
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 to
6 Hawaii's cemetery and funeral service consumers.

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

10 "§441- Board; appointment. (a) There is established
11 the board of cemetery and funeral trusts, which shall consist of
12 seven members appointed in accordance with section 26-34, unless
13 otherwise provided in this section. Three of the members shall
14 be engaged in the industry of cemetery and funeral trusts as
15 provided in subsection (b). One of the members shall be a
16 member of the public not connected with the industry. Three of
17 the members shall be representatives of consumer organizations
18 as provided in subsection (c).

19 (b) The governor shall appoint three members who shall be
20 engaged in the cemetery and funeral trusts industry from
21 nominations submitted by three organizations representing the
22 cemetery industry, the pre-need industry, and funeral directors.



1 The governor shall appoint one member from the nominations
2 submitted by each of the three industries. One appointee shall
3 represent the pre-need industry, another, the cemetery industry,
4 and the other, funeral directors.

5 (c) The governor shall appoint three consumer members from
6 nominations submitted by the three most active consumer
7 organizations in Hawaii with priority in protecting consumer
8 interest in the industry of cemetery and funeral trusts. The
9 governor shall appoint one member from the nominations submitted
10 by each of the three consumer organizations.

11 (d) The term of the members shall be for two years. The
12 governor shall reduce the terms of four of the members initially
13 appointed to the board such that two of the three members
14 engaged in the industry of cemetery and funeral trusts and two
15 of the three members who are representatives of consumer
16 organizations shall serve a term of one year, and the remaining
17 three members shall serve a term of two years.

18 §441- Board; powers and duties. The board shall assist
19 the director in carrying out the director's duties under section
20 441-19. In addition, and pursuant to chapter 91, the board
21 shall:



- 1 (1) Assist the director in establishing the qualifications
2 for the licensing of a cemetery or pre-need funeral
3 authority as necessary for the welfare of the public
4 and the cemetery and pre-need funeral authority
5 industry;
- 6 (2) Receive complaints and assist and advise the director
7 in investigating the actions of any person acting in
8 the capacity of a licensee under this chapter,
9 including making recommendations for proper courses of
10 action to take against any person, if there is reason
11 to believe that there may be a violation of this
12 chapter or the rules adopted pursuant thereto; and
- 13 (3) Inquire into the practices and policies of the
14 cemetery and pre-need funeral authority industry and
15 make recommendations to the director with respect to
16 the adoption of practices and policies deemed
17 necessary by the board for the welfare of the public
18 and the cemetery and pre-need funeral authority
19 industry.

20 **§441- Pre-need funeral and pre-need interment**

21 **salesperson.** (a) No person shall act as a pre-need funeral or



1 pre-need interment goods and services salesperson, unless that
2 person is a licensed cemetery or pre-need funeral authority, or:

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

5 (2) Has not been previously convicted of a felony.

6 (b) The cemetery or pre-need authority shall maintain a
7 file on each salesperson selling pre-need funeral or pre-need
8 interment goods and services, which file shall include at a
9 minimum:

10 (1) The name, address, telephone number, and date of
11 contract or agreement between the salesperson and
12 cemetery or pre-need authority;

13 (2) Confirmation of a criminal background investigation
14 performed by the authority. The names and addresses
15 of all other cemeteries and pre-need funeral
16 authorities the salesperson will represent; and

17 (3) A copy of any contract or agreement for representation
18 the salesperson has entered into with any cemetery or
19 pre-need funeral authority, which shall be available
20 for inspection by the department or appropriate board
21 authority at all times.



1 The salesperson and cemetery or pre-need funeral authority
2 shall update the file within ten days of any changes to the
3 matter required to be filed in this subsection.

4 The salesperson shall also agree to maintain a copy of this
5 chapter, chapter 481P, the Telemarketing Sales Rule, 16 Code of
6 Federal Regulations part 310 of the Federal Trade Commission,
7 the Telemarketing Consumer Fraud and Abuse Prevention Act, 15
8 United States Code chapter 87, and any other applicable laws in
9 the salesperson's principal place of business.

10 (c) 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.** 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 comply
16 with all requirements of this chapter, chapter 481P, the
17 Telemarketing Sales Rule, 16 Code of Federal Regulations part
18 310 of the Federal Trade Commission, the Telemarketing Consumer
19 Fraud and Abuse Prevention Act, 15 United States Code chapter
20 87, and any other applicable laws, rules, and federal
21 regulations.



1 §441- Pre-need cemetery and funeral governance fund;
2 use of fund; fees. (a) The director shall establish and
3 maintain a trust fund that shall be known as the pre-need
4 cemetery and funeral governance fund, the proceeds of which may
5 be used by the department to inquire into and investigate any
6 violation or complaint that has been lodged or asserted by
7 reason of fraud, misrepresentation, or deceit against any
8 authority selling pre-need funeral or pre-need interment goods
9 and services.

10 (b) The director shall collect a one time fee of not more
11 than \$2 per contract from each pre-need funeral authority for
12 deposit into the pre-need cemetery and funeral governance fund,
13 as provided in rules adopted by the director pursuant to chapter
14 91. The fee shall apply to every contract accepted by the pre-
15 need funeral authority on or after the effective date of this
16 section and to every contract that was accepted by the pre-need
17 funeral authority on or after January 1, 1992 and that is still
18 in effect upon the effective date of this section. The pre-need
19 funeral authority shall provide payment to the director every
20 January 31, and June 15, for all contracts accepted by the
21 authority during the prior six month period, and shall be
22 allowed to reduce the fee correspondingly for each contract that



1 cancel or terminates within the first six month period of the
2 contract life.

3 (c) The director, as the trustee of the pre-need cemetery
4 and funeral governance fund, shall be authorized to expend
5 moneys in the fund to:

6 (1) Retain private legal counsel to represent the interest
7 of the department in any action involving, or that may
8 result in the enforcement of any payment from, the
9 authority selling pre-need funeral or pre-need
10 interment goods and services;

11 (2) Retain a certified public account for accounting and
12 auditing of the pre-need trusts or perpetual care
13 funds or other funeral and cemetery authorities;

14 (3) Employ necessary personnel, not subject to chapter 76,
15 to assist the director and the department in
16 exercising its powers and duties with respect to this
17 chapter; and

18 (4) Retain a consultant to recover and collect any
19 payments from the pre-need cemetery and funeral
20 governance fund, including interest from the cemetery
21 and funeral trust authorities.



1 (d) The sums received by the director for deposit into the
2 pre-need cemetery and funeral governance fund shall be held by
3 the department in trust for carrying out the purpose of the
4 fund. The director, as trustee of the fund, shall be authorized
5 to expend the funds as set forth in this section, and shall hold
6 such funds for investment and reinvestment in the same manner as
7 funds of the state employees' retirement system. The interest
8 from these investments shall be deposited to the credit of the
9 fund. The director, as trustee, may combine, for the purpose of
10 investing, these sums with other funds held in the same manner;
11 provided that the director shall have the duty to keep separate
12 and distinct accounting records for the fund."

13 SECTION 3. Section 441-1, Hawaii Revised Statutes, is
14 amended by adding three new definitions to be appropriately
15 inserted and to read as follows:

16 "Board" means the board of cemetery and funeral trusts.

17 "Consumer" means any person who:

- 18 (1) Has purchased cemetery property, pre-need interment
19 services, or pre-need funeral services and related
20 commodities from a mortuary, cemetery, or pre-need
21 funeral authority; or

- 22 (2) Is the purchaser's contract beneficiary.



1 "Consumer organization" means an organization that
2 advocates for the interests of consumers under this chapter."

3 SECTION 4. 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,
7 pre-need interment, or pre-need funeral services and related
8 commodities a written contract, in at least ten-point font,
9 which shall contain the following disclosures:

10 (1) The names [~~and~~], addresses, telephone numbers, and
11 license number, if applicable, of the cemetery or
12 pre-need funeral authority, and the names, addresses,
13 and telephone numbers of the purchaser, and contract
14 beneficiary, if the beneficiary is someone other than
15 the purchaser;

16 (2) A clear and concise itemized statement of the
17 property, including, for cemetery property, the
18 location of the plot, crypt, or niche by its unique
19 identifier, and any services and related commodities
20 to be supplied or not supplied and by whom,
21 particularly if the authority is not to be the
22 provider under the terms of the contract;



- 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 trust,
18 including:
- 19 (A) The name and address of the trustee; provided
20 that the disclosure shall not preclude the
21 cemetery or pre-need funeral authority from
22 changing the trustee named;



- 1 (B) The percentage of the contract price for
2 trustable items to be placed in trust; provided
3 that the percentage shall be no less than seventy
4 per cent;
- 5 (C) The percentage of the contract price for
6 trustable items that the cemetery or pre-need
7 funeral authority will retain and not deposit
8 into the trust; provided that the percentage
9 shall not be more than thirty per cent; and
- 10 (D) Where a portion of the contract price relates to
11 deeded property, services, or related commodities
12 that are for immediate delivery and that are not
13 trustable items, a clear description of what
14 those non-trustable items are;
- 15 (6) The refund, cancellation, and default provisions of
16 the contract, including an explanation of the
17 requirements of section 441-22.8, and a statement in
18 twelve-point bold type in substantially the following
19 form:
20 "YOU HAVE REFUND, CANCELLATION AND DEFAULT RIGHTS
21 UNDER STATE LAW AND UNDER THE CONTRACT. PLEASE READ



1 THE CONTRACT CAREFULLY FOR AN EXPLANATION OF THESE
2 RIGHTS";

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

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

7 (9) A statement that the written contract, when signed,
8 shall constitute the entire agreement between the
9 parties relative to its subject matter and that all
10 obligations of both parties shall be fixed and
11 enforceable by the other parties of the contract;

12 [and]

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

16 (11) A statement that identifies who will be responsible
17 for the taxes generated by the earnings on the trust,
18 the dollar amount to be trusted, and the dollar amount
19 that will not be trusted."

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



1 "(d) If the contract is canceled or terminated pursuant to
2 subsection (a) or (b) or for any other reason, the purchaser
3 shall be entitled to a refund of the amounts paid by the
4 purchaser, including any interest earnings and any increase in
5 value, less amounts that may be retained by the cemetery or pre-
6 need funeral authority for its costs pursuant to section 441-
7 38(b) [-]; provided that if the contract is canceled within seven
8 days of its purchase, the purchaser shall be entitled to a
9 refund of one hundred per cent of the amount paid at the time
10 the contract was purchased. The cemetery or pre-need funeral
11 authority shall make the refund to the purchaser within thirty
12 days of:

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

16 SECTION 6. Section 441-23, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "**§441-23 Fine, revocation, suspension, and renewal of**
19 **authority licenses.** (a) All cemetery or pre-need funeral
20 authorities, their employees, agents, or anyone soliciting on
21 their behalf, are prohibited from:



- 1 (1) Making untrue statements or omitting any material fact
2 when engaged in solicitation of pre-need interment or
3 pre-need funeral goods and services;
- 4 (2) Using advertisements or offers of pre-need interment
5 or pre-need funeral goods and services that are false,
6 misleading, deceptive, unfair, coercive, or
7 intimidating;
- 8 (3) Soliciting consumers by telephone any time between the
9 hours of 9:00 p.m. and 8:00 a.m.;
- 10 (4) Using the term "trust" or "trust-funded" in any
11 advertisement or solicitation that is misleading in
12 any way; and
- 13 (5) Direct solicitation of persons in hospitals, rest
14 homes, nursing homes, or similar health care
15 facilities in-person or by telephone without having
16 been expressly requested to do so by that person or
17 that person's representative.
- 18 (b) In addition to any other actions authorized by law,
19 the director may fine an authority, revoke any authority
20 license, or suspend the right of the licensee to use the
21 license, or refuse to renew any license for any cause authorized
22 by law, including but not limited to the following:



- 1 (1) Any dishonest or fraudulent act as a cemetery or pre-
2 need funeral authority that causes substantial damage
3 to another;
- 4 (2) Making repeated misrepresentations or false promises
5 through advertising or otherwise;
- 6 (3) Violation of this chapter or the rules adopted
7 pursuant thereto;
- 8 (4) Commingling the money or other property of others with
9 that of the licensee;
- 10 (5) Having been adjudicated insane or incompetent;
- 11 (6) Selling or offering to sell any cemetery property,
12 pre-need interment, funeral services, or pre-need
13 funeral services based on speculation or promises of
14 profit from resale;
- 15 (7) Failing to file the actuarial study or an audited
16 financial statement or to maintain in effect the bond
17 as required by section 441-22;
- 18 (8) Failing to maintain pre-need trusts or perpetual care
19 funds as required by this chapter; or
- 20 (9) Violating section 441-22.7."

21 SECTION 7. 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 all other records altering or amending the contract, or



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

7 SECTION 8. Section 441-24.5, Hawaii Revised Statutes, is
8 amended to read as follows:

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



1 (b) A late fee of \$ shall be accessed for each
2 day a cemetery authority fails to file an audited financial
3 statement within the time requirements of subsection (a).

4 (c) In the event that any required audited financial
5 statement is not provided to the department within sixty days
6 after it is due, the director may issue immediate notice for the
7 pre-need authority to suspend pre-need sales or prohibit further
8 withdrawal from the perpetual care funds and pre-need trusts.
9 Pending completion of the audit ordered by the director or
10 submission of the audited financial statement by the pre-need or
11 cemetery authority, the director shall impose restrictions on
12 sales and withdrawals for a period determined by the director to
13 be adequate to ensure the integrity of the trust, but the period
14 shall in no event be less than thirty days. The director shall
15 also commence an immediate audit of trust funds held by the
16 funeral authority that engaged in the sale of pre-need funeral
17 or pre-need interment goods and services and failed to submit on
18 a timely basis the required financial statement in accordance
19 with this section. All costs of the audit imposed by the
20 director shall be borne by the pre-need or cemetery authority."



1 SECTION 9. Section 441-24.6, Hawaii Revised Statutes, is
2 amended by amending the title and subsection (a) to read as
3 follows:

4 " ~~[+]§441-24.6[+]~~ **Pre-need trusts and perpetual care funds;**
5 **actuarial studies.** (a) Every cemetery authority operating a
6 perpetual care cemetery and every cemetery or pre-need funeral
7 authority offering pre-need services shall contract with an
8 independent actuary to conduct an annual study of its level of
9 funding. In the case of a perpetual care cemetery, the study
10 shall be to determine whether the authority's perpetual care
11 fund will provide sufficient income to cover the costs of the
12 perpetual care of the cemetery. In the case of a cemetery or
13 pre-need funeral authority, the study shall be to determine
14 whether the amount in the authority's pre-need trust as of the
15 end of fiscal year will be sufficient to cover the future claims
16 of pre-need plan participants ~~[=]~~ as of the end of the fiscal
17 year. "

18 SECTION 10. Section 441-24.7, Hawaii Revised Statutes, is
19 amended by amending the title and subsection (a) to read as
20 follows:

21 " ~~[+]§441-24.7[+]~~ **Actuarial study, audited financial**
22 **statement, trust agreement; complaints, consultant reports, and**



1 contractor reports; available for review. (a) The actuarial
2 study, audited financial statement, and trust agreement filed by
3 a cemetery or pre-need funeral authority, as required by this
4 chapter, shall be available for review by any member of the
5 general public upon request. The review of these documents
6 shall be done during the department's normal business hours.
7 The director shall have the right to deny public review for
8 these documents together with any other complaints, consultant
9 reports, and contracted support and audit reviews, for reasons
10 specified in rules adopted by the director pursuant to chapter
11 91."

12 SECTION 11. Section 441-38, Hawaii Revised Statutes, is
13 amended by amending subsection (b) to read as follows:

14 "(b) [A] Seventy per cent of the funds paid by the
15 purchaser shall be transferred to the trustee to remain in
16 trust; provided that a cemetery or pre-need funeral authority
17 may take and receive, but shall transfer to the trustee as part
18 of or incident to the pre-need trust, all payments received
19 after the recovery of acquisition costs, which shall be the
20 lesser of thirty per of the contract price or the difference
21 between the contract price and the cost of the pre-need
22 interment or pre-need funeral services contracted to be



1 provided. The transfer shall be made not later than thirty days
2 after receipt of payment from the purchaser and shall be
3 immediately deposited in the trust. The trustee shall provide
4 the director with a monthly confirmation notice and, upon
5 request of the purchaser, a copy that the payments have been
6 deposited with the trustee within thirty days of the close of
7 the prior month by the cemetery or pre-need funeral authority."

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

10 SECTION 13. This Act shall take effect on July 1, 2008.



Report Title:

Funeral Industry; Commerce and Consumer Protection

Description:

Establishes a board of cemetery and funeral trusts. Establishes a pre-need cemetery and funeral governance fund. Sets out additional prohibited practices. Authorizes the director of commerce and consumer affairs to prohibit a pre-need authority from engaging in sales and withdrawals if the pre-need authority fails to submit required audits. 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. (SD1)

