1337 H.D. 1 H.B. NO. S.D. 1 C.D. 1

.

1

. .

A BILL FOR AN ACT

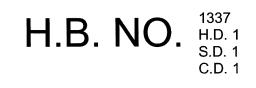
RELATING TO THE DEATH CARE INDUSTRY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

. . .

1	SECTION 1. Chapter 441, Hawaii Revised Statutes, is
2	amended by adding a new section to be appropriately designated
3	and to read as follows:
4	"§441- Cancellation; default and termination; refund.
5	(a) At any time before pre-need funeral services or pre-need
6	interment services are received by the purchaser or the
7	purchaser's contract beneficiary, the purchaser may cancel the
8	contract containing any pre-need funeral services or pre-need
9	interment services by notifying the cemetery or pre-need funeral
10	authority, in writing, of the purchaser's desire to cancel the
11	contract.
12	(b) Before a cemetery or pre-need funeral authority
13	terminates a contract containing pre-need funeral services or
14	pre-need interment services because of a delinquency in payment,
15	the following conditions shall be met:
16	(1) Four months in advance of the contemplated termination
17	date, the cemetery or pre-need funeral authority shall





1		prov	ide written notice to the purchaser at the
2		purc	haser's last known address and the notice shall
3		incl	ude at a minimum:
4		<u>(A)</u>	The total amount owed under the contract at the
5			time it was originally signed, dates and amounts
6			of payments, adjustments, and credits received to
7			date, and the amount of the delinquency;
8		<u>(B)</u>	An explanation as to how the purchaser may
9			effectuate continuance of the contract within
10			four months of the date of notice;
11		<u>(C)</u>	A statement that failure to effectuate
12			continuance of the contract may result in
13			termination of the contract; and
14		<u>(D)</u>	A statement that advises the purchaser of all
15			other requirements under this subsection;
16	(2)	Duri	ng the four-month period, but not less than once a
17		mont	h, and only so long as the purchaser fails to
18		effe	ctuate continuance of the contract as provided
19		here	in, the cemetery or pre-need funeral authority
20		shal	l provide the written notice required under
21		para	graph (1);



Page 3

H.B. NO. ¹³³⁷ H.D. 1 S.D. 1 C.D. 1

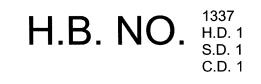
1	(3)	If, however, there is a reasonable good faith bona
2		fide dispute between the parties as to the amount of
3		delinquency, the four-month period shall not start
4		until the dispute is resolved; and
5	(4)	If the purchaser fails to effectuate continuance of
6		the contract by the end of the four-month period, the
7		cemetery or pre-need funeral authority may terminate
8		the contract under the terms and conditions of the
9		contract.
10	If the pu	rchaser elects to effectuate continuance of the pre-
11	need fune	ral services or pre-need interment services contract
12	within th	e four-month period, the cemetery or pre-need funeral
13	authority	may require that the purchaser make payment to
14	effectuat	e the continuance; provided that the amount required
15	shall not	be in excess of one installment payment of the
16	purchaser	's contract. The purchaser shall resume payment on the
17	pre-need	funeral services or pre-need interment services
18	contract	in the amounts and as often as required under the terms
19	and condi	tions of the contract and until all payments owed on
20	the contr	act are paid in full.





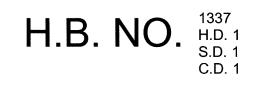
1	(c)	A cemetery or pre-need funeral authority shall not be
2	obligated	to:
3	(1)	Allow a purchaser to effectuate continuance of a
4		contract where a purchaser becomes delinquent again
5		after the four-month period provided in subsection (b)
6		has passed, and may thereafter terminate the contract
7		under the terms and conditions of the contract;
8		provided that the cemetery or pre-need funeral
9		authority gives written notice of the termination to
10		the purchaser at the purchaser's last known address at
11		least ninety days prior to termination; or
12	(2)	Provide pre-need funeral services or pre-need
13		interment services unless the contract is paid in
14		<u>full.</u>
15	(d)	If the contract is canceled or terminated pursuant to
16	subsection	n (a) or (b) or for any other reason, the purchaser
17	shall be	entitled to a refund of the amounts paid by the
18	purchaser	, less amounts that may be retained by the cemetery or
19	pre-need	funeral authority for its costs pursuant to section
20	441-38(b)	. The cemetery or pre-need funeral authority shall
21	make the	refund to the purchaser within thirty days of:





1	(1) Receipt of the purchaser's written notice of
2	cancellation; or
3	(2) Termination of the contract."
4	SECTION 2. Section 441-3, Hawaii Revised Statutes, is
5	amended to read as follows:
6	"§441-3 Map or plat required[+]; unique identifier. (a)
7	The cemetery authority [from time to time], as any of the
8	dedicated cemetery property [described in the certificate of
9	dedication], or any part or section thereof, is offered for
10	sale, transfer, or disposition in the form of plots, crypts, or
11	niches, shall also:
12	(1) In the case of land, survey and subdivide $[\frac{it}{it}]$ the
13	dedicated cemetery property into sections, blocks,
14	plots, avenues, walks, or other subdivisions; make a
15	good and substantial map or plat showing the sections,
16	blocks, plots, avenues, walks, or other subdivisions,
17	with descriptive names, initials, or numbers[+] <u>that</u>
18	uniquely identify each plot;
19	(2) In the case of a mausoleum or columbarium, make a good
20	and substantial map or plat on which shall be
21	delineated the sections, halls, rooms, corridors,

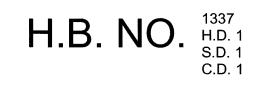




1	elevation, and other divisions, with descriptive	
2	names, initials, or numbers[+] that uniquely identi	fy
3	each niche, mausoleum, or crypt; and	
4	(3) File the maps or plats required by this section in	the
5	office of the bureau of conveyances or the office o	f
6	the assistant registrar of the land court, and	
7	maintain a copy of all filed maps as a permanent	
8	record of the cemetery authority.	
9	[The map or plat shall also be filed in the office of th	e
10	bureau of conveyances or the office of the assistant registra	£
11	of the land court.]	
12	(b) The cemetery authority shall also maintain a	
13	permanent, accurate record of the identity of each person who	se
14	remains are located in the cemetery, together with the	
15	corresponding unique identifier that indicates the location of	f
16	the person's remains within the cemetery. The records requir	ed
17	by this section shall be prepared and maintained in a manner	
18	that will enable the cemetery authority to timely respond to	
19	inquiries from the public or the department regarding the	
20	location of a person's remains within the cemetery.	



Page 7



1 (c) The cemetery authority shall specify the unique 2 identifier of a plot, crypt, or niche in any document that provides for the sale, transfer, or disposition of the plot, 3 4 crypt, or niche." 5 SECTION 3. Section 441-12, Hawaii Revised Statutes, is amended to read as follows: 6 "§441-12 Mortgages and liens [subject to dedication.]; 7 consumer contracts; sales prohibited. (a) Cemetery authorities 8 9 may secure pecuniary obligations by mortgage or lien upon their 10 property, whether or not the property has been set aside for 11 interment purposes, and may sell plots, crypts, [or] niches, or 12 contracts containing pre-need interment services subject to such 13 mortgage or lien within the limitations and conditions imposed 14 by this chapter. 15 (b) All mortgages and other liens of any nature hereafter contracted[, placed, or incurred upon] for and recorded on the 16 17 property which has been and was, at the time of the perfection 18 of the lien, [with the recorded written consent of the owner of any mortgage or lien,] dedicated to cemetery purposes pursuant 19 to this chapter, shall not affect or [defeat] impair the 20

21 dedication $[\tau]$ of the property to cemetery use, or the title of



H.B. NO. ¹³³⁷ H.D. 1 S.D. 1 C.D. 1

1	any plot, crypt, or niche [owner,] <u>contract, or the obligation</u>
2	of the cemetery authority to fully perform any contract
3	containing pre-need interment services, but the mortgage or
4	other lien shall be subject and subordinate to the dedication
5	and title of any plot, crypt, or niche [owner,] <u>contract and the</u>
6	obligation of the cemetery authority to fully perform any
7	contract containing pre-need interment services, and any and all
8	sales made upon foreclosure, insolvency, or federal bankruptcy
9	proceeding shall be subject and subordinate to the dedication
10	and title of any plot, crypt, or niche [owner.] contract and
11	the obligation of the cemetery authority to fully perform any
12	contract containing pre-need interment services.
13	(c) A statutory lien is created, without recordation of
14	the lien, upon all real and personal property held by a pre-need
15	funeral authority upon the filing with the department of audited
16	financial statements, audited by an independent certified public
17	accountant, that indicate that its pre-need funeral trusts are
18	not fully funded as required by applicable law. The amount of
19	the lien shall be equal to the amount that the pre-need funeral
20	trusts are underfunded. This lien shall have priority over all
21	subsequent real property mortgages, security interests, and

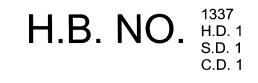




1	liens created upon the real and personal property of the pre-
2	need funeral authority and shall terminate at the time when the
3	pre-need funeral trusts are properly funded, as evidenced by
4	records and certification of the trustee and subsequent
5	assurance from the independent certified public accountant that
6	the underfunding was corrected.
7	(d) Notwithstanding any other language to the contrary,
8	sales by a cemetery or pre-need funeral authority of accounts
9	receivables from contracts containing pre-need interment, pre-
10	need funeral, or perpetual care services shall be prohibited.
11	Sales made in violation of this subsection shall be void.
12	(e) Any transfer of pre-need funeral trust funds and the
13	obligations related thereto shall be to another person subject
14	to section 441-20 or 441-30.5. Any transfer of pre-need funeral
15	trust funds and pre-need funeral contracts and obligations
16	related thereto in accordance with this section shall include
17	the transfer of pre-need funeral contracts made, entered into,
18	or purchased by the pre-need funeral authority prior to the
19	transfer."
20	SECTION 4. Section 441-13, Hawaii Revised Statutes, is
21	amended to read as follows.

21 amended to read as follows:

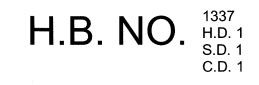




10

1 "§441-13 Sale of plots after dedication; sale of 2 [incumbered] encumbered plots prohibited unless [incumbrance] 3 encumbrance subordinate to dedication. After property is dedicated pursuant to this chapter, a cemetery authority may 4 5 sell, transfer, and convey plots, crypts, or niches thereof, which plots, crypts, or niches [may] shall be described by 6 reference to the map or plat, or amended map or plat, filed in 7 accordance with section 441-3 or 441-8. No plot, crypt, or 8 niche shall be sold, transferred, conveyed, or otherwise 9 disposed of, or offered for sale, transfer, conveyance, or other 10 disposition, unless the property on or in which the plot, crypt, 11 or niche is included has been dedicated pursuant to this 12 chapter, nor shall any plot, crypt, or niche be sold, 13 14 transferred, conveyed, or otherwise disposed of, or offered for sale, transfer, conveyance, or other disposition, unless the 15 property on or in which the plot, crypt, or niche is included 16 17 shall either be free and clear of all [incumbrances] encumbrances or there has been recorded the written consent of 18 every [incumbrancer] encumbrancer thereof that the 19 [incumbrancer's incumbrance] encumbrancer's encumbrance shall be 20 21 subject and subordinate to the dedication of the property to





1 cemetery purposes and the title of any plot, crypt, or niche
2 owner."

3 SECTION 5. Section 441-22.5, Hawaii Revised Statutes, is
4 amended by amending subsection (b) to read as follows:

5 "(b) Every cemetery or pre-need funeral authority shall be 6 required to provide to the purchaser of cemetery property, pre-7 need interment, or pre-need funeral services and related 8 commodities a written contract which shall contain the following 9 [disclosure requirements:] disclosures:

- 10 (1) The names and addresses of the <u>cemetery or pre-need</u>
 11 <u>funeral</u> authority [and], purchaser[+], and contract
 12 <u>beneficiary, if the beneficiary is someone other than</u>
 13 the purchaser;
- 14 (2) A clear and concise <u>itemized</u> statement of the
 15 property, <u>including</u>, for cemetery property, the
 16 <u>location of the plot</u>, crypt, or niche by its unique
 17 identifier, and any services[7] and related
- 18 commodities to be supplied or not supplied and by 19 whom, particularly if the authority is not to be the

20 provider under the terms of the contract;

HB1337 CD1 HMS 2007-4088



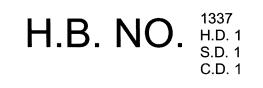
1	(3)	The purchase price of each item of property, services,
2		and related commodities to be supplied, the total
3		purchase price, and how the total purchase price is
4		payable[+], including any credit terms, if applicable;
5		provided that, pursuant to section 441-22.7,
6		disclosure shall also be made that further additional
7		charges or fees for perpetual care subsequent to the
8		execution of the contract are prohibited for any
9		purpose and on any occasion, except for reasonable
10		fees related to the administrative costs of
11		transferring ownership rights, including the cost of
12		research, document and file preparation, photocopying,
13		notary fees, records transfer and storage, and any
14		other costs directly related to the transfer of
15		ownership rights;
16	(4)	Related costs covered under the contract;
17	(5)	The basis on which funds are to be deposited in
18		trust[+], including:
19		(A) The name and address of the trustee; provided
20		that the disclosure shall not preclude the





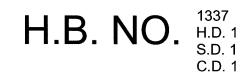
1			cemetery or pre-need funeral authority from
2			changing the trustee named;
3		<u>(B)</u>	The percentage of the contract price for
4			trustable items to be placed in trust; provided
5			that the percentage shall be no less than seventy
6			per cent;
7		<u>(C)</u>	The percentage of the contract price for
8			trustable items that the cemetery or pre-need
9			funeral authority will retain and not deposit
10			into the trust; provided that the percentage
11			shall not be more than thirty per cent; and
12		(D)	Where a portion of the contract price relates to
13			property, services, or related commodities that
14			are not trustable items, a clear description of
15			what those non-trustable items are;
16	(6)	[Ref	und] The refund, cancellation, and default
17		prov	isions of the contract[+], including an
18		<u>expl</u>	anation of the requirements of section 441- , and
19		<u>a st</u>	atement in twelve-point bold type in substantially
20		the	following form:





1		"YOU HAVE REFUND, CANCELLATION AND DEFAULT RIGHTS
2		UNDER STATE LAW AND UNDER THE CONTRACT. PLEASE READ
3		THE CONTRACT CAREFULLY FOR AN EXPLANATION OF THESE
4		RIGHTS";
5	(7)	The date and place of execution of the contract;
6	(8)	The cemetery or pre-need funeral authority's or its
7		duly authorized agent's signature on the contract and
8		the identification of this person by name and title;
9		[and]
10	(9)	A statement that the written contract, when signed,
11		shall constitute the entire agreement between the
12		parties relative to its subject matter and that all
13		obligations of both parties shall be fixed and
14		enforceable by the other parties of the contract $[-]$;
15		and
16	(10)	A statement that the contract may not waive any rights
17		of the consumer or duties of the cemetery or pre-need
18		funeral authority under the law."
19	SECT	ION 6. Section 441-24, Hawaii Revised Statutes, is
20	amended t	o read as follows:

HB1337 CD1 HMS 2007-4088



15

1 "§441-24 Inspection of cemetery or pre-need funeral 2 authority books [+ annual exhibits]. The books, records, and 3 papers of every cemetery authority whether or not a corporation, 4 which operates or claims to operate a perpetual care cemetery, 5 and of every pre-need funeral authority shall be subject to examination by the director [to the same extent and in the same 6 7 manner as may be from time to time provided for corporations in 8 section 414-472,] as provided by law, and every cemetery 9 authority operating a perpetual care cemetery, and every pre-10 need funeral authority shall submit such information as may be required by the director [in order] to furnish information as to 11 12 whether or not the cemetery or pre-need funeral authority has 13 complied with this chapter. 14 The records of every cemetery authority shall include the 15 information required under section 441-3(b). The records of

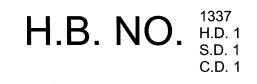
16 every cemetery and pre-need funeral authority shall also include

17 a record of any and all notifications from purchasers or

18 representatives of purchasers regarding:

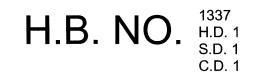
- 19 (1) Any change in address; and
- 20 (2) Notice of cancellation,

HB1337 CD1 HMS 2007-4088



1	and shall include copies of any and all written notices of
2	termination that were sent to purchasers. Change of address
3	notices, cancellation notices, and notices of termination
4	relating to each contract containing any pre-need funeral
5	services or pre-need interment services shall be maintained by
6	the authority at all times prior to delivering goods or
7	rendering services on the contract and for a period of at least
8	six months after all goods have been delivered or all services
9	have been rendered."
10	SECTION 7. Section 441-45, Hawaii Revised Statutes, is
11	amended to read as follows:
12	"§441-45 Penalty. In addition to the penalties otherwise
13	provided by law, any [licensee who] <u>cemetery or pre-need funeral</u>
14	authority that violates, or [omits] fails to comply with any of
15	
15	the provisions of this chapter or rules adopted pursuant thereto
16	the provisions of this chapter or rules adopted pursuant thereto shall be fined not more than $[\$1,000]$ $\$5,000$ for each
16	shall be fined not more than $[\$1,000]$ $\$5,000$ for each





SECTION 9. This Act shall take effect on July 1, 2007;
 provided that sections 1 and 5 shall take effect on July 1,
 2008.



H.B. NO. 1337 H.D. 1 S.D. 1 C.D. 1

Report Title:

Consumer Protection; Funeral Services

Description:

Provides additional protections for consumers of cemetery or funeral services. (HB1337 CD1)

