
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) If the cemetery or pre-need funeral authority
13 determines that the purchaser is in default due to nonpayment of
14 a contract containing any pre-need funeral services or pre-need
15 interment services, the cemetery or pre-need funeral authority
16 shall provide written notice of the default to the purchaser
17 prior to terminating the contract. The notice of default shall
18 include:



1 (1) The total amount owed under the contract at the time
2 it was originally signed, dates and amounts of
3 payments, adjustments, and credits received to date,
4 and the amount of the delinquency;

5 (2) An explanation of the purchaser's right to reinstate
6 the contract and a statement that failure to reinstate
7 a contract shall result in termination of the
8 contract; and

9 (3) A statement that advises the purchaser of all other
10 requirements under this subsection.

11 The cemetery or pre-need funeral authority shall provide the
12 purchaser with a minimum of ninety days from the purchaser's
13 receipt of the notice of default to elect to reinstate the
14 contract. The purchaser may elect to reinstate by providing
15 written notice to the cemetery or pre-need funeral authority.
16 If, however, the purchaser notifies the cemetery or pre-need
17 funeral authority in writing that the amount of the delinquency
18 is disputed, the reinstatement period does not start until the
19 dispute is resolved. If the purchaser elects to reinstate the
20 contract within the reinstatement period, the purchaser is
21 entitled to resume payments on the contract in the amounts and
22 as often as is required under the terms and conditions of the



1 contract in effect prior to the default. The purchaser is
2 entitled to continue payment on the contract until the contract
3 is paid in full. If the purchaser fails to elect to reinstate
4 the contract within the reinstatement period, the cemetery or
5 pre-need funeral authority may terminate the contract.

6 (c) If the contract is canceled or terminated pursuant to
7 subsection (a) or (b) or for any other reason, the purchaser
8 shall be entitled to a refund of the amounts paid by the
9 purchaser, less amounts that may be retained by the cemetery or
10 pre-need funeral authority for its costs pursuant to section
11 441-38(b). The cemetery or pre-need funeral authority shall
12 make the refund to the purchaser within thirty days of:

- 13 (1) Receipt of the purchaser's written notice of
14 cancellation; or
15 (2) Termination of the contract."

16 SECTION 2. Section 441-3, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "~~§441-3~~ Map or plat required[-]; unique identifier. (a)
19 The cemetery authority [~~from time to time~~], as any of the
20 dedicated cemetery property [~~described in the certificate of~~
21 ~~dedication~~], or any part or section thereof, is offered for



1 sale, transfer, or disposition in the form of plots, crypts, or
2 niches, shall also:

3 (1) In the case of land, survey and subdivide [~~it~~] the
4 dedicated cemetery property into sections, blocks,
5 plots, avenues, walks, or other subdivisions; make a
6 good and substantial map or plat showing the sections,
7 blocks, plots, avenues, walks, or other subdivisions,
8 with descriptive names, initials, or numbers[+] that
9 uniquely identify each plot;

10 (2) In the case of a mausoleum or columbarium, make a good
11 and substantial map or plat on which shall be
12 delineated the sections, halls, rooms, corridors,
13 elevation, and other divisions, with descriptive
14 names, initials, or numbers[-] that uniquely identify
15 each niche or crypt; and

16 (3) File the maps or plats required by this section in the
17 office of the bureau of conveyances or the office of
18 the assistant registrar of the land court, and
19 maintain a copy of all filed maps as a permanent
20 record of the cemetery authority.



1 ~~The map or plat shall also be filed in the office of the~~
2 ~~bureau of conveyances or the office of the assistant registrar~~
3 ~~of the land court.]~~

4 (b) The cemetery authority shall also maintain a
5 permanent, accurate record of the identity of each person whose
6 remains are located in the cemetery, together with the
7 corresponding unique identifier that indicates the location of
8 the person's remains within the cemetery. The records required
9 by this section shall be prepared and maintained in a manner
10 that will enable the cemetery authority to timely respond to
11 inquiries from the public or the department regarding the
12 location of a person's remains within the cemetery.

13 (c) The cemetery authority shall specify the unique
14 identifier of a plot, crypt, or niche in any document that
15 provides for the sale, transfer, or disposition of the plot,
16 crypt, or niche."

17 SECTION 3. Section 441-12, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§441-12 Mortgages and liens ~~[subject to dedication];~~**
20 **consumer contracts; sales prohibited.** (a) Cemetery authorities
21 may secure pecuniary obligations by mortgage or lien upon their
22 property, whether or not the property has been set aside for



1 interment purposes, and may sell plots, crypts, [~~e~~] niches, or
2 contracts containing pre-need interment services subject to such
3 mortgage or lien within the limitations and conditions imposed
4 by this chapter.

5 (b) All mortgages and other liens of any nature hereafter
6 contracted[~~, placed, or incurred upon~~] for and recorded on the
7 property which has been and was, at the time of the perfection
8 of the lien, [~~with the recorded written consent of the owner of~~
9 ~~any mortgage or lien,~~] dedicated to cemetery purposes pursuant
10 to this chapter, shall not affect or [~~defeat~~] impair the
11 dedication[~~,~~] of the property to cemetery use or the title of
12 any plot, crypt, or niche [~~owner,~~] contract or the obligation of
13 the cemetery authority to fully perform any contract containing
14 pre-need interment services, but the mortgage or other lien
15 shall be subject and subordinate to the dedication and title of
16 any plot, crypt, or niche [~~owner,~~] contract and the obligation
17 of the cemetery authority to fully perform any contract
18 containing pre-need interment services and any and all sales
19 made upon foreclosure, insolvency, or federal bankruptcy
20 proceeding, shall be subject and subordinate to the dedication
21 and title of any plot, crypt, or niche [~~owner,~~] contract and



1 the obligation of the cemetery authority to fully perform any
2 contract containing pre-need interment services.

3 (c) A statutory lien is created, without recordation of
4 the lien, upon all real and personal property held by a pre-need
5 funeral authority upon the filing with the department of audited
6 financial statements, audited by an independent certified public
7 accountant, that indicate that its pre-need funeral trusts are
8 not fully funded as required by applicable law. The amount of
9 the lien shall be equal to the amount that the pre-need funeral
10 trusts are underfunded. This lien shall have priority over all
11 subsequent real property mortgages, security interests, and
12 liens created upon the real and personal property of the pre-
13 need funeral authority and shall terminate at the time when the
14 pre-need funeral trusts are properly funded, as evidenced by
15 records and certification of the trustee and subsequent
16 assurance from the independent certified public accountant that
17 the underfunding was corrected.

18 (d) Notwithstanding any other language to the contrary,
19 sales by a cemetery or pre-need funeral authority of accounts
20 receivables from contracts containing pre-need interment, pre-
21 need funeral, or perpetual care services are prohibited. Sales
22 made in violation of this subsection are void.



1 (e) Any transfer of the pre-need funeral trust funds and
2 the obligations related thereto must be to another person
3 subject to section 441-20 or 441-30.5. Any such transfer of
4 pre-need funeral trust funds and pre-need funeral contracts and
5 obligations related thereto in accordance with this section,
6 must include the transfer of pre-need funeral contracts made,
7 entered into, or purchased by the pre-need funeral authority
8 prior to the transfer."

9 SECTION 4. Section 441-13, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§441-13 Sale of plots after dedication; sale of**
12 **~~[incumbered]~~ encumbered plots prohibited unless ~~[incumbrance]~~**
13 **encumbrance subordinate to dedication.** After property is
14 dedicated pursuant to this chapter, a cemetery authority may
15 sell, transfer, and convey plots, crypts, or niches thereof,
16 which plots, crypts, or niches ~~[may]~~ shall be described by
17 reference to the map or plat, or amended map or plat, filed in
18 accordance with section 441-3 or 441-8. No plot, crypt, or
19 niche shall be sold, transferred, conveyed, or otherwise
20 disposed of, or offered for sale, transfer, conveyance, or other
21 disposition, unless the property on or in which the plot, crypt,
22 or niche is included has been dedicated pursuant to this



1 chapter, nor shall any plot, crypt, or niche be sold,
2 transferred, conveyed, or otherwise disposed of, or offered for
3 sale, transfer, conveyance, or other disposition, unless the
4 property on or in which the plot, crypt, or niche is included
5 shall either be free and clear of all [~~incumbrances~~]
6 encumbrances or there has been recorded the written consent of
7 every [~~incumbrancer~~] encumbrancer thereof that the
8 [~~incumbrancer's incumbrance~~] encumbrancer's encumbrance shall be
9 subject and subordinate to the dedication of the property to
10 cemetery purposes and the title of any plot, crypt, or niche
11 owner."

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

14 "(b) Every cemetery or pre-need funeral authority shall be
15 required to provide to the purchaser of cemetery property, pre-
16 need interment, or pre-need funeral services and related
17 commodities a written contract which shall contain the following
18 [~~disclosure requirements~~] disclosures:

19 (1) The names and addresses of the cemetery or pre-need
20 funeral authority [~~and~~], purchaser[~~]~~, and contract
21 beneficiary, if the beneficiary is someone other than
22 the purchaser;



- 1 (2) A clear and concise itemized statement of the
2 property, including, for cemetery property, the
3 location of the plot, crypt, or niche by its unique
4 identifier, and any services[7] and related
5 commodities to be supplied or not supplied and by
6 whom, particularly if the authority is not to be the
7 provider under the terms of the contract;
- 8 (3) The purchase price of each item of property, services,
9 and related commodities to be supplied, the total
10 purchase price, and how the total purchase price is
11 payable[7], including any credit terms, if applicable;
12 provided that, pursuant to section 441-22.7,
13 disclosure shall also be made that further additional
14 charges or fees for perpetual care subsequent to the
15 execution of the contract are prohibited for any
16 purpose and on any occasion, except for reasonable
17 fees related to the administrative costs of
18 transferring ownership rights, including the cost of
19 research, document and file preparation, photocopying,
20 notary fees, records transfer and storage, and any
21 other costs directly related to the transfer of
22 ownership rights;



- 1 (4) Related costs covered under the contract;
- 2 (5) ~~[The basis on which funds]~~ Information regarding
3 payments received from the purchaser for pre-need
4 services and related commodities that are to be
5 deposited in trust [?], including:
- 6 (A) The name and address of the trustee; provided
7 that the disclosure shall not preclude the
8 cemetery or pre-need funeral authority from
9 changing the trustee named;
- 10 (B) The amount of money to be placed in trust; and
- 11 (C) The amount of money paid on the contract that the
12 cemetery or pre-need funeral authority will
13 retain and not deposit into the trust;
- 14 (6) ~~[Refund]~~ The refund, cancellation, and default
15 provisions of the contract [?], printed in twelve point
16 bold type, including an explanation of the
17 requirements of section 441- ;
- 18 (7) The date and place of execution of the contract;
- 19 (8) The cemetery or pre-need funeral authority's or its
20 duly authorized agent's signature on the contract and
21 the identification of this person by name and title;
22 [and]



1 (9) A statement that the written contract, when signed,
2 shall constitute the entire agreement between the
3 parties relative to its subject matter and that all
4 obligations of both parties shall be fixed and
5 enforceable by the other parties of the contract ~~[+]~~;
6 and

7 (10) A statement that the contract may not waive any rights
8 of the consumer or duties of the cemetery or pre-need
9 funeral authority under the law."

10 SECTION 6. Section 441-24, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "~~§441-24~~ **Inspection of cemetery or pre-need funeral**
13 **authority books** ~~[, annual exhibits]~~. The books, records, and
14 papers of every cemetery authority whether or not a corporation,
15 which operates or claims to operate a perpetual care cemetery,
16 and of every pre-need funeral authority shall be subject to
17 examination by the director ~~[to the same extent and in the same~~
18 ~~manner as may be from time to time provided for corporations in~~
19 ~~section 414-472,]~~ as provided by law, and every cemetery
20 authority operating a perpetual care cemetery, and every pre-
21 need funeral authority shall submit such information as may be
22 required by the director in order to furnish information as to



1 whether or not the cemetery or pre-need funeral authority has
2 complied with this chapter."

3 SECTION 7. Section 441-45, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "~~§441-45~~ **Penalty.** In addition to the penalties otherwise
6 provided by law, any [~~licensee~~] cemetery or pre-need funeral
7 authority who violates, or [~~omits~~] fails to comply with any of
8 the provisions of this chapter or rules adopted pursuant thereto
9 shall be fined not more than [~~\$1,000~~] \$5,000 for each
10 violation."

11 SECTION 8. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 9. This Act shall take effect on July 1, 2050.



Report Title:

Consumer Protection; Funeral Services

Description:

Provides additional protections for consumers of cemetery or funeral services. Eff 7/1/2050. (SD1)

