying false information intending that the information be used to obtain an identification document;

(2) making, counterfeiting, altering, amending or mutilating any identification document:

(A) Without lawful authority; and

(B) with the intent to deceive; or

(3) willfully and knowingly obtaining, possessing, using, selling or furnishing or attempting to obtain, possess or furnish to another for any purpose of deception an identification document.

(e) Identity fraud is a severity level 8, nonperson felony.

(f) This section shall be part of and supplemental to the Kansas criminal code.

**History:** L. 1998, ch. 179, § 1; L. 2000, ch. 181, § 8; L. 2005, ch. 131, § 2; L. 2006, ch. 149, § 6; July 1.

#### CASE ANNOTATIONS

1. Acquittal of identity theft affirmed where unauthorized immigrant bought false identification papers in order to work in U.S. *City of Liberal v. Vargas*, 28 K.A.2d 867, 24 P.3d 155 (2001).

**75-702a. Duty to determine constitutionality of Kansas funeral privacy act.** In accordance with K.S.A. 75-702, and amendments thereto, the attorney general shall seek judicial determination of the constitutionality of K.S.A. 21-4015, as amended by L. 2007, ch. 111, § 1, and amendments thereto. If the action authorized by this section is brought in a district court of this state, then the judgment of that district court shall be appealed directly to the Kansas supreme court as a matter of right.

**History:** L. 2007, ch. 111, § 3; July 1.



TOPEKA

HOUSE OF  
REPRESENTATIVES

## TESTIMONY IN SUPPORT OF HB 2970 (PROPONENT)

Before the House Federal and State Affairs Committee

March 18, 2008

Chairman Siegfried, Vice Chairman Huebert, and Ranking Member Peterson, our names are Rep. Jeff Whitham (123rd District) and Rep. Raj Goyle (87th District). We are the co-sponsors of HB 2970 and thank you for the opportunity to testify in support of the bill. We appreciate your expedited consideration of this issue. We are long overdue in providing Kansas families protection from hateful protests as they mourn the passing of their loved ones.

Last year the Legislature unanimously passed the Kansas Funeral Privacy Act (the "Act") which enacted a 150-foot buffer zone around a funeral in which protestors could not engage in a public demonstration. Included in the bill was a provision that required the Attorney General to sue to determine the constitutionality of the Act before it became effective. This so-called "judicial trigger" was not essential to the bill—we are confident the buffer zone was, and is, constitutional—but was included only out of an abundance of caution and to ensure its passage by both chambers of the Legislature.

Last week, the Kansas Supreme Court ruled the judicial trigger provision unconstitutional and consequently struck down the law. The Court did not make any findings regarding the buffer zone or the other substantive provisions of the law. Although we wrote a brief urging the Court to "sever" the judicial trigger and allow the remainder of the bill to stand as good law, the Court declined to do so. The Court, however, did release its decision with enough time remaining in the legislative session for us to remedy the bill. We are here today to do just that.

The bill before you now, HB 2970, simply removes the judicial trigger from the bill enacted last year. The substantive provisions remain the same.

As discussed during our bill introduction last Tuesday, we did explore the idea of adding a provision that would permit Kansas families to sue protestors for emotional distress caused by the picketing they witness during a funeral. The family of a fallen war hero in Maryland obtained an \$11 million judgment last year against Fred Phelps based on this cause of action. The Maryland case, however, was not based on statutory law, but rather on the common law, which is available to Kansas families now. It is our view, after consulting with Solicitor General Steve McAllister, that there is no need to add a distress provision to the law at this time. Adding

House Fed and State Committee  
March 18, 2008



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OFFICE OF THE ATTORNEY GENERAL

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**House Federal & State Affairs Committee**

House Bill No. 2970

Deputy Solicitor General Jared S. Maag

March 18, 2008

Mr. Chairman and members of the committee, I want to thank you for allowing me to deliver testimony on behalf of the Attorney General on this very important and sensitive issue.

Without question, the Attorney General supports the Legislature's efforts to address and legally reconcile restrictions on outrageous and provocative speech during funeral proceedings.

To that end, our office has reviewed the speech restrictions as well as the time and distance limitations set forth in HB 2970. We believe that each provision will withstand any constitutional challenge which might arise after codification, and our office remains committed to defending the Funeral Privacy Act should a challenge be brought.

Respectfully submitted

OFFICE OF THE ATTORNEY GENERAL  
STEPHEN N. SIX

  
Jared S. Maag  
Deputy Solicitor General

House Fed and State Committee  
March 18, 2008

Attachment 3





Our mission is to end discrimination based on sexual orientation and gender identity, and to ensure the dignity, safety, and legal equality of all Kansans

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**Testimony of Jason Chaika, Chapter Vice Chair  
Kansas Equality Coalition of Topeka  
In Support of HB2970  
House Federal and State Affairs  
March 18, 2008**

Good afternoon Chairman Siegfried and members of the Committee,

My name is Jason Chaika, vice-chair of the Topeka Chapter of the Kansas Equality Coalition. I am gay. I don't normally introduce myself with such personal information, but it is relevant due to the nature of the bill we are addressing today. I am a lifelong Kansan, and I've resided with my life partner in Topeka since 1998.

The Phelps clan has been picketing funerals for 17 years. First they picketed the funerals of gay people and the persons that died of AIDS. Then they picketed persons who spoke out against them. This caused many to avoid speaking out against the Phelps for fear of having the pickets on their own sidewalk, in front of their homes and businesses and churches.

Topeka's gay community has suffered discrimination due to the picketing of the Phelps. Sharon York was fired from a local restaurant that became the target of intensive picketing after Fred Phelps discovered that she was a lesbian. Ms. York had difficulty finding employment after she became a target of Phelps' picketing. No one wanted to have their business picketed next. This is just one example of many.

Some thought the best way to deal with the Phelps was to ignore them, but like spoiled children, the Phelps have acted out in increasingly unconscionable behavior to gain attention. Kansans have reacted like the fabled frog in hot water, and have gradually become accustomed to this vile behavior until it has become a part of the landscape.

Martin Niemoller famously commented about how when the Nazis came for the various marginalized groups, many did nothing. In the end there was nobody left. We've come to see that, no matter what one's sexual orientation, intolerance, bigotry, and discrimination are everyone's problem.

The families of gay and lesbian Kansans have endured much at the hands of the Phelps, and now the rest of America must endure them as well. Their latest attempts at hate-mongering are directed at our fallen soldiers for one reason: to draw attention to their campaign of intolerance. The Phelps abuse their First Amendment rights by attacking the families of the men and women who give their lives defending it.

Protected speech is to be a guarded treasure worth fighting for. However, much of what the Phelps do is not protected speech. We believe it is disorderly conduct, and should be regulated.

In the interest of protecting the grief stricken, we suggest 150 feet is not adequate. The signs used by the picketers are designed to be read from a distance, and the taunts and cat calls can be heard for great distances. We request that this bill be amended to require picketers remain at least 500 feet from a funeral.

It must be frustrating to members of this body that the Kansas Supreme Court overturned your previous efforts. We share that frustration. This is the third attempt in three years that Kansas has tried to regulate funeral picketing. Since efforts began, many families have suffered while the Legislature and the courts have attempted to work out the details. Let's hope the third time is the charm.

House Fed and State Committee  
March 18, 2008

**House Bill 2970**  
**House Federal and State Affairs Committee**  
**Room 313-S, March 18, 2008**

By  
**Donnie Behrens, Assistant Adjutant**  
**The American Legion Department of Kansas**

Thank you for this opportunity to appear before you today and to ask for your favorable action on HB 2970. My name is Donnie Behrens and I serve as Assistant Adjutant for the American Legion Department of Kansas.

When someone loses a friend, sibling, parent, spouse, child, or any relative, they should be allowed to lay their friend or loved one to rest in peace and with dignity. That applies to everyone, not just those lost while serving their nation in the Armed Forces. No one should have to endure insults, harassment, jeers, and signs displaying hateful messages during their time of mourning. These demonstrations are no longer being restricted solely to the funerals of current and former members of the Armed Forces. The family members of fire fighters, law enforcement officials, actors, and even school children are under attack while trying to pay their last respects.

HB 2970 will protect people when they are most vulnerable....when laying their loved ones to rest. Indiana, Illinois, South Dakota, and Oklahoma have all passed measures similar to HB 2970. By similar I am referring to the distances incorporated in those states' laws of which one requires a distance of 500 feet. In its present form, HB 2970 requires those who picket and otherwise protest during funerals by setting up directly in front of entrances to funeral homes and churches, heckling and insulting grieving families, do so from not less than 150 feet away. Bear in mind that on election day voters are protected from those participating in electioneering by a distance of 250 feet. You might ask yourself, which is more sacred, the right to vote in peace or

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the sanctity of a funeral and the ability to mourn a loved one and lay them to rest undisturbed.

Are they equal? Or is one's right to vote more important than his or her right to mourn? In my opinion the privacy of a funeral is at least as important as the privacy of a voting booth.

I salute the Patriot Guard which was founded by Kansas Legionnaires and whose ranks have swelled to more than 1500 in Kansas and over 60,000 nationwide. Patriot guard members come from all walks of life and from a number of organizations with one common purpose: to provide a peaceful human shield between the families of those who sacrificed their life for this nation and those who would dishonor their service. I'm proud to be a member of the Patriot Guard whose only dues are your patriotism and your time. I hope you will join us by voting in favor of HB 2970 and by urging your colleagues to do the same.

STATE OF KANSAS

SENATOR PHILLIP B. JOURNEY

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TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS

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(JOINT), VICECHAIR  
MEMBER: HEALTH CARE STRATEGIES  
JUDICIARY  
PUBLIC HEALTH AND WELFARE  
TRANSPORTATION

CORRECTIONS AND JUVENILE JUSTICE  
OVERSIGHT (JOINT)

**Testimony before the Kansas State  
House Federal and State Affairs Committee  
in Support of Senate Bill 46  
on March 18<sup>th</sup>, 2008,  
The Honorable Arlen Siegfried Presiding**

Senate Bill 46 is a simple piece of legislation that changes the severity level of the crime of defacing the identification marks of a firearm which under current law is a Class B misdemeanor punishable by up to six months in custody and a \$1,000 fine to a severity level 10, nonperson felony.

One of the purposes of this bill is to raise the level of criminality of this act to become more aligned with federal criminal statutes. Currently, under criminal statutes of the United States, defacing the serial number or the identification marks of a firearm is a felony under Chapter 18 of the United States code with penalties of several years in custody. While the amount of time the defendant might serve on a sentence when convicted under state law as proposed would still be similar to a Class B misdemeanor, assuming that his or her criminal history is not above a Category I or H, it would still have the sanctions of felony conviction imposed upon the defendant as they should be. It's important to remember that when an individual chooses to attempt to remove the serial numbers from a firearm that it is usually done in anticipation of another crime such as a homicide or an effort to thwart the investigation of the theft of that firearm from another person. Firearms are, of course, an instrumentality or machine that can be the means to cause serious injury or death. The characteristics of the firearm are taken into account by raising this to a felony crime just as we currently have felony crimes for removing anti-theft devices in an attempt to commit a misdemeanor theft for shoplifting.

I hope that the Committee sees the rationale behind this modification of this criminality of current Kansas law increasing it to the lowest-level felony in our current sentencing grid, and that the Committee will support passage of this legislation. Your time and attention are sincerely appreciated.

Respectfully submitted,

  
Senator Phillip B. Journey  
State Senator 26<sup>th</sup> District

House Fed and State Committee  
March 18, 2008



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# STATE OF KANSAS



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SENATE CHAMBER

**DAVID B. HALEY**  
SENATOR  
DISTRICT 4  
WYANDOTTE COUNTY

RE: SB 397

Mr. Chairman and Members of the House Federal and State Affairs Committee:

Thank you for scheduling a hearing on this bill which intends to restore to our law the long standing practice of the leasing of a Guard armory for groups that furnish their own alcoholic beverage(s).

Several constituents brought this to my attention when, after many years of having previously hosted events with alcohol permitted at the Armory, they were no longer able to lease due to a new law.

I believe this was not the Legislature's intent and that due to a drafting error, we erroneously assumed all "training centers" to be "armories" which is not the case. Although it was my opinion, due to the history of this relationship, that the Senate Committee consider leaving the bill "clean" (without amendment) and advancing it to the Consent Calender, the Senate Committee added, and advanced without controversy, the "server-presented-seemingly-proper-identification" indemnification amendment.

Since the entire bill passed the Senate unanimously (40-0), I support the bill.

Thank you again. I am pleased to stand for any questions.

A handwritten signature in black ink, appearing to read "David B. Haley".

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COMMITTEE ASSIGNMENTS  
ASSESSMENT & TAXATION  
JUDICIARY REAPPORTIONMENT  
PUBLIC HEALTH & WELFARE  
HEALTH CARE STRATEGIES

SenHaley@aol.com  
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JOINT COMMITTEE ASSIGNMENTS  
STATE TRIBAL RELATIONS  
CORRECTIONS & JUVENILE JUSTICE  
HEALTH POLICY OVERSIGHT  
CHILDREN'S ISSUES



*Kansas  
Licensed  
Beverage  
Association*

Testimony on SB-397, March 18, 2008  
House Federal and State Affairs Committee

Mr. Chairman, and Members of the Committee,

I am Philip Bradley representing the Kansas Licensed Beverage Assn., the men and women, in the hospitality industry, who own, manage and work in Kansas bars, breweries, clubs, caterers, hotels and restaurants where beverage alcohol is served. These are the over 3000 places you frequent, enjoy and the tens of thousands employees that are glad to serve you. Thank you for the opportunity to speak today and I will be brief.

We support SB-397 and ask for your favorable consideration.

We believe that in many towns and communities across Kansas that the Armory may be the only facility large enough for events that include everyone or events that draw from a large area. Therefore it makes sense to use them to the fullest extent.

We are slightly concerned however that this change may reduce the chances that a private individual(s) may invest in those communities to start a small business to serve those very needs.

We are also concerned about a tax subsidised facility being able to use it's building, paid for by public dollars, maintained and operated by public dollars to compete in those cities that have other choices, tax paying facilities, paid for by folks out of their own pockets as they attempt to survive and compete. This is further illustrated by the fiscal note.

We trust that these concerns could be monitored and corrected in future legislation if necessary.

This bill also corrects the affirmative defense for service if the server had "reasonable cause to believe that the minor was 21 or more years of age". The specific problem is with the language about the picture. The current KSA 41-2615, c, states that the ID "containing a photograph of the minor and purporting to establish that such minor was 21 or more years of age." This is far in excess of the reasonable cause standard. This measure amends it to read, "that reasonably appears to contain a photograph of the minor and purporting to establish that such minor was 21 or more years of age." This would achieve the intent and conform to the "reasonable cause" defense.

I will provide additional supporting documents to the committee.

I am available for your questions. Thank you for your time.

Philip Bradley

*Philip Bradley  
CEO*

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