

NFDA KEY FEDERAL ISSUES UPDATE July 2008

INTRODUCTION

With the 110th Congress nearing its end, here is a status report on the issues involving funeral service. It is critical that all NFDA members go to the members side of the NFDA website under professional resources, Advocacy and Compliance and click on Congress-at-a-click and send your Representative and Senators a predrafted e-mail on the Qualified Funeral Trust bills and the SSI Codification bills. If we are to achieve any success in 2008 to pass these bills, we need your active support. In addition, your support of the NFDA PAC will greatly assist in our efforts to pass these bills.

1. LEGISLATIVE ISSUES

Estate Tax (no bill yet). NFDA and 150 other associations continue to strongly advocate for permanent relief from the federal estate tax. Over the years, the Democrats have been adamantly opposed to repeal; however they now appear to be willing to entertain some sort of modest relief especially for family owned businesses such as funeral homes. In that regard, the Senate Finance Committee held a hearing in 2007 on the problems facing small businesses in complying with the current law. NFDA submitted written comments for the record outlining the problems funeral homes are having with it. Additional hearings were held this year all setting the stage for some action by Congress in 2009 when the tax is scheduled to expire for 2010 and return at the 2001 levels in 2011. NFDA will continue to actively advocate for permanent estate tax relief for funeral homes but this is clearly a next year issue.

Small Business Health Plans (S. 2795/H.R. 6210). To date several bills have been introduced or will be introduced that would benefit funeral homes including a bill that NFDA is assisting the Chairman of the House Small Business Committee in drafting. However, in discussing these bills with relevant Congressional staff in both chambers, it is clear that nothing will happen this year. Congress intends to allow the next President time to propose his own health care plan early next year. Consequently, NFDA does not expect action to provide any health care relief for small business in 2008 unless some significant problem arises to force them to move. Again, these bills have been introduced to begin to frame the issue for action in 2009.

[Codification of SSI Irrevocable Funeral/Burial Trust Exemption. \(S. 989/H.R. 1629\)](#). At the request of NFDA, Senator Blanche Lincoln (D-AR) and Representatives Pomeroy (D-ND) and Wilson (D-OH) have again introduced bills to codify the current regulatory exclusion specifying that irrevocable funeral and burial trust funds are not assets for purposes of determining eligibility for the supplemental security income (SSI) and Medicaid programs. Passage of these bills continues to be a high NFDA priority for 2008. While we have had much success in gaining co-sponsors for each of these bills, the chances to attach either to a relevant larger bill moving through Congress during the remainder of this Session are slim. Most likely, this will also be a 2009 issue when the debate about social security and Medicaid heats up.

[Eliminate the Dollar Limitation on Qualified Funeral Trusts \(H.R. 1264/S.1743\)](#). At the request of NFDA, Representatives Kind (D-WI), Wilson (D-OH), Matheson (D-UT), Camp (R-MI) and Tiberi (R-OH) have introduced H.R. 1264, a bill to eliminate the current dollar limitation on qualified funeral trusts under Section 685 of the Internal Revenue Code. NFDA is working to include this bill in a larger tax bill in 2008 and have worked with our co-sponsors to position it for inclusion in a couple of them but so far to no avail. However, there may be at least one more opportunity before Congress ends this year. These bills will reduce administrative costs for funeral homes and assist those consumers who want to preplan and prepay their funeral expenses. They also will benefit state master trusts. Senators Hatch (R-UT) and Kohl (D-WI) have introduced a Senate companion bill. Again, like the SSI bill, we have had a significant number of co-sponsors sign on to both bills which give them a greater likelihood of being addressed this year.

[Congressional Resolution Declaring March 11, 2008 as National Funeral Director and Mortician Recognition Day \(S. Res. 390/H. Res. 892\)](#). Both the House and Senate passed this Resolution honoring funeral directors and morticians! At least we had one victory!

[Energy/Fuel Prices](#). NFDA has been invited to participate in a coalition of small business associations which will advocate with Congress and the White House the importance of developing reasonable energy policies to alleviate the upward pressure on costs associated with operating and managing a small business caused by escalating fuel and energy prices. To date, the coalition has sent a letter to both the House and Senate urging them to consider both immediate and long-term solutions to this crisis.

2. REGULATORY ISSUES

[Mass Fatality Management](#). Prompted by the threat of a pandemic flu epidemic, NFDA continues to work with key officials in the federal government with responsibility for disaster management to ensure that the role and responsibilities of funeral homes, cemeteries and crematories and all funeral service personnel, including industry suppliers are included in the National Response Framework or any mass fatality and family assistance plans that may be adopted. This includes:

a. A Mass Fatality Management Component MUST be developed and made part of the National Response framework (NRF) and any federal Agency Response Plan or Policy. Such a Plan should include:

- i. Policies and procedures dealing with the dignified recovery, storage, identification and processing of remains as well as the timely issuance of death certificates and the orderly conduct of the funeral and final disposition.
- ii. The establishment of a SINGLE Agency and Agency official responsible for implementing and managing the mass fatality component of any disaster response plan.
 - b. Establishment of a national missing person's database and locator for displaced family members which would include a universal identification code for victims.
 - c. Funeral homes, cemeteries, crematories and morgues and their suppliers should be included as a priority for logistical and workforce support and protection, including vaccinations and personal protective equipment, during emergency situations that may involve quarantines, restrictions on transportation, travel and public gatherings as well as the actual conduct of the funeral and final disposition.
 - d. Temporary suspension of certain federal, state and local laws, rules and regulations governing the conduct or practice of funeral directing, cemetery or crematory operations and which may otherwise hinder the proper conduct of fatality services in an emergency situation. These would include but not be limited to the FTC Funeral Rule, various workplace, wage and hour and environmental policies.
 - e. Emergency licensing reciprocity for Medical Examiners, Coroners, funeral directors, cremationists, and other licensed fatality service personnel to allow them to support the needs of fatality services in other jurisdictions.
 - f. Limited legal liability protection for funeral homes, cemeteries, and crematories to fully comply with a pre-need contract or failure to adequately comply with the federal, state and local laws, rules and regulations mentioned in item 4 above.

Progress is slow on getting the attention of the federal officials at HHS and DHS on the importance of these issues; however, we are making incremental progress and will continue to do so. However, in that regard, NFDA has been successful in its efforts to put funeral service personnel in one of the top Tiers set forth by CDC for priority vaccinations against the avian flu during a severe national pandemic. NFDA was initially able to have funeral service personnel classified in Tier 3 (out of 5 Tiers) along with other "essential health care workers". Recently, NFDA advocated that funeral service personnel should be at least in Tier 2, the second highest level due to their increased risk of exposure. CDC has indicated that it would reconsider their original placement and could move funeral service personnel into Tier 2. We should know more later this year.

In addition, the Department of Homeland Security recently held a workshop just on Mass fatality Management where several members of our Sub-Council representing all segments of our industry were represented. Past President Bob Biggins and NFDA's Advocacy Staff represented funeral directors. The purpose of the meeting was to develop a document identifying the needs of funeral service during a mass fatality event for use by other 17 Coordinating Councils in their disaster planning. In addition, President-Elect John Reed and SVP Fitch made a presentation on mass fatality to the NDMS Review Committee which is charged with the responsibility of reviewing the organization and effectiveness of the National Disaster Medical Service. Finally, NFDA's Advocacy staff hosted a meeting with representative of the United States Northern Command

(USNORTHCOM) to discuss the development of a joint military/civilian national mass fatality plan.

Formaldehyde. This will be a critical year for funeral service as the Government's National Cancer Institute (NCI) is conducting a study on formaldehyde exposure by funeral directors/embalmers and increased risk of cancer; the European Union is proposing a total ban on the use of formaldehyde even in embalming; the US EPA is conducting a risk assessment on formaldehyde exposure and many state regulators are analyzing formaldehyde and risk to workers who are exposed to it. The consequences of all these efforts could have significant ramifications for funeral directors and could lead to bans on formaldehyde use/exposure or significant reductions in exposure to include expensive prep room air filtration systems. Moreover, it could lead to dramatic changes in embalming procedures including using non-formaldehyde embalming chemicals. NFDA is actively engaged in all these efforts and has met with the NCI researchers to discuss the details of their study. In addition, we have formed a small group of staff, outside council and funeral directors to develop talking points and other materials in anticipation of the release of the NCI study and to emphasize the efforts NFDA has made over the years to insure all our members have established good environmental and health and safety compliance programs. We also intend to explore the use of non- formaldehyde substitutes for use in embalming and to discuss these issues with our chemical suppliers at a meeting in October at the NFDA convention.

Since NFDA members have indicated that Advocacy is one of the two most important services NFDA offers, we in the Advocacy Department want to make sure you are kept informed about what we are doing on your behalf here in our Nation's Capitol.