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**MILILANI GROUP, INC.**

**Fax**

**LATE**

**To:** SENATOR SUZANNE CHUN OAKLAND **From:** DIANA UYEMATSU

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**Fax:** (808) 586-6131 **Pages:** 3

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**Phone:** **Date:** 1/30/2008

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**Re:** SENATE BILL SB2148/2599 **CC:** PATRICK W. SOUZA

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**Urgent**     **For Review**     **Please Comment**     **Please Reply**     **Please Recycle**

**SENATE COMMITTEE ON HSP - REGARDING SB 2148/2599**

Please see the attached and can you add this to your package for yesterday's hearing.

Many Thanks,

D.Uyematsu

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THE SENATE  
TWENTY-FOURTH LEGISLATURE, 2008  
STATE OF HAWAII

TO: COMMITTEE ON HUMAN SERVICES AND PUBLIC HOUSING  
REGARDING: S.B. NOT 2148 and S.B. 2599

This is my testimony in writing per your request. My name is Diana Uyematsu and I am a sales counselor for Mililani Memorial Park and Mortuary and have been there for 21 years. I've helped thousands of families in my career. I am totally opposed to this bill primarily because it will inadvertently do away with Pre-need. My most salient argument at that point, when I gave my testimony, was that in servicing families, there is such a big relief and peace of mind when at time of need, all the arrangements have been taken cared of. . . and on the other hand, the stress and pain that results from not having the money and having to struggle to come up with the funds when someone passes away. It's night and day.

But. . . after the testimonies, Senator Ihara brought up his main concern which appears to be that he worries that if all the families that purchased Pre-need services were to pass away all at once, would we have all the money in trust! Now isn't that a bit "unreal"! Do the banks have all the money in their vaults which have been deposited by families? Or for that matter, do the insurance companies have all the money in their reserves to satisfy all claims? Of course not! In Senator Ihara's defense, it is very crucial that monies be there to protect the consumer.

We at Mililani Memorial Park and Mortuary have never had any incidence of not servicing a contract, due to lack of funds. We pay thousands of dollars for annual audits to ensure that we're in compliance with FTC and state regulations. If other mortuaries have been in violation, punish them, not us. But the biggest devastation here would be the result that families would be the ones losing out. And if we are to be consumer oriented, then let us allow

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the consumer the rights he's been accustomed to for many decades here in Hawaii.

As for the insurance option – how shallow! Not everyone is allowed to buy insurance. If a person is terminally ill he may be allowed to buy some \$10,000 or \$5,000 policy, and I'm being generous in saying that. But when purchasing funeral plans, anyone under any circumstances can purchase. I could go on and on . . . Thank you very much for your kind attention.

Much Aloha,



STATEMENT FROM  
ASSOCIATION OF PRENEED FUNERAL PLANS, INC.

**LATE**

TO THE COMMITTEE ON HUMAN SERVICES AND PUBLIC HOUSING

SUBJECT:     ✱ SENATE BILL 2148, A Bill Relating to Funerals  
              ✱ SENATE BILL 2599, A Bill Relating to the Funeral Industry

HEARD ON:     Tuesday, January 29, 2008  
                  1:30 P.M.

THIS ASSOCIATION **STRONGLY OPPOSES** the proposed changes to Chapter 441 of the Hawaii Revised Statutes, entitled "RELATING TO FUNERALS" and offers the additional testimony set forth below.

This Association consists of several pre-need authorities doing business in the State of Hawaii together with those entities currently seeking application for pre-need licenses. Discussions within our organization confirm that the enactment of either of these bills in their present state would cause many pre-need authorities to cease offering pre-need contracts. The pre-need authorities cannot afford to subsidize this product from current operations.

The most immediate and direct result would be the loss of more than 200 sales positions in the industry. Many of these pre-need advisors have been working in this industry for more than 25 years.

However the greater loss would be the availability of the pre-need contract to Hawaii consumers. **THERE ARE MANY CONSUMERS WHO FIND BENEFIT AND COMFORT THROUGH ACQUIRING A PRE-PLANNED AND PREPAID FUNERAL SERVICE CONTRACT.**

Lastly let me offer some statistics of which this industry is very proud. From information gathered from three pre-need authorities, there have been in excess of 50,000 pre-need contracts which have been fully serviced since being granted their pre-need licenses; a fully serviced contract refers to a consumer who bought a pre-need contract and whose family received the contracted service. In the last 36 months, Better Business Bureau has a record of only one complaint being received. (This complaint was resolved, and I believe it did not involve a pre-need contract.). The Department of Commerce and Consumer Affairs maintains a similar exemplary record for our industry. Further our pre-need contracts have been incorporated in benefit packages to many groups and associations. Organizations such as Honolulu Police Department, Honolulu Fire Department, HSTA and HGEA; Unions such as IBEW, Iron Workers Union Local 625, Local 5 Hotel Workers, Operating Engineers, and Teamsters Local 996; Federal Credit Unions, Religious Organizations and community associations have found merit to promoting these pre-need contracts to their members.

We are extremely troubled by the introduction of the proposed legislation. We do not believe there is sufficient support for its ratification.

RESPECTFULLY SUBMITTED,

Eadean M. Buffington, for the Association

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heard. Our testimony is broken down into two categories: 1) provisions with which we would have no objections if appropriately amended, and 2) two provisions that we must respectfully oppose.

First, the Department supports initiatives that will work and will help consumers. Within S.B. 2148 and S.B. 2599 there are several provisions that meet this objective and, subject to suggested amendments, the Department would support. They include the following:

- Rather than create a new licensing process for salespersons of cemetery and pre-need funeral authorities, the bill should instead place the onus on the authorities to hire such personnel in accordance with the enumerated qualifiers in the bill. This would be consistent with the Legislative Auditor's position in a sunset report of 1981, where at the time salespersons were regulated and licensed under Chapter 441, HRS, but where the Auditor recommended repeal of salesperson licensing (which was effectuated). The Auditor believed control of sales practices would be best accomplished by assigning clear responsibility to the authorities for their salespersons. With that in mind, Chapter 441, HRS, has numerous provisions that hold the authority responsible for disclosure and sales practices by their company (and by any agent of the company). However, if the Committee would like to make authorities more accountable and conform their hiring criteria to include the standards set forth, then this mandate on the authority would be set forth in the bill. We note though

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that prohibition of a felony conviction should not contradict Chapter 831, HRS;

- Whatever policy position is taken on the percentage that may be received by authorities from the sales of pre-need interment and pre-need funeral services and merchandise, we urge that the financial solvency of a cemetery or pre-need operation not be negatively impacted as that will harm consumers. Further, we are unsure if it was an inadvertent omission but the bills would not allow authorities to recover costs for operational expenses, as they currently are allowed to do;
- Providing a confirmation notice to the purchaser of payments received could be informative if it is not onerous on the Trustee nor increase costs to purchasers of pre-need services and merchandise. We suggest clarification of when such notice is to be provided (e.g., with each payment, quarterly, semi-annually, yearly) in order for impacts to be determined;

Provisions specific only to S.B. 2599 that the Department would support if suggested amendments are adopted, include the following:

- As set forth, the proposal for the Department to conduct yearly audits for a period of three (3) years of pre-need authorities can be done but the provision should be amended to include "cemetery authorities", change the start-up date to fiscal year 2009, and clarify whether such reports are public record;

- We strongly prefer continuation of the existing cash basis for audited financial statements (in lieu of the proposed accrual method), but consistent with our practices suggest that clarification be inserted that "The audited financial statements shall include a statement of financial position, statement of activities, and statement of changes in net assets."
- As a deterrent to late filing of audited financial statements, imposing a "late fee" versus a "penalty" would alleviate the possibility of a Chapter 91, HRS proceeding. Further, if this deterrent is to apply to all pre-need authorities, then "pre-need funeral authority" should be added to the provision. Also, new language giving the Department authority to set the late fee through rule adoption is suggested; and
- Language stating that actuarial studies focus on a "fiscal year" basis may need further clarification that this includes year end closing based on a "calendar year".

The two provisions in S.B. 2599 which the Department must respectfully oppose include the following:

- The requirement that the reports of our contracted CPA consultant be public. DCCA uses such reports in its regulatory pre-decisional and deliberative process. Making these reports public would frustrate a legitimate government function if disclosed and, pursuant to HRS 92F-13(3), such information is exempt from disclosure. The Office of

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Information Practices (OIP) has issued several opinions on similar situations (see OIP Opinion Numbers 90-21 and 91-16) and we find no reasons why the cemetery statute should contradict HRS 92F.

- The requirement for the department to develop an audited financial statement form. We believe that with the yearly audit to be done by the Department on pre-need authorities and audited financial statements filed on the trusts, an additional audited financial statement form seems unnecessary, in addition to being very difficult if not impossible to develop given the numerous variables involved. The Department does not shy away from challenges, but the amount of time and effort required to develop a standard statement form could not be justified in light of the lack of demonstrated need for or benefits of such a form.

Thank you for the opportunity to testify on S.B. 2148 and S.B. 2599. Should the Committee move these bills forward, we ask that you include our suggested amendments.



STATEMENT FROM  
ASSOCIATION OF PRENEED FUNERAL PLANS, INC.

LATE TESTIMONY

TO THE COMMITTEE ON HUMAN SERVICES AND PUBLIC HOUSING

SUBJECT: SENATE BILL 2599, A Bill Relating to the Funeral Industry

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

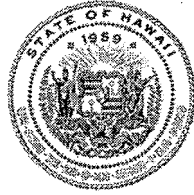
THIS ASSOCIATION STRONGLY OPPOSES the proposed changes to Chapter 441 of the Hawaii Revised Statutes, entitled "RELATING TO THE FUNERAL INDUSTRY".

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



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LINDA LINGLE  
GOVERNOR

JAMES R. AIONA, JR.  
LT. GOVERNOR

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LAWRENCE M. REIFURTH  
DIRECTOR

RONALD BOYER  
DEPUTY DIRECTOR

**PRESENTATION OF THE  
PROFESSIONAL AND VOCATIONAL LICENSING DIVISION**

TO THE SENATE COMMITTEE ON  
HUMAN SERVICES AND PUBLIC HOUSING

TWENTY-FOURTH LEGISLATURE  
Regular Session of 2008

Tuesday, January 29, 2008  
1:30 p.m.

**TESTIMONY ON SENATE BILL NO. 2148, RELATING TO FUNERALS AND  
TESTIMONY ON SENATE BILL NO. 2599, RELATING TO THE FUNERAL  
INDUSTRY.**

TO THE HONORABLE SUZANNE CHUN OAKLAND, CHAIR,  
AND MEMBERS OF THE COMMITTEE:

My name is Noe Noe Tom, Licensing Administrator of the Professional and Vocational Licensing Division, Department of Commerce and Consumer Affairs ("Department"). With the Committee's indulgence, we are presenting this testimony to cover both S.B. 2148 and S.B. 2599 as there are common threads between the two proposals and our comments are similar and applicable to both. S.B. 2599 contains issues not found in S.B. 2148, and we have addressed these issues within this testimony but will address them separately if the Committee prefers, when S.B. 2599 is

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CRICK DEC  
Copied for testimony

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

**TESTIMONY ON SENATE BILL NO. 2148 AND 2599  
RELATING TO THE FUNERAL INDUSTRY**

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

My name is Lydia Tomiyasu and appreciate the opportunity to raise questions on both these Senate bills in opposition to its passage.

Testimony was provided by the Department of Commerce and Consumer Affairs reflecting the provisions which would be in effect on July 1, 2008. As requested, you should not revisit these issues already addressed that will become effective as of July 2008 and be certain that the issues are not implemented with those already in process. This needs clarity and organization in the way the bill is written.

My concerns are as follows:

- SB 2148 page 9 of 10, Section 6 which states that a one hundred percent of the funds paid by the purchaser shall be transferred to the trustee to remain in trust.
- SB 2599 page 6 of 12, Section 3 – 5B regarding the “Basis on which funds are to be deposited. The percentage of the contract price would be a ratio of 85/15.

The Funeral industry for many years followed the 30/70% rule implemented in the regulations under the Department of Commerce and Consumer Affairs. According to representatives of the National Funeral Directors Association, Hawaii has the “worse” record of management of Pre Need Funeral Services offered by the Funeral Industry of Hawaii, and yet the BBB and DCC both have provided us with less than 5 complaints over a period of 36 months (BCC) and 5-years (DCC), regarding the industry. So why again should you limit or abolish the 30/70% rule if we have had less than 5 complaints.

It is interesting to also note that the Federal Trade Commission that protects the Consumer has the following input on the web:

## **THE FEDERAL TRADE COMMISSION**

THE AGENCY THAT CARES FOR THE PUBLIC AND PROTECTS THE CONSUMER  
WHOSE GUIDELINES ARE INDUSTRY STANDARDS

“When a loved one dies, grieving family members and friends often are confronted with dozens of decisions about the funeral - all of which must be made quickly and often under great emotional duress. What kind of funeral should it be? What funeral provider should you use? Should you bury or cremate the body, or donate it to science? What are you legally required to buy? What other arrangements should you plan? And, as callous as it may sound, how much is it all going to cost? “

“Each year, Americans grapple with these and many other questions as they spend billions of dollars arranging more than 2 million funerals for family members and friends. The increasing trend toward pre-need planning - when people make funeral arrangements in advance - suggests that many consumers want to compare prices and services so that ultimately, the funeral reflects a wise and well-informed purchasing decision, as well as a meaningful one.”

The whole point of the matter is, people already are finding it difficult to purchase pre-need and we all know that many have paid cash up front in order to handle the arrangements for their loved one. When they purchase Pre-Need, it provides them with choices, length of payment plans, selection of goods and services and when it's paid in full, its done, unlike insurance policies. Why do I say that. . . . upon purchase of an insurance policy, it covers “Today's” cost, what happens if they purchase at 29 years old and die at 99 years, can you predict the cost of the goods? You know also that policies increase after a certain age, and today for the seniors, most of their so called “perks” for retirement diminishes with age. Don't let the people who think they know about our Hawaii Industry tell you our industry is not good, instead, allow the regulatory agencies that should be protecting the consumer work closely with the funeral industry to resolve these matters.

The funeral industry is very old, and has evolved into an industry that needs to “catch-up” to the rest of the world. Unfortunately, today in our “Paperless” society, the industry needs to resolve issues, such as internet communications with the City Morgue, Hospitals and Doctors and the Department of Health for applications of Death Certificates. The voluntary services that we helped to implement with the Department of Health we feel was a “giant” undertaking, even for the Physicians who were not prepared has tried to expense funds for their need of computers. In fact, even your website notes “Paperless” as well. So what in your opinion does it cost for all of your agencies to become “paperless”? Compare it to an industry that did it the old fashion way by driving down and picking up the paperwork!

The Funeral industry needs you to be aware of more than just “Sales Representatives”, they need you know that the amount currently established will help in accomplishing a better service for the client. Every large and small business need capitol, otherwise they cannot survive. Don’t limit the consumer to choices that they may not be able to afford. Don’t allow the National Funeral Directors Association to dictate their ideas by saying we have not provided complete services for their pre-need plans. In fact I am asking you to “Kill” both of these bills that will eliminate the 100% and 85% in trusting, and keep the regulations already established in tact.

Respectfully submitted

Lydia Tomiyasu