

SESSION OF 2008

**SUPPLEMENTAL NOTE ON
HOUSE SUBSTITUTE FOR SENATE BILL NO. 226**

As Recommended by House Committee on
Federal and State Affairs

Brief*

House Sub. for SB 226 would create the Kansas Funeral Privacy Act by prohibiting a public demonstration within 150 feet of any entrance to any cemetery, church, mortuary, or other location where a funeral is held or conducted.

The prohibition would commence within one hour prior to the scheduled commencement of the funeral.

In addition, the bill would prohibit knowingly obstructing, hindering, impeding or blocking a person's entry to or exit from a funeral or knowingly impeding vehicles which are part of the funeral procession. Under the bill, violations of these provisions would be a class B person misdemeanor. Each day a violation occurs would constitute a separate offense.

Under the provisions of the bill, "public demonstration" would mean any picketing, oration, speech, or use of sound amplification equipment or device which is not part of the funeral.

The Act would take effect upon its publication in the *Kansas Register*.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Background

Proponents of the bill included: Representative Raj Goyle; Representative Jeff Whitman; Jared Maag, Deputy Solicitor General; Jason Chaika, Kansas Equality Coalition of Topeka; and Donnie Behrens, American Legion. No opponents appeared before the Committee. The bill was offered in response to the Kansas Supreme Court decision in *State of Kansas ex rel. Paul J. Morrison, Attorney General of the State of Kansas v. The Honorable Kathleen Sebelius, Governor of the State of Kansas (No. 98,691)* which found “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.”

The bill also differs from the 2007 Act in that the provisions allowing a family to sue protestors for emotional distress caused by the picketing they witness during a funeral were not included in this bill. The reason given by the Representatives for this was “adding such a provision may actually reduce the chances a Kansas family could recover for emotional distress and complicate the bill when it is reviewed by a court.”

No fiscal note was available at the time of the hearing.