

Protecting a consumer's right to choose meaningful, dignified, and affordable funerals since 1963

April 6, 2013

Senate Judiciary Committee State of Florida 404 S. Monroe Street Tallahassee, FL 32399-1100 (850) 487-5198

SB 370-Request for Amendment and Clarification

Ladies and gentlemen,

I write to you as the executive director of the nation's oldest and largest non-profit dedicated to protecting the rights and choices of funeral consumers. Funeral Consumers Alliance's federation of local, volunteer groups includes seven in Florida with thousands of individual citizen members.

I join others in asking the committee to revise and amend the bill in order to protect the ability of Florida families to choose a private, family-directed funeral. One portion of this bill would inadvertently make this even harder than it already is. Florida's funeral and cemetery division has routinely exceeded its statutory authority and improperly thwarted private activities, claiming the ability to require families to hire commercial funeral homes. As with all licensing divisions, legal authority extends to the **commercial practice of a profession**; it does not extend into the private sphere except in rare circumstances. By analogy, the health department may regulate the kitchen facilities at restaurants, but it may not do so in our private kitchens nor may it require us to purchase our food only through commercial vendors.

Though many have never encountered the idea of "home funerals"—funerals directed and carried out by families themselves without hiring commercial funeral homes—the practice has a long history and was standard in this country just over 100 years ago. There is a resurgence of interest in this old-fashioned tradition, which often goes hand in hand with interest in simple, environmentally friendly or "green" burial. The concept is so unfamiliar that most people assume it is illegal, which is not true.

The troublesome portion of SB 370 is:

(9) "Funeral director" means a licensed funeral director or direct disposer licensed pursuant to chapter or other person-who first assumes custody of or effects the final disposition of a dead body or a fetus as described in subsection (7).

Removing the phrase "or other person" undercuts the legal possibility of a wife carrying out her husband's funeral, or a mother who wishes to care for a deceased child. The likely *intent* of the revision is completely reasonable—clarifying that the term applies only to state-licensed funeral providers. The *effect*, however, is to make it seem that *only* licensed providers may engage in the necessary tasks, such as filing death certificates, and that private families are *barred* from doing so and *required by law* to hire a commercial funeral home even if they wish to perform this sensitive activity themselves. So many Florida families have contacted Funeral

Consumers Alliance over the years to relate that funeral directors and the funeral and cemetery division have told them just that. This is not idle speculation; the problem is already occurring.

A simple re-write could clarify this and accomplish the state's objective without unintentionally affecting families' private choices. I'd like to suggest the best way to ensure these choices are available would be to insert an exemption into all statutes relating to the procurement and filing of death certificates, burial permits, and other tasks necessary for the final disposition of a decedent. **Important**—I do not propose anything that would endanger the public health or interfere with the state's legitimate medico-legal interest in death certification. <u>All deaths already must be certified by a medical practitioner whether it is the family or a funeral director who requests the certificate.</u>

The National Home Funeral Alliance, also a nonprofit, co-authored a position paper with FCA for the benefit of legislators who may be unfamiliar with the concept. I have included it with this letter. Also included is the chapter on the state of Florida from my book *Final Rights*. This chapter explains some of the current difficulties Florida families encounter.

Our suggested model language:

Nothing contained in this section/title shall be construed to prohibit the next-of-kin or designee(s) from carrying out the disposition and funeral services of the decedent privately and without hiring a funeral establishment. Such kin and designees shall not be required to be licensed funeral directors in order to carry out the tasks associated with the disposition, including but not limited to, preparing, filing and obtaining necessary certifications and permits, preparation of the body (not including embalming), transport of the body to the place of final disposition, and any desired ceremonies. No agency or department may promulgate any regulation that interferes with these rights and abilities except in cases of demonstrated and immediate threats to public health or safety. No agency or department shall refuse to furnish necessary authorizations to the next-of-kin or designee(s) provided those designees correctly supply information and/or paperwork that satisfies the laws of this state. Nor shall any agency or department require the family to hire or otherwise engage a commercial funeral establishment to accomplish such tasks.

I hope you find these materials helpful. My colleagues and I will make ourselves available in any way that you would find helpful with this or other funeral-related legislation.

Respectfully submitted

Josh Slocum Executive Director