

State Lobbying:

**Yes It's Legal,
Yes You Can; and
Yes You Should.**

12 Tips To Make It Happen

A how-to manual for Funeral Consumer Alliance affiliates who want to stay ahead in the race with funeral industry lobbyists and trade organizations when consumer rights are at stake. A case study from the 2005 – 2006 Wisconsin legislative session.

Prepared by: Ray Gurney - Legislative Liaison, FCA of Greater Milwaukee

Prepared for: Funeral Consumers Alliance Biennial Conference
June 1 – 3, 2006 Edwards University, Austin, Texas

Don't Let This Happen in Your State

For some reasons unknown to the two Funeral Consumer Alliance affiliates in Wisconsin, 2005 went down as the year of the funeral industry's attack on the consumer's right to a meaningful, dignified, and affordable funeral in our state.

This became especially clear when Assembly Bill 485 was introduced during the summer. It supposedly had to do with protecting consumers from fly-by-night funeral directors.

What was particularly appalling about this is that most residents of the state like to believe there are strong consumer protection laws that are fully enforced and our legislators simply wouldn't tolerate any proposed legislation to the contrary.

AB 485 was so far from this ideal, that at first, it didn't seem possible that anyone could take it seriously. But not only were the law makers taking it seriously, it was headed toward almost instant passage with hardly a whisper of opposition.

Maybe it would be more accurate to say 2005 was the year the Wisconsin FCA affiliates lost their naiveté and grew up really fast.

This case study has a somewhat happy ending for now, but beginning in January 2007, the same battle may need to be fought all over again.

Be Aware of Proposed Legislation

Wisconsin has a wonderful free service to anyone with Internet access that emails a notification of any legislative action based on the user's interests. I had signed up to be notified of any pending legislation that has key words in it like funeral, death, cremation, burial, body disposition, etc. But then I changed Internet Service provider and had failed to update my automatic notification of pending legislation on the state website.

Tip 1 – Make use of any and all web based tools to be automatically notified when any pending legislation is in the pipeline. Then check from time to time to be sure the system is working like you expect. (See www.legis.state.wi.us then select Legislation and then Bill Notification.)

If your state does not provide this type of service, become an advocate with other consumer rights groups in order to stay on top of pending legislation. If you do not know about it, you sure can't react to it.

However, much of the work of developing new bills is done without public knowledge. By the time a bill is introduced in Wisconsin, lobbying interests have practically written the bill, a legislative resource bureau has provided a legal analysis of the bill (at no charge to the author), co-sponsors are already lined up, lobbying interests have developed a marketing campaign to sell the bill, and more. In other words, even before a consumer group knows that a bill is in the works, it is well on its way to being passed. All that an advocacy group can hope for is to try to have the bill modified using amendments.

Make Use of the FCA National Office

Now, back to the AB 485 story.

Fortunately for us, Joshua Slocum, the Executive Director of FCA, got wind of a bill that was introduced "in the consumer's best interest," as it's sponsors would later claim, that would have severely limited startup funeral homes among other anti-consumer measures. Josh instantly emailed and called several FCA members to alert us as to the impending catastrophe. (This was described in the Fall 2005 issue of the FCA Newsletter).

Tip 2 – When the FCA office calls, answer the phone. They might know something you need to know right away. They may be your best resource when you need a door opened. Conversely, don't hesitate to call the national office. Everyone there is knowledgeable and helpful. They may be able to save you countless hours of struggle.

Name a Legislative Advocate

Fortunately for us, the FCA of Greater Milwaukee was due to have a regularly scheduled meeting in a few days. Josh had called some of the officers of this group to brief them on the situation. Based on that information, I was invited to attend and give a report. Before long, the conversation turned to deciding on what steps to take to block or modify the bill. Some of the officers expressed interest in helping by contacting legislators, appearing on talk shows, etc. What was missing though, was one person to steer the process. Larry Schmidt, a long-time board member, came up with a brilliant idea; create a non-voting non-board member position called Legislative Liaison for me. This would give me a title as I contacted legislators and the media. I liked this idea and as it played out, the title did seem to impress people. They didn't have to know it was a volunteer position and that I was learning as I went.

Tip 3 – By an official motion and vote of the board, create a position called Legislative Liaison. The person who fills this spot is not necessarily a member of the board but does make reports to the board at their regularly scheduled meetings.

Do this before there is a crisis if possible and while there is enough time for the person who fills this spot to prepare for the job of fighting off highly paid, well informed lobbyists and other advocates for the funeral industry who have deep pockets and count on feeding their children with the fees they earn. What would you do if you were one of them and met up with a consumer advocate who wasn't well prepared for a fight? Needless to say they figured me out rather quickly and did work me over a few times.

Stay Focused and Involved

The job of the Legislative Liaison is to be the eyes and ears (and sometimes mouth) for your FCA affiliate. No one expects you know everything about the legislative process in your state, what is going on in other states, how to write letters to the editor, develop relationships with other advocacy organizations, create media events, personally get to know key legislators that are consumer friendly, get the governor's ear, and file law suits when all else fails.

Well, actually they probably do, now that you're called Legislative Liaison, but don't let it overwhelm you.

Tip 4 - Stay focused on the most important tasks. If it's emailing legislators, do that. If it's organizing a letters to the editor campaign, do that. If it's learning how a bill becomes a law in your state, do that. But stay focused.

The lobbyists and legislators know that for the most part, consumer advocates are over involved, often retired people, volunteers who can quickly lose their enthusiasm over even the most important issues. They are counting on us dropping the ball and disappearing into the background. They know they really don't have to take us seriously. What they don't know is that we love obstacles. Obstacles make us mad. They make us hungry for success. Obstacles feed us like the contents of dirt do for earthworms. (I kind of like that metaphor. Throw more dirt my way!)

Do Your Homework

Tip 5 – Make use of any and all public records to understand what and whom you are up against.

Stop and think about this for a minute. Mark Paget, the Executive Director of the Wisconsin Funeral Directors Association, a 501(c)(6) organization, made \$85,000 in 2004. This information is on the Internet and is easily found. Know the enemy!

Mr. Paget also has a staff. He can also hire paid lobbyists. In the year 2005, his organization spent \$34,832 on lobbying. Added to that were legal analyses of bills for a total lobbying expenditure of \$46,261. We were not only going to be going up against him but also the other Wisconsin trade association and also any lobbyists they hire as well as any legislators that owe favors to the funeral industry and also any legislators that owe other legislators favors and also ... (you get the idea). Now is a good time to reread the story of David and Goliath if you haven't looked at it lately! I don't think I need to tell you whom you might want to identify with.

You are clearly outnumbered, out moneyed, starting late out of the box, unsure of what you're doing, don't have the massive amount of time it takes to be a consumer advocate, and your computer just died – and that's on one of the better days. Maybe you're wondering why you even took on this impossible task.

If FCA Doesn't Do It, No One Will

Tip 6 – Never forget that for every anti-consumer piece of legislation that passes and is signed into law, hundreds and hundreds of consumers will be affected for years to come. No amount of consumer education is going to overcome bad laws.

FCA of Greater Milwaukee has an exceptional speakers bureau and has helped countless people over the years avoid tragic and costly decisions. But, when the Milwaukee board was presented with the potential harm that would have been done by passage of AB 485, they did not respond by coming up with a new speakers program, neither did they say this could be negotiated the next time the contract with the participating funeral home came due, rather they determined that an immediate, coordinated, effective challenge to the bill was needed.

Lobbying is Not a Dirty Word

The Wisconsin statutes recognize that "the operation of an open and responsible government requires that the opportunity be afforded to the people to petition their government for the redress of grievances and to express

freely to any officials of the executive or legislative branch their opinions on legislation, on pending administrative rules and other policy decisions by administrative agencies, and on current issues."

In effect, this is a description of what lobbyists do. It is what lobbying is. There is nothing inherently wrong with this activity. In fact, it is necessary to the operation of our governmental system. It is also what we do as private citizens when we contact a member of the executive or legislative branch of our government and express a view on a particular issue, law, regulation, or bill.

Tip 7 – Learn about the legislative process in your state and understand the lobbying rights you have.

For the most part, when an affiliate expresses an opinion on pending legislation, it is done in the spirit of educating an elected official regarding the effect their official actions may have on our members. They have an obligation to hear our views, whether or not they agree with them. There is no risk of coming under the scrutiny of lobbying laws when an affiliate does this. It is most likely one of the things we said we would be doing, either directly or indirectly, as a part of our charter when we incorporated as an organization within our state.

In Wisconsin, the Ethics Board regulates lobbying. Their website (see www.ethics.state.wi.us) provides a clear list of what it means to be a lobbyist that is required to register and file paperwork from time to time.

If your affiliate is a 501(c) (3) organization, the IRS rules apply to how much lobbying can be done. But, do not be misled in thinking you cannot do any lobbying. There are some guidelines that need to be watched, but if your charter and bylaws indicate you're organized to provide for meaningful, dignified, and affordable funerals for your members and there is pending legislation that would interfere with your ability to serve your members you have every right to speak up on the behalf of your members.

Lawmaking has never been very pretty. They are like hotdogs, as good as they might be at a picnic, in the end, you probably don't want to know what went into them. Law making is like that too. Unfortunately, if you want to have an effect on the laws in your state, you're going to have to learn about the down and dirty part of the system. It doesn't mean you have to get down and dirty, but it doesn't hurt to wear your barn boots.

The state of Wisconsin website has some very helpful articles in understanding the basic processes. I expect your state does too. Once you have mastered the basics, grab onto a bill you want to follow and start emailing the sponsor, cosponsors, lobbyists, and affected organizations with questions. If you ask any kind of penetrating or critical question, you will quickly discover how emotional the supposed rational system of law making we have really is.

Being on the Inside Helps

Members of the legislature have assistants, sometimes called aides, who are the people who actually follow a piece of legislation that the legislator sponsors. The aide also has numerous contacts with constituents who support the reelection of the legislator. It is not a myth that a legislator is always running for reelection. And their aides are key in helping them. If they have sponsored a bill, there is always some reelection value in their action. If you oppose a bill of theirs, you represent a loss at the polls. You are not their friend. You are their enemy. Don't expect anything nice from them or their aides.

Tip 8 – Find a friendly legislator that can be your guide, or other sources of inside help.

On the other hand, there are always legislators, maybe even in your own district, who might want to have support in opposing a bill they have not sponsored. In Wisconsin, after a bill is introduced, it is sent to a committee for a hearing. This is the chance, in theory, for interested parties to express their views. In practice, the input at these hearings is rather meaningless. The legislators already know how they are going to vote. But it doesn't hurt to contact the members of the committee before the hearing to express your views. Emails work fine, but if you can talk on the phone with an aide, all the better. But, keep it brief and follow up with a friendly email.

In AB 485, we were able to get one friendly funeral director to call a friendly funeral director I know to call her state representative who sits on the committee that heard the bill and convince him to vote against the bill in committee. His was the only Nay vote. It didn't change the outcome of the vote, but it was a small moral victory for our side.

Or... This is the time to be creative. I'm not much of a fan of letters to the editor in cases where legislation is pending. It is much more useful to find a real news story and give a reporter the background they need to write something that appears in the form of an exposé or similar hard news piece. Although not many people listen to public radio talk shows, don't ignore this avenue. We have several good public radio talk shows, but by the time we knew the lobbyists had set up a show, it had already aired. To our good fortune, a friendly funeral director was listening and called in to voice his objections.

Building on this entrée, Josh Slocum and several of us locally contacted a number of media outlets to encourage them to do exposé types of stories. Although none of them took us up on our idea, a business page reporter in Milwaukee did do a story.

I believe the fact that we bombarded the media channels with our requests got back to the sponsors of the bill and caused them to back off of their absurd positions. At one point, the main sponsor claimed he was not going to pursue the bill. In fact, this was a delaying tactic to keep us quiet.

At this same time, members of both FCA affiliates in Wisconsin were contacting their legislators and giving well-reasoned arguments why AB 485 was not only bad legislation, but the ham handed and deceitful process being used to gain its passage was a dishonor to the public.

After this Herculean effort, amendments made in committee removed the most offensive parts of the bill.

Fortunately for us, when the bill came to the floor for its final vote, no one attempted to amend the bill back to its original form. There is a recent case in Texas where a bill had been amended in committee, but a legislator tried to revert the bill to its original form when it came up for a final vote. He was only stopped by a friendly legislator who was on the floor at the time.

You're Not All Alone

There will be days when you will wonder why you are working so hard, for no pay, with no recognition, and hardly ever winning any battles. It helps to know that this is part and parcel of advocacy. It helps even more to be in contact with others who are doing the same or similar work.

You may find some other legislative liaison through the FCA connections you have. The FCA national office can also be a support system.

But, in the end, it helps to find other consumer advocates in your state that can guide you through the legislative process. They will most likely have confronted some of the same bottlenecks you are running up against and will give you ideas to try.

Tip 9 – Find other consumer advocacy organizations that you can network with for the purpose of understanding how successful lobbying actually works.

If nothing else, building these links will give you a chance to tell your story and perhaps recruit some friendly advocates.

Whining Doesn't Count

Years ago I attended a sales course where I was introduced to the concept of the "assumptive sale." I like that idea to a point. Here's what I assume when I put on my advocacy hat.

In my mind, I can't imagine why any responsible, clear thinking, knowledgeable citizen of the state of Wisconsin would want laws and rules that victimize consumers.

That's my "sales position." Actually, it's my values position. So, for me, I don't have to "sell" anything. I just need to let people know that certain proposals are not in keeping with Wisconsin's longstanding and progressive views towards consumer protection.

My biggest challenge then is not to “sell” anything, but to find creative ways to avoid power struggles, whining, or otherwise forgetting the basic value that needs to be upheld.

Tip 10 – Be creative in finding ways to keep your values, and that of your affiliate, in front of the legislators and regulators as it relates to the death care industry.

Please note, that by taking this approach you are proactive and not just reacting to “their” proposals. You are defining the issues and can set the tone of the rhetoric – and the values that are at stake.

It also helps to remember, we are not anti industry, but we are pro consumer.

The 80/20 Rule at Work

Be prepared to spent about 80% of your time educating yourself about the processes you'll have to deal with to be a legislative liaison and only 20% of your time on the actual issues.

In addition, be prepared to spend 80% of your time educating your affiliate board, members, and other interested parties about the issues and only 20% of your time trying to educate lawmakers. Never forget, the sponsors of a bill already have their minds made up on a bill – that's why they are sponsors. There's little chance, if any, that they'll change their minds.

Even the non-sponsors of bills will show little interest in listening to you. However, their legislative assistants (aides) will probably be willing to exchange a few emails with you. These are the people you need to educate.

From a sales point of view, the aides are not the decision makers, but are strong influencers. You need to give them to ammunition they need to sell the legislator on your point of view.

Tip 11 – Broaden your concept of educating and lobbying to include not only legislators, but also anyone interested in the issues.

Somewhere, someone will take up the flag and run with it. Once this happens, and legislators get wind of it, they will start to think differently.

AB 485 was amended only because of a media and letter-writing blitz that came from a half-dozen different directions. This included the FCA national office, a friendly funeral director, a friendly business page writer, and both FCA affiliates in Wisconsin.

Conclusion

FCA has a long and proud history in trying to do what is right for consumers of death care products and services. Perhaps the most critical emerging issue is the aggressive way industry advocates are attempting to skew state laws to benefit themselves at the expense of the consumers.

Tip 12 – If you are the Legislative Liaison for your affiliate, think of yourself as the creator of vaccines that can prevent nasty diseases from occurring. You may feel like a fire fighter most of time, but never lose sight of your larger purpose.

If the results for us on AB 485 can be considered a partial victory, the industry was able to block Designated Agent for Body Disposition legislation in this biennial session.

Keeping score, we can say a half a point for us and a whole point for the industry. They won this round.

But the next session starts January 3, 2007.

We'll be there – wiser and more organized – lobbying our hearts out. Wish us luck!