

JAN 22 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 funds 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^[7] at any time,
9 the purchaser shall be entitled to a refund of one hundred per
10 cent of the amounts paid by the purchaser, [~~less amounts that~~
11 ~~may be retained by the cemetery or pre-need funeral authority~~
12 ~~for its costs pursuant to section 441-38(b).~~] plus interest, and
13 less an amount that may be retained by the cemetery or pre-need
14 funeral authority for applicable cancellation or termination
15 fees, which amount shall be no more than fifteen per cent of the
16 amounts paid by the purchaser. 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 441-24.5, Hawaii Revised Statutes, is
9 amended to read as follows:

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



1 audited financial statement form that shall be used by every
2 funeral authority required to submit a audited financial
3 statement pursuant to this section.

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

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

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



1 claims of pre-need plan participants[-] as of the end of the
2 fiscal year."

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

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

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

20 "(b) [A] Eighty-five per cent of the funds paid by the
21 purchaser shall be transferred to the trustee to remain in
22 trust; provided that a cemetery or pre-need funeral authority



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

18 SECTION 10. The director of commerce and consumer affairs
19 shall conduct an audit of all funeral authorities that engage in
20 the sale of pre-need funeral or pre-need interment goods or
21 services and hold moneys in trust for pre-need funeral or pre-
22 need goods or service each year for the three years, beginning



1 in fiscal year 2008. All costs of the audit shall be borne by
2 the funeral authority and may be based upon a percentage, to be
3 determined by the director, of the amount of pre-need sales
4 contracts the funeral authority maintains.

5 SECTION 11. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

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

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INTRODUCED BY:

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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.

