



April, 18th, 2013

Honorable Tom Harkin  
Chairman, Committee on Health, Education, Labor and Pensions  
731 Hart Senate Office Building  
Washington, DC 20510

Dear Mr. Chairman,

Established in 1882, the National Funeral Directors Association represents more than 13,000 funeral homes and over 20,000 licensed funeral directors and embalmers in all 50 states and in over 20 countries worldwide. The average NFDA member is an independently owned and operated business with fewer than 10 employees and has been in the same family for over 60 years. NFDA is the leading funeral service organization in the United States and around the world, providing a national and international voice for the profession.

Funeral Service, because of its exceptional status as a low hazard industry, as verified by the Bureau of Labor Statistics, is exempt from OSHA's injury and illness reporting requirements due to its low incident rate of injuries and illnesses. It is also exempt from maintaining a Sharps Injury Log, as otherwise would be required by the OSHA Blood Borne Pathogen Standard.

S. 665, "*Protecting America's Workers Act*", would require a funeral home to keep a site log for all recordable injuries and illnesses occurring among all employees on its particular work site, whether such employees are employed directly by the funeral home employer or are employed by contractors or temporary help or employee leasing services. For an exempt industry, such as funeral service, this requirement is in conflict with the existing OSHA practice, policy and regulations and ignores its exempt status as a low hazard industry.

The NFDA urges that S. 665 be revised to reflect the existing exemption for low hazard industries by modifying its application to those employers who are required to maintain an annual injury and illness log under the OSHA law. The revised language of Section 302 (B) would read "...to require site – controller employers, who are required to maintain a log of occupational injuries and illnesses under 29CFR1904, to keep a site log for all reportable injuries and illnesses...".

S. 665, in Section 301, modifies and expands the duties of an employer to provide a workplace free of recognized hazards that are causing or likely to cause death or serious physical harm to *“other individuals performing work at the place of employment”* who may not be employees of the employer. While this may be appropriate for a large job site, such as a construction site with a general contractor and management personnel to exert overall control of the job site, including work performed by outside contractors, it has little or no real application to a small business that has neither the personnel, the knowledge or direction and control over the actions of outside contractors hired to do work at the employer’s premises.

A roofer, for instance, hired to put a new roof on the employer’s premises, performs this work without any supervision, control or direction of the owner of the business.

NFDA urges that Section 301, of S. 665, be revised to recognize the lack of knowledge, expertise, control and direction that a small business has over employees of outside employers hired to do work at the employer’s worksite. The revised language of Section 301, of S. 665, would read “...or any other individual performing work at the place of employment that are under the supervision, direction and control of the site controlling employer.”

NFDA is concerned that the dramatic increase in civil penalties, contained in Section 312, will have a detrimental effect on small businesses, without any corresponding increase in workplace safety and health. This is exacerbated by the requirement, under Section 314 of the bill, that interest on a pre-final Order penalty begins to accrue on the date a party contests a citation issued under the Act and shall continue until the issuance of the final Order.

This requirement ignores the fact that an employer may have a legitimate defense to a citation and acts to chill the employer’s right of contest. The effect of Section 312 and Section 314 would place an unfair burden on a small business that would be the least able to afford substantially higher penalties and the mandated interest payments.

NFDA urges that a small business exception be included in Sections 312 and 314 that recognizes the financial reality of the operation of a small business that would be least able to pay an excessive civil penalty with interest and also meet the cost of compliance to correct a workplace condition that affects employees’ safety and health. The NFDA further urges that Sections 312 and 314 be modified to allow a small business to deduct the documented cost of compliance from the penalty and interest assessed.

NFDA also urges that Section 313, Criminal Penalties, include a clear definition of the word “knowingly”, given the dramatic increase in potential criminal punishment. Employers, especially small business employers, must be given clear guidance as to what is allowable and what is not allowable especially when a punishment for certain actions, as well as the result of any such actions, is severe.

As a final point, the NFDA and its members have always believed in voluntary compliance with the OSHA law, regulations and standards affecting their operation. This is clearly evident by funeral service’s excellent workplace injury and illness rate, as determined by the Bureau of Labor Statistics. NFDA and its members believe in and will continue to support voluntary compliance and applaud OSHA’s efforts in this direction.

S. 665 appears to shift the focus of OSHA from compliance to punishment which NFDA submits will do little for workplace safety and health and turn a cooperative approach into an adversarial relationship. This, NFDA feels would be counterproductive to the mutual goal of a safe and healthy workplace for all employees.

Thank you for your consideration. If you have any questions, please contact me at your convenience.

Sincerely,

*John H. Fitch, Jr.*

John H. Fitch, Jr.  
Senior Vice President, Advocacy  
National Funeral Directors Association