

STORAGE NAME: h0415s1.cjcl
DATE: March 13, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CIVIL JUSTICE AND CLAIMS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 415

RELATING TO: Funeral Processions

SPONSOR(S): Rep. Reddick

STATUTE(S) AFFECTED: s. 316.1974 and s. 316.0072, F.S.

COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) COMMITTEE ON CIVIL JUSTICE AND CLAIMS YEAS 9 NAYS 0

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I. SUMMARY:

HB 415 substantially rewrites existing statutes relating to funeral processions. Some of the regulations proposed are permitting a lead vehicle which lawfully enters an intersection to proceed regardless of any state or local ordinances and permitting all other vehicles to follow the lead vehicle; providing liability for death, personal injury or damage to property if injuries are proximately caused by funeral directors, funeral establishments and their agents and employees; providing that funeral directors and funeral establishments shall not be liable for failing to use reasonable care in the planning and selection of the funeral procession route; prohibiting motorists to pass a procession on its left side on two-lane roads; and defining or redefining funeral processions, funeral escorts, funeral escort vehicles, and funeral lead vehicles.

Lastly, authorized law enforcement vehicles conducting non-emergency escorts to warn the public of an approaching motorcade shall be considered authorized emergency vehicles.

Fiscal impact is indeterminate.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Statutory Provisions for the regulation of funeral processions

Little information is available concerning the appropriate etiquette of both participants and other motorists during funeral processions. Many of the current practices developed over time. Not surprisingly, the Florida Legislature has passed few laws regulating funeral processions. Therefore, HB 415 proposes to more thoroughly address the regulation and operation of funeral processions.

According to s. 316.1974, F.S. funeral processions consist of four or more motor vehicles accompanying the body of the deceased. Funeral processions may take place only during daylight hours, and cars in a funeral procession shall travel with lighted headlights. Pedestrians and other vehicles must yield the right-of-way to funeral processions, except emergency vehicles.

When the lead vehicle of a funeral procession enters an intersection, all other cars in the procession may follow. The procession may continue despite any traffic control device or right-of-way provisions prescribed by statute or local ordinance, provided all cars exercise "due care" when following the lead vehicle. Other motorists may not drive between vehicles in a funeral procession unless directed to do so by a police officer. s. 316.1974, F.S.

The final provision of HB 415 addresses authorized emergency vehicles. Currently, authorized law enforcement, when conducting a non-emergency escort to warn the public of an approaching motorcade, are not considered authorized emergency vehicles.

Judicial rulings relating to the regulation of funeral processions

Under the most recent Judicial rulings, a funeral director who "voluntarily undertakes to organize and lead a funeral procession owes a duty of reasonable care to procession participants." *Union Park Memorial Chapel v. Kathleen Hutt*, 670 So. 2d 64 (Fla. 1996). This ruling does not absolve any driver involved in a procession from exercising reasonable care, but it also does not absolve funeral directors of no duty of care entirely. Therefore, the Florida Supreme Court has stated:

"One who undertakes, gratuitously or for consideration, to render services to another which should recognize as necessary for the protection of a third person or his things, is subject to liability to the third person for physical harm resulting from his failure to exercise reasonable care to protect his undertakings if (a) his failure to exercise reasonable care increases the risk of such harm, or (b) he has undertaken to perform a duty owed by the other to third person, or (c) the harm is suffered because of reliance of the other or the third person upon the undertaking."

B. EFFECT OF PROPOSED CHANGES:

HB 415 amends s. 316.1974, F.S., relating to funeral processions. To provide a clear explanation of its effects, this section is divided into six headings which correspond to the Section-by-Section Analysis beginning on page seven.

Effect 1 - Definitions - (Sections (1a-1e) of the section-by-section analysis).

The definition of funeral processions is amended. Presently, four cars constitute a funeral procession. Under HB 415, two cars, including the lead vehicle or escort vehicle, is considered a funeral procession. This change will have little effect, if any, on the operation of funeral processions.

HB 415 provides a definition for funeral lead vehicles 1(c): *any properly equipped, authorized law enforcement or non-law enforcement motor vehicle or a hearse being used to lead or facilitate the movement of a funeral procession.* The definition clarifies what type of vehicle constitutes a lead vehicle. Presently, the lead vehicle may enter and proceed through an intersection, notwithstanding state or local ordinances. This provision meets the needs of rural areas which use law enforcement personnel to lead funeral processions as well as metropolitan areas which generally do not use authorized law enforcement to lead processions.

All other definitions provided would have minor effect on the current statutes. They are explained in the Section-by-Section Analysis.

Effect 2 - Equipment use and display - (Sections (2a-2b) of the section-by-section analysis).

This section requires lead vehicles and non-law enforcement escorts to display amber circulation lamps visible at a distance of 500 feet. Law enforcement vehicles must make their lights visible from the same distance. These provisions benefit all motorists by providing increased notice of an approaching funeral procession.

Effect 3 - Funeral procession right-of-way - (Sections (3a-3d) of the Section-by-Section Analysis).

When the funeral lead vehicle lawfully enters an intersection, the remaining vehicles in a procession may follow the remaining vehicles in a procession may follow through the intersection regardless of any traffic control or state or local right-of-way ordinances. This provision clarifies existing state laws; there is a neutral effect on the current regulation of funeral processions.

Effect 4 - Operation of funeral procession - (Sections (4a-4d) of the Section-by-Section Analysis).

HB 415 allows cars in a procession to follow one another "as closely as possible, but in a practical and safe manner." It also invalidates any state or local ordinances regulating the allowable distance between vehicles. (Subsections 4a & 4b). These provisions could increase the risk of traffic accidents.

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Subsection 4(d) provides increased notice of a funeral procession by requiring vehicles in a procession to have lighted headlights and flashing hazard lights.

Effect 5 - Operation of funeral procession - (Sections (5a-5d) of the Section-by-Section Analysis).

Additional safety measures are provided for drivers not included in a funeral procession. Motorists not participating in a funeral procession would not be allowed to pass a funeral procession on a two-lane road. This provision will reduce the risk of traffic accidents due to inappropriate passing, and ensure the continuance of an uninterrupted funeral procession.

Effect 6 - Liability - (Sections (6a-6c) of the Section-by-Section Analysis).

Subsections 6(a) would establish liability only if injuries were proximately caused by the negligent or intentional actions or inactions of funeral directors, funeral establishments or their employees and agents. This subsection has minor to no impact on the current handling of tort procedures.

Funeral directors or funeral establishments shall have no liability for failing to use reasonable care in the planning or selection of the procession route (Subsection 6c). This provision limits liability of funeral directors and funeral establishments that fail to use reasonable care in the planning or selection of the funeral route. This provision does not conflict with the existing judicial rulings concerning funeral directors duty of care. Although no current laws exist addressing a funeral director's responsibility in the planning and selection of a funeral procession route, the courts have stated that funeral directors shall have a duty of care in the planning and selection of funeral procession routes and may be held liable for the motorists participating in the procession.

Section 2, of HB 415 allows the driver of an authorized law enforcement vehicle conducting a non-emergency escort to warn the general public of an approaching motorcade to be considered an authorized emergency vehicle. In FY 1996, Representative Reddick filed a similar house bill (H 2105). It passed out of the House and was placed in Senate messages; from there the bill was referred to the Senate Transportation Committee and died in committee.

The effective date of the provisions included in subsection (6) shall apply to causes of action accruing on or after October 1, 1997. There shall be no retroactive suits filed against funeral directors or funeral establishments pursuant to s. 316.1974, F.S.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Local government would be subject to the provisions of HB 415. Specifically, local governments could not regulate the allowable distance between cars traveling in a procession.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

NA.

(2) what is the cost of such responsibility at the new level/agency?

NA.

(3) how is the new agency accountable to the people governed?

NA.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No. The public, funeral directors and funeral establishments will benefit by increased regulation of funeral processions.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes. Funeral directors, funeral establishments and their employees will be able to more effectively conduct processions.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

NA.

(2) Who makes the decisions?

NA.

(3) Are private alternatives permitted?

NA.

(4) Are families required to participate in a program?

NA.

(5) Are families penalized for not participating in a program?

NA.

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

NA.

(2) service providers?

NA.

(3) government employees/agencies?

NA.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. amends s. 316.1974, F.S., providing definitions for funeral procession right-of-way and liability.

(1) (a) A funeral director is any person licensed under s. 470.002, F.S., to practice funeral directing in Florida.

(1) (a) A funeral establishment is a facility licensed under s. 470.002, F.S., where a funeral director or embalmer practices funeral directing or embalming.

(1) (b) A funeral procession is two or more vehicles, including the lead or escort vehicles, accompanying the deceased or traveling to the church, chapel, or other location at which the funeral service will be held. The procession must be conducted during daylight hours.

(1) (c) The **funeral lead vehicle** is any properly-equipped, authorized law enforcement or non-law enforcement motor vehicle or a hearse being used to lead or facilitate the movement of a funeral procession.

(1) (d) **The funeral escort** is a person or entity that provides escort services for funeral processions, including law enforcement personnel and agencies.

(1) (e) The **funeral escort vehicle** is any motor vehicle that is properly equipped and which escorts a funeral procession.

Section 1. amends s. 316.1974, F.S., providing equipment use and display during funeral processions.

(2) (a) Funeral lead vehicles and non-law enforcement funeral escort vehicles shall have a lighted, amber circulation lamp visible 500 feet from the vehicle. Flashing amber lights shall be used only when the procession is in motion.

(2) (b) Law enforcement escort vehicles may be equipped with red, blue, or amber flashing lights visible at a distance of 500 feet.

Section 1. amends s. 316.1974, F.S., providing for funeral procession right-of-way, funeral escort vehicles and funeral lead vehicles.

(3) (a) Pedestrians and all other operators of vehicles, with exception, shall yield the right of way to a funeral procession being led by a funeral escort vehicle or a funeral lead vehicle regardless of any traffic control device or local or state right-of-way ordinances .

(3) (b) When the funeral lead vehicle lawfully enters an intersection, at the direction of a traffic control device or law enforcement personnel, the remaining vehicles in the funeral procession may follow, regardless of any traffic control device or right-of-way provisions preserved by local or state law.

(3) (c) Funeral processions shall have the right-of-way at intersections, regardless of traffic control devices provided the following conditions are met:

1. Vehicle operators in funeral processions shall yield the right-of-way to emergency vehicles giving an audible or visible signal.

2. Vehicle operators in a funeral procession shall yield the right-of-way when directed to do by a police officer.

Section 1. amends s. 316.1974, F.S., providing for vehicles in a funeral procession.

(4) (a) All vehicles in a funeral procession shall follow one another as closely as possible, but in a practical and safe manner.

(4) (b) Any state or local ordinance regulating the allowable distance between vehicles, shall not apply during funeral processions.

(4) (c) All vehicle operators in a funeral procession shall have lighted headlights, either high beam or low beam, and lighted tail lights. Vehicles equipped may also use hazard lights.

Section 1. amends s. 316.1974, F.S., providing for vehicles not in a funeral procession.

(5) (a) Vehicles not in a funeral procession are prohibited from driving between a procession unless directed to do so by a police officer, excluding emergency vehicles.

(5) (b) Operators not in a funeral procession shall not join a procession in order to secure any allowable right-of-way privileges granted to vehicles in funeral processions.

(5) (c) Operators not in a funeral procession shall not attempt to pass a funeral procession on a two-lane highway or road.

(5) (d) Whenever funeral processions are proceeding through the red signal of traffic lights, vehicles not in the procession are prohibited from entering the intersection. Vehicles are denied entry at an intersection even if facing a green signal, unless they can do so without crossing the path of funeral processions.

Section 1. amends s. 316.1974, F.S., providing for liability.

(6) (a) The funeral director or funeral establishment or their employees or agents shall not be liable for any death, personal injury or property damage suffered by any person in a funeral procession unless proximately caused by the negligent or intentional act of an employee or agent of the funeral director or funeral establishment.

(6) (b) All persons leading, organizing or participating in a funeral procession including the director, establishment or escort, shall be presumed to have acted with reasonable care.

(6) (c) There shall be no liability on the part of a funeral director or funeral establishment for failing to use reasonable care in the planning or selection of the route to be followed by the funeral procession

Section 2. amends s. 316.072, F.S., providing for authorized emergency vehicles. The operator of an authorized law enforcement vehicle conducting a non-emergency escort to warn the public of an approaching motorcade shall be considered an authorized emergency vehicle.

Section 3. amends s. 316.293, F.S., relating to motor vehicle noise. Authorized law enforcement participating in a funeral procession are exempt from any state motor vehicle noise level ordinance restricting the use of sirens.

Section 4. Provides and effective date of October 1, 1997. Also, the provisions of subsection (6) shall apply only to causes of action accruing on or after October 1, 1997.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

NA.

2. Recurring Effects:

Indeterminate.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Indeterminate.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Indeterminate.

2. Direct Private Sector Benefits:

Indeterminate.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the percentage of a state tax shared with counties or municipalities. Therefore, it would not contravene the requirements of Article VII, Section 18 of the state constitution.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill would not reduce the percentage of state tax shared with counties or municipalities. Therefore, it would not contravene the requirements of Article VII, Section 18, of the state constitution.

V. COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Eleven amendments to HB 415 were passed in the March 12, 1997, Civil Justice and Claims Committee meeting. The effects of the amendments have been incorporated into the bill analysis; therefore, the following list outlines the content of each amendment:

Amendment 1 Provides a definition of a funeral lead vehicle: the funeral lead vehicle is any properly-equipped, authorized law enforcement or non-law enforcement motor vehicle or a hearse being used to lead or facilitate the movement of a funeral procession.

- Amendment 1a Provides for the flow of traffic through an intersection: when a funeral lead vehicle lawfully enters an intersection, the remainder of the procession may follow through the intersection regardless of any traffic control or state or local right-of-way ordinances.
- Amendment 2 Strikes language allowing the driver of a funeral escort vehicle to direct and control traffic of all motorists, except emergency vehicles. Removes provisions permitting funeral escort vehicles to exceed the posted speed limit by 15 miles per hour.
- Amendment 3 Strikes language regulating the speed which funeral processions may travel.
- Amendment 4 Provides for notice of a funeral procession: each vehicle in a funeral procession shall have lighted headlights and taillights. Vehicles may also use flashing hazard lights.
- Amendment 5 Strikes language which allowed other motorists to pass a funeral procession on multi-lane highways.
- Amendment 6 Strikes language providing for liability if death personal injury or damage to property is proximately caused by the actions or inactions of funeral directors, funeral establishments or their employees. In addition, language is stricken which would have permitted only employees of funeral directors or funeral establishments to be considered agents.
- Amendment 7 Provides for liability with respect to reasonable care: there shall be no liability on the part of a funeral director or funeral establishment for failing to use reasonable care in the planning or selection of the route to be followed by the funeral procession.
- Amendment 8 Strikes language which provided immunity from liability for funeral directors, funeral establishments, funeral escorts and participants in a funeral procession if the provisions of HB 415 are kept.
- Amendment 9 Provides that authorized law enforcement participating in a funeral procession may not be subject to any noise level ordinances.
- Amendment 10 Provides an effective date for subsection (6) of the bill: only causes of action accruing on or after October 1, 1997, shall apply to s. 316.1974 (6).

VII. SIGNATURES:

COMMITTEE ON CIVIL JUSTICE AND CLAIMS:

Prepared by:

Legislative Research Director:

Bridget Edmond