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2003 HOUSE JUDICIARY

HB 1173

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1173

House Judiciary Committee

Conference Committee

Hearing Date 1-27-03

Tape Number	Side A	Side B	Meter #
2	XX		47.3-END
2		XX	0-37
Committee Clerk Signature <i>Al Penrose</i>			

**Minutes:** 13 members present.

**Chairman DeKrey:** We will open the hearing on HB 1173.

**Rep. Bellev:** Introduced the bill.

**Molly Brunner:** Support (see attached testimony)

**Chairman DeKrey:** Thank you.

**Rep. Onstad:** It states in the bill that a person in a nursing home cannot execute a will in that nursing home. If they had the desire to execute a will or initiate that, how would that process be done.

**Ms. Brunner:** During some discussion, the language could be changed to allow a compromise - have impartial area and impartial person help an elderly person understand what is being said.

**Rep. Wrangham:** Was your aunt of sound mind?

**Ms. Brunner:** We have questions as to that, that was never really brought up at the trial. She was recuperating from a broken hip and pneumonia.

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**Rep. Wrangham:** What are you desiring to do? Exclude anyone who is in a nursing home from making or having the freedom of making a choice.

**Ms. Brunner:** We're not stopping them from making a will. We're saying that the nursing home is not the time and place to be making a will. If they can't leave the nursing home, what are they doing changing their will.

**Rep. Klemm:** If somebody wants to have a will drafted or changed, an employee of the nursing home is supposed to notify LAND (Legal Assistance of North Dakota)?

**Ms. Brunner:** Again, that language could be changed to provide some advocate other than people in the nursing home.

**Rep. Klemm:** Have you talked to LAND about their taking on this responsibility?

**Ms. Brunner:** No.

**Rep. Klemm:** If an employee of the nursing home doesn't notify LAND, is it correct to say that the last sentence would make that will void, because an employee of the nursing home didn't make the notification?

**Ms. Brunner:** Absolutely.

**Rep. Delmore:** Are you saying that most employees of the nursing home have no professional ethics.

**Ms. Brunner:** No. The social worker has his or her particular expertise and now we're asking them to make a decision about the person's capacity to make a will.

**Rep. Maragos:** Your great-aunt had two previous wills, were you able to ascertain why she wrote a third will.

**Ms. Brunner:** No.

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**Rep. Galvin:** Wasn't there an executor.

**Ms. Brunner:** There was a personal representative, yes.

**Rep. Galvin:** So your great-aunt's wishes weren't carried out in the will.

**Ms. Brunner:** We don't know what they were, because the 1999 will dramatically changed the essence of her 1995 will.

**Rep. Galvin:** Could this be expanded a little more to include those people not in a nursing home could be protected the same way.

**Ms. Brunner:** Yes.

**Chairman DeKrey:** Thank you. Anyone else in favor. Any testimony in opposition to HB 1173.

**David Boeck, Protection & Advocacy Project:** (see attached testimony) Opposed.

**Rep. Onstad:** Taking into account the previous testimony, what could change within the bill to address the problems.

**Mr. Boeck:** Don't have any suggestions right now, in how you could guard against fraud.

**Chairman DeKrey:** Thank you. Any other testimony opposed to HB 1173.

**Christine Hogan, Executive Director, State Bar Association of ND:** Neutral (see attached testimony).

**Chairman DeKrey:** This is about the third or fourth session in a row now, where we have had private citizens of North Dakota come into this committee with some kind of bill where they strongly feel that an attorney did their family wrong. Is there a larger problem out there than we are seeing of attorneys doing wrongdoing.

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**Ms. Hogan:** It is unethical for an attorney to take under the will that she/he drafts. There are legal protections dealing with undue influence, etc.

**Rep. Boehning:** Is a 15 page will long, and can you understand it in an hour.

**Ms. Hogan:** I don't know, I don't deal with wills and estates.

**Rep. Delmore:** If there's a problem in drafting a will with a lawyer, what is the process with the Bar Association as far as investigation of that, discipline.

**Ms. Hogan:** State Bar Association does pay 1/2 of the costs of disciplining attorneys. If a complaint is made to the Clerk of the Supreme Court, they make a recommendation to the Disciplinary Board, and then the attorney may appeal that decision.

**Rep. Delmore:** How often does it happen that the allegations would be brought before the Bar.

**Ms. Hogan:** It happens all the time.

**Rep. Klemin:** The Supreme Court did take action against an attorney in Fargo.

**Ms. Hogan:** Yes.

**Rep. Maragos:** If the family feels harmed - can they bring a cause of action against the lawyer to repair the harm.

**Ms. Hogan:** No, there are malpractice actions they can bring. They can bring a suit. Also if the attorney should embezzle funds, and the lawyer doesn't have insurance to cover that, there is a fund that covers that from the Bar Association to pay out on the claim.

**Chairman DeKrey:** Thank you.

**Malcolm Brown, lawyer:** Opposed. This bill is a reaction to a bad case. If a person is over the age of 18, they are competent to make a will. There are statutes on undue influence. Now you

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