

JAN 18 2008

---

---

# A BILL FOR AN ACT

RELATING TO THE FUNERAL INDUSTRY.

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

1           SECTION 1. The legislature finds that the funeral industry  
2 in Hawaii presently lacks uniformity in its sales contracts and  
3 required financial reports so that consumers are at an unfair  
4 disadvantage when purchasing pre-need funeral goods and  
5 services. The department of commerce and consumer affairs does  
6 not have the knowledge and resources to perform adequate  
7 oversight for this industry.

8           The National Funeral Directors Association, the largest  
9 organization of funeral service professionals in the United  
10 States, adopted the "Model Consumer Protection Guidelines for  
11 State and Pre-need Funeral Statutes" in October 2007 to assist  
12 consumers who purchase pre-need funeral and interment goods and  
13 services. These consumer guidelines establish industry  
14 standards that enable consumers to make informed purchases,  
15 receive protections against the loss of pre-paid funeral funds,  
16 deal with ethical and licensed pre-need authorities and agents,



1 and retain the right to cancel pre-need funeral and interment  
2 contracts.

3 The purpose of this Act is to adopt the National Funeral  
4 Directors Association guidelines in order to materially advance  
5 and improve the level of consumer protection afforded Hawaii's  
6 cemetery and funeral service consumers.

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

10 "§441- Pre-need funeral and pre-need interment  
11 salesperson. (a) No person shall act as a pre-need funeral or  
12 pre-need interment goods and services salesperson, unless that  
13 person is a licensed cemetery or pre-need funeral authority, or:

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

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

17 (3) Files an application with the department, which shall  
18 include:

19 (A) The name, address, and telephone number of the  
20 applicant;



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

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

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

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

12           §441- Pre-need funeral and pre-need interment

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

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

19           (A) Identify themselves;

20           (B) Disclose the identity of the pre-need funeral or  
21           pre-need interment authority the salesperson is  
22           representing; and



- 1            (C) Provide a general description of the pre-need  
2            goods or services;
- 3            (2) Present the consumer with a copy of the general price  
4            list of the pre-need funeral or pre-need interment  
5            authority; and
- 6            (3) When soliciting by telephone, maintain a "do not call"  
7            list and place any consumer on this list who requests  
8            to be placed upon that list.
- 9            (b) All cemetery or pre-need funeral authorities, their  
10          employees, agents, or anyone soliciting on their behalf, are  
11          prohibited from:
- 12          (1) Making untrue statements or omitting any material fact  
13          when engaged in solicitation of pre-need interment or  
14          pre-need funeral goods and services;
- 15          (2) Using advertisements or offers of pre-need interment  
16          or pre-need funeral goods and services that are false,  
17          misleading, deceptive, unfair, coercive, or  
18          intimidating;
- 19          (3) Soliciting consumers by telephone any time between the  
20          hours of 9:00 p.m. and 8:00 a.m.;



1       (4) Using the term "trust" or "trust-funded" in any  
2       advertisement or solicitation that is misleading in  
3       any way; and

4       (5) Directly or indirectly soliciting persons in  
5       hospitals, rest homes, nursing homes, or similar  
6       health care facilities in-person or by telephone  
7       without having been expressly requested to do so by  
8       that person or that person's representative."

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

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

16       (1) The names [~~and~~], addresses, telephone numbers, and  
17       license number, if applicable, of the cemetery or  
18       pre-need funeral authority, and the names, addresses,  
19       and telephone numbers of the purchaser, and contract  
20       beneficiary, if the beneficiary is someone other than  
21       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 and related commodities  
5           to be supplied or not supplied and by whom,  
6           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, 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 are to be deposited in trust,
- 3           including:
- 4           (A) The name and address of the trustee; provided
- 5           that the disclosure shall not preclude the
- 6           cemetery or pre-need funeral authority from
- 7           changing the trustee named;
- 8           (B) The percentage of the contract price for
- 9           trustable items to be placed in trust; provided
- 10          that the percentage shall be no less than
- 11          ~~[seventy per cent;]~~ eighty-five per cent;
- 12          (C) The percentage of the contract price for
- 13          trustable items that the cemetery or pre-need
- 14          funeral authority will retain and not deposit
- 15          into the trust; ~~[provided that the percentage~~
- 16          ~~shall not be more than thirty per cent;]~~ as
- 17          provided in section 441-38(b); and
- 18          (D) Where a portion of the contract price relates to
- 19          property, services, or related commodities that
- 20          are not trustable items, a clear description of
- 21          what those non-trustable items are;



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

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

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

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

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

19          [and]

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





1        (11) A statement as to who will be responsible for the  
2            taxes generated by the earnings on the trust, the  
3            dollar amount to be trusted, and the dollar amount  
4            that will not be trusted."

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

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

- 18            (1) Receipt of the purchaser's written notice of  
19            cancellation; or  
20            (2) Termination of the contract."

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



1           "§441-24   **Inspection of cemetery or pre-need funeral**  
2 **authority books.** The books, records, and papers of every  
3 cemetery authority whether or not a corporation, which operates  
4 or claims to operate a perpetual care cemetery, and of every  
5 pre-need funeral authority shall be subject to examination by  
6 the director as provided by law, and every cemetery authority  
7 operating a perpetual care cemetery, and every pre-need funeral  
8 authority shall submit such information as may be required by  
9 the director to furnish information as to whether or not the  
10 cemetery or pre-need funeral authority has complied with this  
11 chapter.

12           The records of every cemetery authority shall include the  
13 information required under section 441-3(b). The records of  
14 every cemetery and pre-need funeral authority shall also include  
15 a record of any and all notifications from purchasers or  
16 representatives of purchasers regarding:

17           (1) Any change in address; and

18           (2) Notice of cancellation,

19 and shall include copies of any and all written notices of  
20 termination that were sent to purchasers. Change of address  
21 notices, cancellation notices, [~~and~~] notices of termination, and  
22 any other records relating to each contract containing any



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

6 SECTION 6. Section 441-24.5, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 "**§441-24.5 Pre-need trusts and perpetual care funds;**  
9 **audited financial statements.** (a) Every cemetery authority  
10 operating a perpetual care cemetery or which engages in pre-need  
11 sales [~~or~~] and holds money in trust for pre-need interment  
12 services, and every pre-need funeral authority which engages in  
13 pre-need sales or holds money in trust for pre-need funeral  
14 services shall submit an audited financial statement of its pre-  
15 need trusts and perpetual care funds to the director within  
16 ninety days after the close of the authority's books on a fiscal  
17 or calendar year basis[~~-~~] and shall use an accrual method of  
18 accounting with generally accepted accounting practices. Each  
19 statement shall conform with the requirements of rules adopted  
20 by the director. The director shall create a standardized  
21 audited financial statement form that shall be used by every



1 funeral authority required to submit a audited financial  
2 statement pursuant to this section.

3 (b) A penalty of \$ \_\_\_\_\_ shall be accessed for each  
4 day a cemetery authority fails to file an audited financial  
5 statement within the time requirements of subsection (a)."

6 SECTION 7. Section 441-24.6, Hawaii Revised Statutes, is  
7 amended by amending the title and subsection (a) to read as  
8 follows:

9 " ~~[+]~~§441-24.6 ~~[+]~~ **Pre-need trusts and perpetual care funds;**  
10 **actuarial studies.** (a) Every cemetery authority operating a  
11 perpetual care cemetery and every cemetery or pre-need funeral  
12 authority offering pre-need services shall contract with an  
13 independent actuary to conduct an annual study of its level of  
14 funding. In the case of a perpetual care cemetery, the study  
15 shall be to determine whether the authority's perpetual care  
16 fund will provide sufficient income to cover the costs of the  
17 perpetual care of the cemetery. In the case of a cemetery or  
18 pre-need funeral authority, the study shall be to determine  
19 whether the amount in the authority's pre-need trust as of the  
20 end of the fiscal year will be sufficient to cover the future  
21 claims of pre-need plan participants[-] as of the end of the  
22 fiscal year."



1 SECTION 8. Section 441-24.7, Hawaii Revised Statutes, is  
2 amended by amending the title and subsection (a) to read as  
3 follows:

4 "[+]§441-24.7[+] Actuarial study, audited financial  
5 statement, trust agreement; complaints, consultant reports, and  
6 contractor reports; available for review. (a) The actuarial  
7 study, audited financial statement, and trust agreement filed by  
8 a cemetery or pre-need funeral authority, as required by this  
9 chapter, and all complaints, consultant reports, and contractor  
10 reports filed with the director, shall be available for review  
11 by any member of the general public upon request. The review of  
12 these documents shall be done during the department's normal  
13 business hours. The director shall have the right to deny  
14 review for reasons specified in rules adopted by the director  
15 pursuant to chapter 91."

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

18 "(b) [A] Eighty-five per cent of the funds paid by the  
19 purchaser shall be transferred to the trustee to remain in  
20 trust; provided that a cemetery or pre-need funeral authority  
21 may take and receive[, ~~but shall transfer to the trustee as part~~  
22 ~~of or incident to the pre-need trust, all payments received~~



1 ~~after the recovery of acquisition costs, which shall be the~~  
2 ~~lesser of thirty per of the contract price or the difference~~  
3 ~~between the contract price and the cost of the pre need~~  
4 ~~interment or pre need funeral services contracted to be~~  
5 ~~provided.] the remaining fifteen per cent to pay for any~~  
6 ~~applicable sales tax, applicable licensing fees owed to the~~  
7 ~~department, taxes on earnings generated by the trust, trustee~~  
8 ~~fees, trust administration expenses, or any applicable~~  
9 ~~cancellation or termination fees permitted by law. The transfer~~  
10 shall be made not later than thirty days after receipt of  
11 payment from the purchaser and shall be immediately deposited in  
12 the trust. The trustee shall provide the purchaser with a  
13 confirmation notice that the payments have been deposited with  
14 the trustee within thirty days of the receipt of payment by the  
15 cemetery or pre-need funeral authority."

16 SECTION 10. The director of commerce and consumer affairs  
17 shall conduct an audit of all funeral authorities that engage in  
18 the sale of pre-need funeral or pre-need interment goods or  
19 services and hold moneys in trust for pre-need funeral or pre-  
20 need goods or service each year for the three years, beginning  
21 in fiscal year 2008. All costs of the audit shall be borne by  
22 the funeral authority and may be based upon a percentage, to be



1 determined by the director, of the amount of pre-need sales  
2 contracts the funeral authority maintains.

3 SECTION 11. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 12. This Act shall take effect on July 1, 2008.

6

INTRODUCED BY: *McAllister Jr*

*Amil Yde*

*Will Eyo*  
*Cecily de Beken*



**Report Title:**

Funeral Industry; Commerce and Consumer Protection

**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. Requires the director of commerce and consumer affairs to conduct yearly audits of funeral authorities engaging in the sale of pre-need funeral and interment goods and services for three years, beginning fiscal year 2008.

