

SENATE BILL NO. 15
INTRODUCED BY J. TROPILA

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE PICKETING OF FUNERALS UNDER CERTAIN CIRCUMSTANCES; PROVIDING PENALTIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

WHEREAS, the Legislature reveres the rights of free speech, association, and privacy guaranteed or protected by both the state and federal constitutions; and

WHEREAS, the memorialization of a loved one is often a time of significant grief involving particularly somber and sacred rites and rituals, whether religious in nature or not; and

WHEREAS, people attending funerals, particularly loved ones and family members of the deceased, are involved in a circumstance of disquiet and grieving that civil society has traditionally recognized and accorded deepest respect and privacy; and

WHEREAS, the Legislature finds that it is likely that the circumstances of a funeral, including the gathering of many people at one place for solemn services during a time of mourning and emotional vulnerability, mean that picketing at a funeral subjects mourners to messages that the mourners are powerless to avoid and to which they are essentially captive, whether they agree with the messages or not; and

WHEREAS, it has been discovered that regardless of the picketers' message, picketing at a funeral to promote a position garners the picketers significant attention to their message that they might not otherwise enjoy, not in the least by the fact that society finds such exploitation of another's grief shocking to the conscience; and

WHEREAS, the Legislature finds that funeral picketing may constitute a deliberate verbal or visual assault on funeral mourners who are powerless to avoid the assault; and

WHEREAS, the Legislature finds that the taking of unjust advantage of funeral mourners is a flagrant and egregious exploitation of grief that constitutes an assault that justifies proscription; and

WHEREAS, the Legislature recognizes the right of speakers to convey a message; and

WHEREAS, the Legislature recognizes the right of people to grieve and memorialize the death of a loved one; and

WHEREAS, the Legislature recognizes the need to carefully balance the rights of speakers against the privacy rights of those who may be unwilling and captive recipients of the speakers' message; and

WHEREAS, the Legislature finds that there is a significant government interest in preserving and

protecting the sanctity and dignity of funeral services and in protecting funeral mourners from unwanted and unwarranted intrusion by strangers by narrowly tailoring the prohibition on funeral picketing for a relatively brief time period and only to a certain distance from funeral sites, thereby leaving open ample alternative channels of communication.

THEREFORE, the Legislature finds it necessary and right to enact this Right to Grieve in Privacy Act.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Funeral picketing -- penalties. (1) A person commits the offense of funeral picketing if the person knowingly engages in picketing within 1,500 feet of any property boundary entrance to or exit from a funeral site during the period from 1 hour before the scheduled commencement of the funeral services until 1 hour after the actual completion of the funeral services.

(2) A person convicted of funeral picketing shall be fined an amount not less than \$250 and not more than \$1,000 or be imprisoned in the county jail for a term not to exceed 12 months, or both.

(3) This section does not affect any proceeding against a person for violation of any other provision of law. A district court may enjoin conduct proscribed by this section.

(4) In addition to, and not in lieu of, the penalties provided for in subsection (2), a district court may in a civil action award damages, including punitive damages, attorney fees, and other appropriate relief, to a person who suffers injury as a result of activity that may be a violation of this section.

(5) As used in this section, the following definitions apply:

(a) "Funeral" or "funeral services" means the ceremonies, rituals, and memorial services held in connection with the memorial of a deceased person or in connection with the burial, cremation, or other disposition of a human body, including the assembly and dispersal of the persons attending the funeral.

(b) "Funeral site" means a church, synagogue, mosque, funeral home, mortuary, cemetery, gravesite, mausoleum, or other public or private place where a funeral is conducted.

(c) "Picketing" means the making of any noise or diversion that can reasonably be expected to disturb a funeral by:

(i) standing, sitting, or repeated walking, riding, driving, or other similar action by a person displaying or carrying a banner, placard, flag, sign, or similar device that is not a part of the funeral services;

(ii) engaging, with or without the use of a sound amplification device, in loud oration, speech, singing, chanting, whistling, or yelling that is not part of the funeral services;

(iii) distributing any handbill, pamphlet, leaflet, or other written or printed material other than written material that is distributed as part of the funeral services; or

(iv) obstructing or preventing the intended uses of a public street, public sidewalk, or other public space.

NEW SECTION. **Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 45, chapter 8, part 1, and the provisions of Title 45, chapter 8, part 1, apply to [section 1].

NEW SECTION. **Section 3. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 5. Applicability.** [This act] applies to offenses committed on or after [the effective date of this act].

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