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1202

2007 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1202

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1202

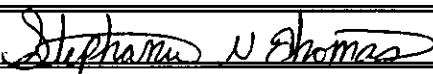
House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: January 22, 2007

Recorder Job Number: 1488

Committee Clerk Signature



Minutes:

Chair Keiser opened the hearing on HB 1202.

Rep. Dave Weiler, District 30: Overview of HB 1202.

Gary McDaniel, Licensed Funeral Director in ND: For the last 10 years I've worked in the pre-need market in ND. For three of those years I was employed by a major cooperation debt care company that's no longer operating funeral homes and doing business in ND. For the past seven years I've worked for locally owned funeral homes in Bismarck, Jamestown, and Edgely area. As you know, HB 1202 would require ND funeral establishments to include who owns the controlling interest in the funeral home under general price list in contrast. The question may be, why should this information be included on a general price list? This is because the ownership question is one of the most frequently asked questions by the consumer who's looking into making funeral arrangements for himself, herself, or a loved one. The consumer in question is usually a senior citizen who is moved from a small community into one little ark of communities in the state. Also, HB 1202 will compliment a funeral law, called the funeral rule that makes it easier for the consumer to choose only those services in merchandize they want, or need to pay for. Therefore, is this bill consumer friendly? I think so. HB 1202 would enable the consumer to become better informed about the ownership of a

funeral home. The better informed the consumer is about the ownership of the funeral home, the easier it is for the consumer to make an informed decision when shopping for a funeral home. I ask you all to give some serious consideration in giving this bill a do pass recommendation.

Rep. Ruby: Why the need for this industry to have this information on the price list?

Gary: The funeral service is a different type of business than most businesses that we deal with. In the funeral industry, funeral homes are generally family owned and or operated, and when they pass from one generation to the other, or from cooperation to the other, the ownership question becomes a gray area. People do business with a name, not necessarily knowing who really owns the business.

Rep. Ruby: Why is there a bill brought to do this, when other industries are doing their own.

Anything we do with an ad, or sponsorship of anything, I usually put if it's locally owned, or family owned, or whatever. Why can't this be done through advertising?

Gary: It's not required. Prior to the funeral being implemented in 1984, people were given virtually no information when they came to a funeral home about prices, or merchandise. The funeral rule opened the world to shoppers. It encourages people to go out and gather information. All I see here is put the information on paper so, they can find it.

Rep. Kasper: It appears to me from what you're saying is that you're wanting to get out to the public, the consumer, the opportunity that they can have a list that they can purchase from, as opposed to the all inclusive package. Is that where we were trying to go with this bill?

Gary: No, we're trying to get on the literature that's in that package, that's giving the consumer full disclosure.

Rep. Kasper: How does the fact that the ownership is wherever it's at, provide full disclosure and benefit the consumer?

Gary: It really doesn't matter who the owner is, as long as it's made available to the consumer.

Rep. Kasper: What difference would that make, as far as to the consumer who owns it?

Gary: Again, I'm working at a senior market, and to the seniors this is extremely important. They want to do business locally.

Rep. Kasper: Could they ask the funeral home who owns the business?

Gary: Sure they could.

Rep. Thorpe: If this bill passed, wouldn't this affect how they resale that business? If this bill goes through, and everything has to change when the new owner takes over, the value wouldn't be the same.

Gary: I don't see how this would have any affect on the value of the selling price of the piece of property served, but after the transaction is closed, the new owner takes over. Why can't the consumer know who the owner is? The selling price on a funeral home is not based on who previously owned it, it's based on factors in the industry, such as the number of cases they do per year, and the number of trait falls they do per year.

Rep. Thorpe: I see no reason why the consumer doesn't have the opportunity to know who owns it.

Gary: In the pre-need market, which is entirely different than the funeral market so, there are two types of funeral service. There's pre-need, before-need, at-need, I'm talking about the people in the pre-need area, the consumer who's out there. Most senior citizens are beginning to out live their assets; they're trying to get the best bang for the buck.

Rep. Kasper: Is your concern that if an out of state establishment owns a funeral home, and funeral services are being purchased pre-need, pre-death, those dollars are being handled properly. That the dollars are deposited someplace that are going to be there, or that the

benefit is properly purchased, and what you're supposing from this is that ND owned companies are taking better care of these situations than some out of state company. Is that where you're going with this?

Gary: No. I'm more concerned that the consumer knows who the owner is. I believe that if they know who the majority owner of a particular business is, then it enables them to make more intelligent decisions, one that they're comfortable with.

Mike Nathe, Funeral Director & Owner of Bismarck Funeral Home: See written testimony #1.

Rep. Johnson: This is a share greater than 50%, because it's split three ways with two partners that doesn't need to be disclosed.

Mike: Whoever has the controlling edge. It's going to be somebody in that group that's going to have 1% more, then they will have the controlling edge in that group.

Rep. Amerman: Is there some conglomerate or something out there trying to corner the market on all this?

Mike: Years ago in our business with the mergers and everything, the acquisitions got really crazy, and there were a number of funeral home cooperation's that went nuts buying funeral homes. The public thought they were going through a locally owned funeral home. What happened then is they overextend, they get too big, and eventually filed bankruptcy, unrenowned to most of the consumers in that market, until it hit the papers.

Rep. Amerman: You were saying whoever had the 1% control in interest would have to be on there, but to be honest with you, I don't know if this bill really speaks to that. It only speaks if you have 50% or greater.

Mike: How most funeral homes are set up, when they're merging with another partner, one partner is given the controlling edge. Somebody has to have the final say in the business.

That would maybe be something where the State Board of Funeral Service would make that decision, if it came down to it.

Rep. Thorpe: Do you own a home here in Bismarck?

Mike: Yes, I own Bismarck Funeral Home here in town.

Rep. Thorpe: How many funeral home operators are here in Bismarck?

Mike: There are three in town, and two of them are owned by the same cooperation out of Minnesota.

Rebecca Ternes, Deputy Insurance Commissioner: We want to support HB 1202 for a very specific reason, and that is as it relates to preemie funeral insurance. We have laws on the books related to accurately representing the company you're selling insurance for, and we take calls where consumers are a little bit concerned, or confused as to who is representing who in a preemie funeral insurance sell. Our law does say that they need to identify themselves as an insurance agent, and identify the company that they're selling insurance for.

Rep. Keiser: How will this bill do that?

Rebecca: All I can really relate is a couple of calls that we have taken, relate to maybe a business card that says that they work for a funeral home, versus an insurance company.

Rep. Keiser: How does this bill make them put insurance agent on the card?

Rebecca: I would hope that because they have to identify it right away on a business card, or on a letterhead, certainly it would be on a policy, but it might not be on something that gains them entry into a consumer's home, or at the board meetings.

Gary: When dealing with the consumer, I have to disclose that I'm an independent contractor representing a funeral home. When it comes to the preemie funeral insurance, you have to disclose whether or not you're a licensed insurance agent, or a representative of a company, and who that company is. The disclosure has to be there.

Rep. Keiser: Do you think we should put the ownership of that company on the card, as well?

Gary: I think what you would have to do is disclose that the individual is an insurance agent, or representative of a company.

Rep. Keiser: Why transparency? Don't you want to know where that company is from?

Gary: That would be nice, but what if they're representing 2 or 3 companies? I guess you would have to put them all on there. I can see from their position what they are saying, and that is if you want transparency, there's got to be more disclosure in the bill, than it currently asks for.

Rep. Kasper: What we're trying to get to is that if an insurance agent is selling preemie funeral policies, that they're not representing they are any kind of insurance agent, or in some instances that they are or aren't an employee of a funeral home.

Mike: Some of them are employees of the funeral home, and have the insurance license. Some of them represent numerous funeral homes. I think that this bill forces them to disclose who they're working for.

Paul Sannes, ND Funeral Directors Association: See written testimony #2.

Rep. Kasper: You say this bill is nothing more than an attempt by one funeral home to gain a competitive advantage over other funeral homes. How does this bill cause that to occur?

Paul: We feel the jest behind this bill is a local owner here in Bismarck attempting to disclose ownership of the other funeral homes here, to simply gain a competitive advantage that they're not locally owned.

Rep. Keiser: This industry is somewhat unique. People come to you in a state of mind that is different than buying a car, or anything else. There may be value in knowing who owns the operation.

Paul: Families come to us in a time of distress, and it's our job to help those families through their time of need. The ownership of the funeral home has no bearing on that. There is nothing hidden from the consumer, so the ownership is irrelevant.

Rep. Thorpe: Is there a problem with some funeral homes having people selling preemie funeral insurance?

Paul: The preemie industry in the state of ND is regulated by rules and regulations. In the pre-need industry there are two types of vehicles that can be used, a CD or a trust in a bank, or funeral insurance. All CD's are regulated by the state, as well as the funeral insurance. Every insurance company that we would represent as a licensed agency is all approved by the State Insurance Commissioner.

Rep. Vigesaa: What percentage of the funeral homes in ND is not considered locally owned, and of those how many are out of state owned?

Paul: In the state of ND, funeral homes are licensed by the funeral home, and also their chapels. There are approximately 120 funeral home/chapels in the state of ND. Of that there are I believe 4 funeral homes in the state of ND that are owned by the same family, cooperation that owns the funeral home I manage. The 2 funeral homes here in Bismarck, 1 in Linton, 2 in Cooperstown, and one other in the eastern part of the state are owned by the family cooperation out of Breckenridge, Minnesota.

Stephanie Armstrong, Owner of the Gilbertson Funeral Home in Devils Lake, ND: I am a locally, family owned funeral home, and I am opposed, because I do not feel that it is necessary that we have a law telling that I'm a locally owned funeral home. I have every right to do that in my advertising, as everyone else in the state does. All consumers of funeral service in the whole United States fall under the Federal Trade Commission rule, which say they are entitled to consumer price lists, casket lists, and vault lists with the prices. I feel we

are taking care of the emotional needs of our families at that time. Ownership I don't think is a big significance to that.

Hearing closed.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1202

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: January 22, 2007

Recorder Job Number: 1494

Committee Clerk Signature

Stephanie N Thomas

Minutes:

Chair Keiser opened the hearing on HB 1202.

Rep. Dietrich: I make a motion do not pass.

Rep. Thorpe: Second.

Rep. Clark: This bill wants to be like a marketing tool for one particular funeral home looking to get a competitive advantage, with the theory being they can sell locally owned services, as opposed to some other cooperation that might be on Wall Street.

Rep. Dosch: Part of the rationale a couple of years ago was when the issue of the company that came down and bought numerous funeral homes across the whole Midwest, and they ended up going into bankruptcy. A lot of the people that had purchases pre-need accounts from them had no idea that they were dealing with a Canadian company when they purchased them, and it caused a lot of stir in the industry, especially because we are dealing with a lot of older senior citizens type, and now they suddenly get a notice in the mail saying this funeral home has gone out of business, and their assets are being transferred over to this other one. The funds were secure, but it caused a lot of anxiety, and that's what prompted the bill a couple of years ago. I don't know if that's so much the case now anymore, I think that industry has kind of shut it down.

Rep. Amerman: Listening to testimony, I don't think this bill does what they thought they were going to do because, according to them whoever was the controlling interest had to have that. With this bill you have to have 50% or more, so we'd have to amend it to start with, I believe, with what their intent of the bill was. Last session it passed the house by a vote, and there was one Senator that had concerns, what was the concern that it got killed over in the Senate?

Rep. Dosch: I believe there was some issues with disclosure, because the other ones that came in and opposed it were owned by a larger company, and they didn't necessarily want to have to disclose that they weren't local owned.

Rep. Keiser: When it got to the House side 2 years ago, it wasn't opposed real effectively. When it got to the Senate side, it was a different hearing entirely. People are already questioning the language in the bill. One was the 50/50 ownership, and another was the three-party ownership where no one had 51% or more.

Rep. Dietrich: I agree with Rep. Dosch, the fervor over the Canadian company has died down, but we've heard testimony that the funds are held in a well regulated industry, and they haven't had any problems. If a company is locally owned, they can advertise.

Roll call vote was taken. 10 Yeas, 1 Nay, 3 Absent, Carrier: Rep. Amerman

Hearing closed.

Date: 1-22-07
Roll Call Vote #: _____

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1202

House Industry Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do not pass

Motion Made By Rep Dietrich Seconded By Rep Thorpe

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep. Amerman	X	
Vice Chairman Johnson	X		Rep. Boe		
Rep. Clark	X		Rep. Gruchalla	X	
Rep. Dietrich	X		Rep. Thorpe	X	
Rep. Dosch		X	Rep. Zaiser		
Rep. Kasper	X				
Rep. Nottestad	X				
Rep. Ruby					
Rep. Vigesaa	X				

Total Yes 10 No 1

Absent 3

Floor Assignment Rep Amerman

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1202: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO NOT PASS** (10 YEAS, 1 NAY, 3 ABSENT AND NOT VOTING).
HB 1202 was placed on the Eleventh order on the calendar.

2007 TESTIMONY

HB 1202



BISMARCK
funeral home

January 22, 2007

Mr. Chairman, members of the committee my name is Mike Nathe. I am a funeral director and owner of Bismarck Funeral Home here in Bismarck. I am here asking you to support HB 1202. I believe that this is a consumer friendly bill that adds transparency to our industry and helps protects the families that we serve. It's a win-win situation for both parties.

This bill will help better inform the families, I believe they have the right to know who they are dealing with when it comes down to making arrangements for their loved ones and are spending thousands of dollars for those services. What possible advantage is there to keep these families in the dark when it comes to ownership? Ownership may not be a big concern in most other industries, but because of the nature of funeral service and the situation that the families are in, the issue can be of great importance.

Similar ownership laws are already in place in most of the states around the country. The transparency of the law helps funeral service, the costs to the funeral homes are minimal and can easily enforced, the experiences of the other states prove that. This bill costs the state of North Dakota nothing.

In conclusion I ask that you give HB 1202 a Do Pass recommendation to help protect and better inform the families of North Dakota. Thank You.

Mike Nathe
Bismarck Funeral Home



January 22, 2007

HOUSE INDUSTRY, BUSINESS & LABOR COMMITTEE
HB 1202

CHAIRMAN KEISER AND COMMITTEE MEMBERS:

My name is Paul Sannes. I am president of the North Dakota Funeral Directors Association and also manage the Myers Funeral Home in Linton. Our Association strongly opposes this legislation and respectfully request that you give it a **do not pass**.

It is difficult for me to stand here and oppose a proposal by a fellow member of the funeral industry. However, this bill is nothing more than an attempt by one funeral home to gain a competitive advantage over other funeral homes. This has nothing to do with consumers. This has nothing to do with public safety. This has nothing to do with improving the services the industry can provide to the public.

The proponent of this legislation has consistently driven home the point in its ads and brochures and other marketing material that is supposedly the only locally-owned funeral home in the Bismarck-Mandan area. Now he wants you as the state legislature to do this for him.

Why? Is the public somehow being injured? No. Is there fraud or cheating taking place? No. Is the public being deceived and mistreated? No. Then why do we need this legislation? The North Dakota Funeral Directors Association believes we do not need it. House Bill 1202 does nothing to assist families in selecting the best funeral home to meet its needs. Local ownership does not automatically translate into quality service or low prices. Competition and the ability of the funeral director in charge of the service most often determines whether a family is satisfied.

This bill would increase the cost of the funeral service to the consumer because printed materials, marketing materials and signage would all have to be redone to reflect the ownership of the funeral home at any given time.

[OVER]

This bill substantially decreases the value of a funeral home because it limits the value of goodwill when the funeral home is being sold to someone living outside the community in which the funeral home is located. This might be a community fifty miles down the road. Linton for example.

Finally, we have to ask why this bill is limited just to the funeral industry. If local ownership is automatically better, than why not impose these disclosure requirements on all businesses?

This bill is a matter of competition within a particular industry that should remain within the industry and not become the subject of state legislation.

We respectfully request you give this bill a DO NOT PASS.

Thank you for your time and consideration. I'd be glad to answer any questions.



**Industry, Business, and Labor Committee
HB 1202
January 22, 2007**

Chairman Keiser and members of the committee, I am Linda Johnson Wurtz, Associate State Director for Advocacy. I represent the 79,600 North Dakota members of AARP.

AARP North Dakota supports a requirement that advertisements for funeral and burial services disclose the ownership of the entity offering the service.

According to the deathcare industry, the current average cost of a traditional funeral is \$6,100 (not including cemetery charges). For many older consumers, this purchase is their third-largest expenditure, ranking behind only the purchase of a home and an automobile.

The deathcare industry is undergoing change. Policy changes and mergers are blurring once distinctive lines among the five segments of the deathcare industry and what services they provide – funeral homes, crematories, cemeteries, sellers of preneed plans, and third-party sellers. Many funeral homes are now owned by commercial chains and consumers may be unaware of changes in ownership.

To give consumers a fair chance at making a prudent investment, AARP urges transparency from the funeral industry by disclosing ownership through their advertising.

Thank you. If there are any questions, I am available at the following numbers: 701-527-1474 (mobile) and 701-355-3642 (office).