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PRESENTATION OF  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE SENATE COMMITTEE ON  
HUMAN SERVICES AND PUBLIC HOUSING

TWENTY-FOURTH STATE LEGISLATURE  
REGULAR SESSION, 2008

TUESDAY, JANUARY 29, 2008  
1:30 P.M.

TESTIMONY ON SENATE BILL NO. 2148 – RELATING TO FUNERALS

TO THE HONORABLE SUZANNE CHUN OAKLAND, CHAIR,  
AND TO THE HONORABLE LES IHARA, JR., VICE-CHAIR,  
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify regarding Senate Bill No. 2148, Relating to Funerals. My name is Jo Ann Uchida of the Department's Regulated Industries Complaints Office ("RICO"). RICO offers the following comments on Senate Bill No. 2148. Because this bill covers many parts of Chapter 441, Hawaii Revised Statutes ("HRS"), the Department is submitting separate testimony from RICO, as to the RICO-related or enforcement-related aspects of the bill, and from the Professional and Vocational Licensing Division ("PVLD"), as to the licensing aspects of the bill. RICO offers the following comments on sections 2, 3, 4, 5, and 8 of Senate Bill No. 2148.

Senate Bill No. 2148 establishes requirements for pre-need funeral and pre-need interment salespersons, provides criteria for the solicitation of pre-need funeral and pre-need interment services, and amends various existing provisions of Chapter 441, HRS, relating to disclosure and refund requirements of pre-need funeral and pre-need interment service contracts, inspection of records, and contributions and payments to trustees.

As a general comment, RICO notes that Act 188, enacted just last year, extensively amended Chapter 441, HRS, to provide for the cancellation, termination, default, and refund of pre-need funeral and pre-need interment service contracts. Act 188 also established requirements for plot, crypt, and niche identification, disclosures in pre-need funeral and pre-need interment contracts, and recordkeeping. Two sections of the 2007 amendments pertaining to cancellation procedures (§441-22.8) and disclosure requirements (§441-22.5) are not effective until July 1, 2008. As a result, RICO urges the Committee to consider not revisiting issues already addressed in recent legislation, and to allow for an opportunity to test the efficacy of the amendments set to become effective later this year.

Section 2 - Pre-Need Funeral and Pre-Need Interment Solicitations: RICO defers to the testimony of the PVLD with regard to the licensing-related provisions in the bill, but offers the following comments concerning the remainder of the section:

RICO shares the Committee's concerns about abuses in the course of soliciting pre-need and interment contracts and believes that strong laws in this area are appropriate. For enforcement purposes, however, RICO notes that a number of the

suggested bill amendments in this section are already set forth in other laws or rules, and that it would be counterproductive to duplicate the language through this bill.

Specifically, general price list disclosure requirements are required in §441-22.6, HRS; time-of-day solicitation restrictions are addressed in federal and state telemarketing laws, the Telemarketing and Consumer Fraud and Abuse Prevention Act and Telemarketing Sales Rule and Chapter 481P, HRS, respectively; and misrepresentations by a cemetery or funeral authority also are covered, as grounds for discipline, in §441-23(1) and (2), HRS. As such, RICO recommends that these provisions be deleted.

In addition, RICO suggests that the language in (b)(5) on page 5, lines 6-10, which prohibits telephone solicitations in certain facilities without an express request to solicit, be clarified for enforcement purposes so that terms such as "directly", "indirectly", "hospitals, rest homes, nursing homes, or similar health care facilities", and "person's representative" be clearly defined. For example, what is an indirect solicitation? What would be a health care facility similar to a rest home? Clear definitions are required for effective enforcement. Also, there may be practical difficulties in enforcing this section against telemarketers unless there is a means for a telemarketer to distinguish between a telephone number that connects to a facility and a telephone number that does not.

Finally, RICO suggests that these amendments pertaining to prohibited conduct, if deemed necessary, are more appropriately housed in §441-23, HRS, rather than in a new section.

Section 3 - §441-22.5, HRS, Disclosure Requirements: As noted above, this section of the law was substantially amended last session in Act 188 and the

amendments have an effective date of July 1, 2008. The delayed effective date was provided in order to give the industry time to revise its forms and procedures so that they are in compliance with the new requirements of the law when it becomes effective. As a result, RICO urges the Committee to consider not revisiting issues already addressed in recent legislation. RICO takes no position regarding the substantive amendments proposed in this section.

Section 4 - §441-22.8 Refunds: Except for the concerns noted in our comments to section 3 above, RICO has no objections to the amendments set forth in this section.

Section 5 - §441-24 Inspection of cemetery or pre-need funeral authority books: These amendments add "any other records" to the list of records a cemetery authority must maintain. The phrase "any other records" would be difficult from an enforcement perspective to enforce. RICO recommends that any records that must be maintained by the authority be identified with specificity in the bill.

Section 8 - Effective Date: Because sections 1 and 5 of Act 188 and this bill both deal with the same sections of Chapter 441, HRS, and both have identical effective dates of July 1, 2008, RICO requests that the Committee address this issue to ensure that there is no uncertainty as to which law is in effect.

Thank you for this opportunity to testify on Senate Bill No. 2148. I will be happy to answer any questions that the members of the Committee may have.



# Dodo Mortuary, Inc.

199 Wainaku Street • Hilo, Hawaii 96720-2398 • Phone: (808) 935-5751 • Fax: (808) 935-1074

January 28, 2008

RE: Senate Bill No. 2148 (Relating to the Funerals)

Attn: Senator Suzanne Chun Oakland, Chair  
Senator Les Ihara, Jr., Vice Chair

I would like to submit this testimony in opposition to the passage of S.B. No. 2148 (Relating to the Funerals).

The proposed amendment to make pre-need funeral plans 100% trusting, versus the current 70%, can be viewed as "anti-business" and could actually put us out of business. If passed, this action would result in the potential loss of employment for the sales staff and related office personnel. It is a well know fact doing business in the State of Hawaii costs more compared to other states and the current trusting laws allow firms in the pre-need industry to operate efficiently. Eliminating the amount they are able to retain from sales would result in a lesser degree of service to the consumer.

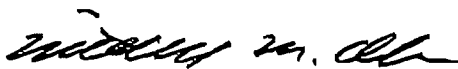
In regards to providing a confirmation notice that payments have been received, this would create an unnecessary inconvenience as well as additional expenses for paper, envelopes, and postage. A receipt is always given at the time a payment is made at our office and a certificate of completion is sent when a funeral plan has been paid in full. From a practical standpoint, the "purchasers" (consumers) of whom this proposed legislation is aiming to protect, may be somewhat befuddled, if not totally confused, by receiving additional financial statements from our firms and good efforts may simply end up "in-the-trash" along with the solicitations for magazines, pre-approved credit cards, and the like.

Other "housekeeping" items which this bill proposes, including salespersons identifying themselves within 30 seconds, "Do-Not Call Lists", solicitation calls late at night, etc., can be considered as "common sense" and any firm holding itself to a higher ethical standard will already be conducting themselves in a like manner that should not have to be further addressed

by legislation. Those firms which do not adhere to this higher standard are probably no longer in existence. I feel the marketplace already regulates itself in this circumstance.

Requiring the director of commerce and consumer affairs to conduct an audit of all funeral authorities that engage in the sale of pre-need funeral or pre-need interment goods or services beginning in fiscal year 2008 also creates undue work for the Department of Commerce and Consumer Affairs (DCCA) which already seems to be overworked. It does not make sense to burden anyone with additional responsibilities that cannot be reasonably carried-out in the required time constraints. Our industry already submits financial statements and actuarial studies to the DCCA on an annual basis for their review. This entity of State Government is already entrusted with the responsibility to "protect the public" from mishandling of their pre-need trust funds. Additional legislation would be redundant.

Overall, we feel the passage of S.B. No. 2148 would not work in the best interest of the pre-need industry in the state and ultimately the consumer. The pre-need firms are being asked to do and provide more, yet at the same time are being asked to accept nothing in return (100% trusting). The point should not be overlooked that the purchase of a pre-need funeral plan is one of many options the consumer has when planning for end-of-life issues. Rather than proposing more regulation for the pre-need industry, which has very little documented complaints, it may be more prudent to leave the decision of the future of our business to the consumer with their right to purchase (or not) our product. For these reasons I would like to submit this testimony against S.B. No. 2148 and ask you do not pass this proposed measure.



Mitchell M. Dodo  
Vice-President / Operations Manager

POSITION STATEMENT FROM  
MILILANI GROUP, INC. d.b.a. MILILANI MEMORIAL PARK & MORTUARY

**TO THE COMMITTEE ON HUMAN SERVICES AND PUBLIC HOUSING**

SUBJECT: SENATE BILL 2148, A Bill Relating to Funerals

HEARING DATE: Tuesday, January 29, 2008  
1:30 P.M.

This statement is made on behalf of Mililani Group, Inc., a company which is doing business as Mililani Memorial Park and Mortuary (hereafter called "Mililani").

We **STRONGLY OPPOSE** the proposed changes to Chapter 441 of the Hawaii Revised Statutes, and offer the following:

WHY IS IT IMPORTANT TO MAINTAIN THE 70/30 FORMULA OF ENTRUSTING AS OPPOSED TO THE 100% FUNDING OF THE CONTRACT PRICE AS PROPOSED BY SAID SENATE BILLS?

- A) If 100 % funding is required, the pre-need program will be completely terminated as the pre-need authority will not have the funds to pay sales commission and other expenses. This will result in the loss of employment of approximately 250 sales counselors and pre-need staff in Hawaii. Many of these sales counselors and staff have been employed for many years, some as many as 23 years. These counselors are treated as employees receiving medical, vision, and dental benefits.
- B) The primary rationale for 100% entrusting is to assure the purchasers that the pre-need authority will have sufficient funds to perform the contracted for service. Hawaii is one, if not the only state, that requires annually an audit to monitor the timely entrusting of funds as well as an actuarial statement to certify that the funds in trust are sufficient to fulfil all of the outstanding pre-need contracts by the pre-need authority. For the major industry members in Hawaii the audit and actuarial requirements have provided satisfactory protection for the consumer-purchaser. The fact that an entity or individual has violated existing laws should not be reason to change the pre-need laws.
- C) The elimination of the pre-need program would take away an option to the consumer. The consumer would not have the availability of a pre-need counselor presenting a program that would provide pre planning a funeral service, comfortably and paying for the service in installments. The program would eliminate the hardship caused by a family having to come up with the total costs at a time when a loved one has passed away. There are other ways of paying for the



cost of a funeral service such as insurance or making a loan, but the major point should be made is that the industry is providing a viable option.

THERE IS BEING PROPOSED THAT THE INTEREST INCOME FROM THE ENTRUSTED FUNDS NOT BE WITHDRAWN UNTIL THE SERVICE IS PERFORMED BY THE PRE-NEED AUTHORITY.

- A) Again the primary reason for this provision is to insure that the pre-need authority would have sufficient funds to complete the contracted for service. As stated above, it is felt that with the audit and actuarial requirements in addition to many, many years of satisfactory performance by the major companies in this industry, should be reason to continue the current laws.
- B) The allocation of interest earned to each contract would cause an accounting burden for the pre-need authority.

WHAT IF ANYTHING DOES THE PURCHASER OF A PRENEED CONTRACT RECEIVE UPON ENTERING INTO A PRE-NEED CONTRACT?

- A) The purchaser receives a contractual right which obligates the Pre-Need authority to provide the funeral service at a guaranteed set price. The purchaser has certain rights of cancellation, whereas, the Pre-Need authority has no right to cancel if the purchaser does not default on his payments.
- B) The contractual rights that the purchaser has with the major pre-need authorities in Hawaii which have been operating for a great number of years, assures the purchaser that the major pre-need authorities will perform fully under the terms of the contract.
- C) Several of the pre-need authorities provide credit life insurance upon entering the contract with limitations as to age and pre-existing illness. This will assure the purchaser the payment by the insurance company of any balance remaining on the contract if the purchaser dies before full payment is made under the contract.
- D) Several of the pre-need authorities permit the pre-need contracts to be transferred thus enabling the plan to be used by other family members or assigns in the event of a prior need. With life insurance policies, a death must occur to enable the benefits under the policy to be used.

SHOULD THE LEGISLATURE ENACT LAWS WHICH WOULD IN EFFECT RESULT IN ELIMINATING THE RIGHTS OF PARTIES TO ENTER INTO CONTRACTUAL ARRANGEMENTS FOR PRE-NEED FUNERAL SERVICES AND WHICH PRE-NEED PROGRAMS HAVE BEEN IN FORCE FOR MANY, MANY YEARS?

FOR THE ABOVE REASONS, Mililani is in strong opposition of the proposed amendments to Section 441.

RESPECTFULLY SUBMITTED,

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REX S. KUWASAKI, President

Senator Susan Chun Oakland  
Chairman  
Committee of Human Services & Public Housing

Honorable Susan Chun Oakland,

Last year the legislature passed Act 188 working with the funeral industry, Department of Commerce & Consumer Affairs and legislature. We are now complying with the act and have printed our forms to be in compliance with Chapter 441 as amended by Act 188. Although we have incurred additional cost we were happy to be part of the solutions to consumer concerns.(1) Now we are faced with two bills SB2148 & SB2599 to which the Hawaii Allied Memorial Council is opposed to 100% trusting does not provide for operational cost of running a funeral plan business.(2) It also requires licensing of sales people, which DCCA did away with 20 years ago as not necessary as sales people are agents of a licensed authority. (3) It is common knowledge that sales people do identify themselves, who they represent and if allowed a sales presentation that truthfully represents their company with all the appropriate paper work to transact a contract. (4) We all maintain a "do not call list" because that is just good business to do so and do not need a new law to tell us that this is a good business practice. (5) It is also good business sense not to make solicitation calls late in the evening and we don't need a law to tell us that.(6) Since by law our pre-need contracts are "trusted-funded", it would be difficult to not tell clients about the trust fund as a depository of funds. (7) We don't solicit persons in hospitals, nursing homes, or other long term facilities unless requested by family members, I don't think we need to codify this practice into law. (8) Three working days to cancel a contract hasn't been a problem. (9) This bill also requires the trustee to send confirmation notice that payments have been deposited within 30 days, this poises a problem because we give out client's monthly payment to complete payment of their contracts. Clients are given receipts of payments when payments are made and a certificate of completion is sent when the plan is fully paid.

In summary this proposed bill would put a hardship on our industry and likely force the closure of all pre-need funeral plans and pre-need cemetery plans. The National Funeral Directors Association is a "At Need" industry and benefits by not having pre-need funeral plans sold. Without pre-need funeral plans the "At Need" mortuaries can charge whatever the "market will bear" and eventually there will be a call to regulate what the "At Need" mortuaries can charge. Pre-need plans actually keep down the price for funeral services as the plans are used for future service at today's prices. The emotional side of pre arranging is just as important as the financial side and most people pre arrange to help there families make handling death in family easier at the worst time of their lives. Please do not pass this legislation and let us work to comply with Act 188 which has the support of the industry and DCCA.

Yours truly,

  
Jerome Andrade

President  
Hawaii Allied Memorial Council

STATEMENT FROM  
ASSOCIATION OF PRENEED FUNERAL PLANS, INC.

TO THE COMMITTEE ON HUMAN SERVICES AND PUBLIC HOUSING

SUBJECT: SENATE BILL 2148, A Bill Relating to Funerals

HEARING DATE: Tuesday, January 29, 2008  
1:30 P.M.

THIS ASSOCIATION **STRONGLY OPPOSES** the proposed changes to Chapter 441 of the Hawaii Revised Statutes, entitled “”.

This Association consists of several pre-need authorities doing business in the State of Hawaii. Hawaii Pre-Need authorities have reviewed this Bill and feel that any change to the entrusting requirements jeopardizes their ability to continue offering this preneed service to the people of Hawaii. Should this bill pass, many of our members, especially the smaller industry operators will be forced to cease offering these plans. It is simply inconceivable how curtailing this program can be of any benefit to the public.

We are extremely troubled by the proposed actions and do not believe there is sufficient support for its ratification.

RESPECTFULLY SUBMITTED,

Eadean M. Buffington, for the Association

STATEMENT FROM  
HAWAIIAN MEMORIAL LIFE PLAN LTD.

TO THE COMMITTEE ON HUMAN SERVICES AND PUBLIC HOUSING

SUBJECT: SENATE BILL 2148, A BILL RELATING TO THE FUNERAL INDUSTRY

HAWAIIAN MEMORIAL LIFE PLAN STRONGLY OPPOSES the proposed changes to chapter 441 of the Hawaii Statutes, entitled "RELATING TO FUNERALS".

Hawaiian Memorial Life Plan LTD. operates cemeteries and funeral homes in the State of Hawaii. We have reviewed this Bill and feel that any change to the entrusting requirements jeopardizes the abilities of preneed authorities to continue to offer a preneed trusting service to the people of Hawaii. Should this Bill pass many of the operators, especially the smaller industry operators will be placed in a position to discontinue to offer a preneed funeral trusting product. This will create less competition in the market place and fewer preplanning options for the community.

We feel that this committee should look at the ramifications of how this Bill will affect the community. We are in agreement with the statement submitted to you from the ASSOCIATION OF PRENEED AUTHORITIES INC.

Respectfully Submitted



Jay Morford

Vice President, Hawaiian Memorial Life Plan LTD.

To: Senator Suzanne Chun Oakland, Chair  
Committee on Human Services and Public Housing  
From: Hawaii Funeral Directors Association  
Date: Tuesday, January 29, 2008  
Subject: Opposition to SB 2148

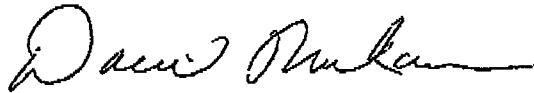
The Hawaii Funeral Directors Association (HFDA) is a non-profit trade association of licensed funeral establishments in the State of Hawaii. The HFDA was originally formed to promote the business environment of the funeral industry through dissemination of information, education and training of its members, and raising the level of service to the families we serve. The HFDA has been and will continue to work with the State Department of Health, and State Civil Defense as a informational resource and an active participant in mass fatality and disaster preparedness planning for the State of Hawaii.

The majority of the members of the Hawaii Funeral Directors Association are affiliated as servicing mortuaries for pre-need authorities, or are licensed pre-need authorities in the state of Hawaii. The members of the HFDA oppose SB 2148 which attempts to regulate the funeral and cemetery pre-need industry and impose a hardship on this segment of the death care industry in Hawaii. A number of points opposed by SB 2148 are:

- 1) The suggested funding percentage as advocated by SB 2148 in general unfairly restrict and regulate profit.
- 2) The amount trusted is inconsequential if the person(s) running the pre-need authority is intent on absconding with the funds.
- 3) Realistic enforcement from the regulating governmental body.

In an overview of bills SB 2148 the HFDA feels that not enough consideration was given to all of the factors which impact regulation of the Hawaii Funeral Industry and that a more

thorough study be done by the legislature including representatives from the Funeral, Cemetery and Preneed industries. Thank you for this opportunity to testify.



David Morikami

President

Hawaii Funeral Directors Association

1 **Testimony for the Senate: HSP**

2 **Re: SB2148 from Sarah Robinson, Funeral Consumers Alliance Hawaii**

3 **Hearing Date and Time: 01/29/07 1:30 p.m. Conf Room 016**

4  
5 The Funeral Consumers Alliance Hawaii is a non-profit educational organization  
6 incorporated in 1962. Our mission is to assist consumers in planning and choosing  
7 meaningful, dignified, and affordable services at the time of death. Our services are free to  
8 the public. We have over 2000 members in the state and are part of a national organization  
9 with more than 400,000 members.

10  
11 We sincerely appreciate the effort made to reform Hawaii Revised Statutes, 441-23; we  
12 **Support SB2418** for the following reason:

- 13  
14 1) The bill establishes requirements for pre-need funeral and interment salespersons.  
15 The bill also provides for having on file with the Department of Commerce and  
16 Consumer Affairs the names, addresses, and phone numbers of all sales people. The  
17 bill requires sales people to identify themselves immediately in the sales transaction  
18 and requires them to state which firm they are representing.
- 19 2) The bill increases the length of time from 3 to 7 days in which consumers can cancel  
20 their contract without penalty. This helps in seeking a second opinion on the contract.
- 21 3) The bill requires the contract to define the amounts that are to be trusted. This offers  
22 the consumer increased transparency in the transaction process.

23 These are positive consumer protection measures designed to decrease the risk of fraud and  
24 will certainly benefit the elderly population who are the primary target market for pre-need  
25 funeral and cemetery plans. Funeral Consumers Alliance Hawaii **Supports SB2418** and  
26 hopes this is one of many steps towards improving Hawaii's pre-need cemetery and funeral  
27 authority laws.

28 Thank you for your time and attention to this issue.

29 Submitted by: Sarah Robinson, 638-9112




## **THE COMMITTEE ON HUMAN SERVICES AND PUBLIC HOUSING**

MY NAME IS GLADYS M. SEDENO, I AM A KUPUNA AND LIVE IN MILILANI. I HAVE JUST PAID FOR MY FUNERAL TRUST PLAN AND PLAN TO BUY MORE, EXCEPT FOR THIS SB BILL 2148 WHICH WILL PREVENT ME FROM MAKING A CHOICE, BECAUSE THE PRE NEED PROGRAM WILL BE ELIMINATED.

THIS IS SO BAD, YOU CAN'T BE SERIOUS ABOUT DOING THIS TO ME AND MY FAMILY AND EVEN THE GENERAL PUBLIC. SECTION FIVE (5) OF THE SB BILL 2148 NEEDS TO BE ELIMINATED. THE 100% IN TRUST WILL ELIMINATE THE PRE-NEED PROGRAM NOW ONGOING AT THE FUNERAL HOME I CURRENTLY PURCHASE MY PLANS. MY FAMILY SINCE 1966 HAS PURCHASED PLANS AND YOU KNOW AFTER IT'S PAID OFF, THE 70% THEY PUT INTO TRUST, PAID OFF MY FAMILIES SERVICES 100%. FROM THE TIME WE PURCHASED TO THE TIME OF DEATH, I AM POSITIVE THAT THE COST OF SERVICES AND GOODS WENT UP AND YET WE DID NOT PAY ANY ADDITIONAL COST.

I WORRY ABOUT MY CHILDREN AND GRAND CHILDREN WHO WILL HAVE TO PAY MORE FOR THEIR FUNERAL TRUST, SO PLEASE ELIMINATE SECTION 5 REGARDING THE 100% TRUST.

MANY THANKS,



GLADYS SEDENO