

JAN 17 2008

A BILL FOR AN ACT

RELATING TO FUNERALS.

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

1 SECTION 1. In 2007, the legislature passed Act 188,
2 Session Laws of Hawaii 2007, which improved consumer protections
3 within the death care industry by clarifying and enhancing both
4 the rights of purchasers of pre-need funeral or interment goods
5 and services, as well as the responsibilities of cemetery and
6 pre-need funeral authorities.

7 In October 2007, the National Funeral Directors
8 Association, the largest organization of funeral service
9 professionals in the United States, adopted the *Model Consumer*
10 *Protection Guidelines for State Pre-need Funeral Statutes*.
11 These guidelines ensure that consumers who purchase pre-need
12 funeral and interment goods and services will make informed
13 decisions, receive protection against the loss of pre-paid
14 funds, deal with ethical and licensed pre-need authorities and
15 agents, and retain the right to cancel pre-need funeral and
16 interment contracts.



1 While Hawaii's current law governing pre-need funeral and
 2 interment goods and services largely incorporates the model
 3 guidelines adopted by the National Funeral Directors
 4 Association, the purpose of this Act is bring Hawaii's pre-need
 5 law closer to the model guidelines and incorporate even greater
 6 consumer protections.

7 The legislature finds that the provisions of this Act will
 8 materially advance and improve the level of consumer protection
 9 afforded Hawaii's cemetery and funeral services consumers.

10 SECTION 2. Chapter 441, Hawaii Revised Statutes, is
 11 amended by adding two new sections to be appropriately
 12 designated and to read as follows:

13 "§441- Pre-need funeral and pre-need interment
 14 salesperson. (a) No person shall act as a pre-need funeral or
 15 pre-need interment goods and services salesperson, unless that
 16 person is a licensed cemetery or pre-need funeral authority, or:

17 (1) Is at least eighteen years of age and has received a
 18 high school diploma or its equivalent;

19 (2) Has not been previously convicted of a felony; and

20 (3) Files an application with the department, which shall
 21 include:



1 (A) The name, address, and telephone number of the
2 applicant;

3 (B) The names and addresses of all cemeteries and
4 pre-need funeral authorities the applicant will
5 represent; and

6 (C) A copy of any contract or agreement for
7 representation the applicant has entered into
8 with any cemetery or pre-need funeral authority.

9 The applicant shall also agree to maintain a copy of this
10 chapter, as amended, in the applicant's principal place of
11 business.

12 (b) The director shall adopt rules pursuant to chapter 91
13 for the purpose of carrying out this section.

14 **§441- Pre-need funeral and pre-need interment**

15 **solicitations.** (a) All pre-need funeral and pre-need interment
16 salespersons, when engaged in the solicitation of pre-need
17 funeral and pre-need interment goods and services, shall:

18 (1) Within thirty seconds of initiating a solicitation by
19 telephone, or upon entering the residence of a
20 consumer:

21 (A) Identify themselves;



1 (B) Disclose the identity of the pre-need funeral or
2 pre-need interment authority the salesperson is
3 representing; and

4 (C) Provide a general description of the pre-need
5 goods or services;

6 (2) Present the consumer with a copy of the general price
7 list of the pre-need funeral or pre-need interment
8 authority; and

9 (3) When soliciting by telephone, maintain a "do not call"
10 list and place any consumer on this list who requests
11 to be placed upon that list.

12 (b) All cemetery or pre-need funeral authorities, their
13 employees, agents, or anyone soliciting on their behalf, are
14 prohibited from:

15 (1) Making untrue statements or omitting any material fact
16 when engaged in solicitation of pre-need interment or
17 pre-need funeral goods and services;

18 (2) Using advertisements or offers of pre-need interment
19 or pre-need funeral goods and services that are false,
20 misleading, deceptive, unfair, coercive, or
21 intimidating;



- 1 (3) Soliciting consumers by telephone any time between the
2 hours of 9:00 p.m. and 8:00 a.m.;
- 3 (4) Using the term "trust" or "trust-funded" in any
4 advertisement or solicitation that is misleading in
5 any way; and
- 6 (5) Directly or indirectly soliciting persons in
7 hospitals, rest homes, nursing homes, or similar
8 health care facilities in-person or by telephone
9 without having been expressly requested to do so by
10 that person or that person's representative."

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

13 "(b) Every cemetery or pre-need funeral authority shall be
14 required to provide to the purchaser of cemetery property,
15 pre-need interment, or pre-need funeral services and related
16 commodities a written contract, in at least eight-point font,
17 which shall contain the following disclosures:

- 18 (1) The names~~[and]~~, addresses, telephone numbers, and
19 license number, if applicable, of the cemetery or
20 pre-need funeral authority, and the names, addresses,
21 and telephone numbers of the purchaser, and contract



1 beneficiary, if the beneficiary is someone other than
2 the purchaser;

3 (2) A clear and concise itemized statement of the
4 property, including, for cemetery property, the
5 location of the plot, crypt, or niche by its unique
6 identifier, and any services and related commodities
7 to be supplied or not supplied and by whom,
8 particularly if the authority is not to be the
9 provider under the terms of the contract;

10 (3) The purchase price of each item of property, services,
11 and related commodities to be supplied, the total
12 purchase price, and how the total purchase price is
13 payable, including any credit terms, if applicable;
14 provided that, pursuant to section 441-22.7,
15 disclosure shall also be made that further additional
16 charges or fees for perpetual care subsequent to the
17 execution of the contract are prohibited for any
18 purpose and on any occasion, except for reasonable
19 fees related to the administrative costs of
20 transferring ownership rights, including the cost of
21 research, document and file preparation, photocopying,
22 notary fees, records transfer and storage, and any



- 1 other costs directly related to the transfer of
2 ownership rights;
- 3 (4) Related costs covered under the contract;
- 4 (5) The basis on which funds are to be deposited in trust,
5 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 percentage of the contract price for
11 trustable items to be placed in trust; provided
12 that the percentage shall be no less than seventy
13 per cent;
- 14 (C) The percentage of the contract price for
15 trustable items that the cemetery or pre-need
16 funeral authority will retain and not deposit
17 into the trust; [~~provided that the percentage~~
18 ~~shall not be more than thirty per cent,~~] as
19 provided in section 441-38(b); and
- 20 (D) Where a portion of the contract price relates to
21 property, services, or related commodities that



1 are not trustable items, a clear description of
2 what those non-trustable items are;

3 (6) The refund, cancellation, and default provisions of
4 the contract, including an explanation of the
5 requirements of section 441-22.8, and a statement in
6 twelve-point bold type in substantially the following
7 form:

8 "YOU HAVE REFUND, CANCELLATION AND DEFAULT RIGHTS
9 UNDER STATE LAW AND UNDER THE CONTRACT. PLEASE READ
10 THE CONTRACT CAREFULLY FOR AN EXPLANATION OF THESE
11 RIGHTS";

12 (7) The date and place of execution of the contract;

13 (8) The cemetery or pre-need funeral authority's or its
14 duly authorized agent's signature on the contract and
15 the identification of this person by name and title;

16 (9) A statement that the written contract, when signed,
17 shall constitute the entire agreement between the
18 parties relative to its subject matter and that all
19 obligations of both parties shall be fixed and
20 enforceable by the other parties of the contract;

21 [and]



1 (10) A statement that the contract may not waive any rights
2 of the consumer or duties of the cemetery or pre-need
3 funeral authority under the law[-]; and

4 (11) A statement as to who will be responsible for the
5 taxes generated by the earnings on the trust."

6 SECTION 4. Section 441-22.8, Hawaii Revised Statutes, is
7 amended by amending subsection (d) to read as follows:

8 "(d) If the contract is canceled or terminated pursuant to
9 subsection (a) or (b) or for any other reason, the purchaser
10 shall be entitled to a refund of the amounts paid by the
11 purchaser, less amounts that may be retained by the cemetery or
12 pre-need funeral authority for its costs pursuant to section
13 441-38(b) [-]; provided that if the contract is canceled within
14 seven days of its purchase, the purchaser shall be entitled to
15 refund of one hundred per cent of the amount paid at the time
16 the contract was purchased. The cemetery or pre-need funeral
17 authority shall make the refund to the purchaser within thirty
18 days of:

19 (1) Receipt of the purchaser's written notice of
20 cancellation; or

21 (2) Termination of the contract."



1 SECTION 5. Section 441-24, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§441-24 Inspection of cemetery or pre-need funeral
4 authority books. The books, records, and papers of every
5 cemetery authority whether or not a corporation, which operates
6 or claims to operate a perpetual care cemetery, and of every
7 pre-need funeral authority shall be subject to examination by
8 the director as provided by law, and every cemetery authority
9 operating a perpetual care cemetery, and every pre-need funeral
10 authority shall submit such information as may be required by
11 the director to furnish information as to whether or not the
12 cemetery or pre-need funeral authority has complied with this
13 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,

21 and shall include copies of any and all written notices of
22 termination that were sent to purchasers. Change of address



1 notices, cancellation notices, ~~[and]~~ notices of termination, and
2 any other records relating to each contract containing any
3 pre-need funeral services or pre-need interment services shall
4 be maintained by the authority at all times prior to delivering
5 goods or rendering services on the contract and for a period of
6 at least ~~[six months]~~ three years after all goods have been
7 delivered or all services have been rendered."

8 SECTION 6. Section 441-38, Hawaii Revised Statutes, is
9 amended by amending subsection (b) to read as follows:

10 "(b) [A] One hundred per cent of the funds paid by the
11 purchaser shall be transferred to the trustee to remain in
12 trust; provided that a cemetery or pre-need funeral authority
13 may take and receive[, but shall transfer to the trustee as part
14 of or incident to the pre need trust, all payments received
15 after the recovery of acquisition costs, which shall be the
16 lesser of] amounts necessary to pay for any applicable sales
17 tax, applicable licensing fees owed to the department, taxes on
18 earnings generated by the trust, trustee fees, trust
19 administration expenses, or any applicable cancellation or
20 termination fees permitted by law; provided further that this
21 amount shall not exceed thirty per cent of the contract price
22 ~~[or the difference between the contract price and the cost of~~



1 ~~the pre need interment or pre need funeral services contracted~~
 2 ~~to be provided]~~. The transfer shall be made not later than
 3 thirty days after receipt of payment from the purchaser and
 4 shall be immediately deposited in the trust. The trustee shall
 5 provide the purchaser with a confirmation notice that the
 6 payments have been deposited with the trustee within thirty days
 7 of the receipt of payment by the cemetery or pre-need funeral
 8 authority."

9 SECTION 7. Statutory material to be repealed is bracketed
 10 and stricken. New statutory material is underscored.

11 SECTION 8. This Act shall take effect on July 1, 2008.

12

INTRODUCED BY: Suzanne Chun Oakland
[Signature]
[Signature]



Report Title:

Pre-Need Funeral Services; Pre-Need Interment Services

Description:

Establishes requirements for pre-need funeral and interment salespersons. Establishes requirements for the solicitation of pre-need funeral and interment goods and services. Makes various amendments to the laws governing pre-need funeral and interment contracts and trusts.

