
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 currently lacks uniformity and regulation of sales
3 contracts and financial reporting. This lack of regulation in
4 the sale of contracts and financial reporting is detrimental to
5 consumers purchasing cemetery and pre-need funeral goods and
6 services; however, no state agency or department has the
7 resources or familiarity with the industry to provide sufficient
8 oversight. Therefore, the legislature finds that it is in the
9 best interest of the consumers of Hawaii's pre-need funeral
10 services industry to create a regulatory oversight board.

11 The legislature finds that it is necessary to ensure that
12 consumers who purchase cemetery and pre-need cemetery or funeral
13 services are able to make informed decisions, are protected
14 against the loss of pre-paid funds, and are able to deal with
15 ethical and licensed pre-need funeral service authorities.

16 The purpose of this Act is to adopt measures to increase
17 oversight and regulation of Hawaii's funeral industry in order

1 to protect consumers. This measure establishes a board of
2 cemetery and funeral trusts; establishes a pre-need cemetery and
3 funeral special fund with proceeds used for investigations,
4 audits, and legal actions including retention of legal counsel,
5 certified public accountants, personnel, and consultants;
6 requires new information in reports submitted by cemetery and
7 pre-need authorities; requires annual reports from the
8 department; and introduces other provisions to increase
9 protection of funeral industry consumers.

10 SECTION 2. Chapter 441, Hawaii Revised Statutes, is
11 amended by adding three sections to be appropriately designated
12 and to read as follows:

13 "§441- Board; appointment. (a) There is established a
14 board of cemetery and funeral trusts within the department of
15 commerce and consumer affairs for administrative purposes, which
16 shall consist of five members appointed in accordance with
17 section 26-34, unless otherwise provided in this section. The
18 board shall consist of:

19 (1) Three members representing cemetery authorities and
20 pre-need funeral authorities licensed under chapter
21 441, appointed by the governor; provided that both the

1 cemetery and pre-need funeral sectors both be
2 represented on the board; and

3 (2) Two members of the public appointed by the director of
4 the department of commerce and consumer affairs from a
5 list of nominations submitted by consumer groups.

6 (b) The members shall serve without compensation.

7 (c) The term of the initial members shall be for two
8 years. Thereafter, the governor shall reduce the terms of four
9 of the members initially appointed to the board so that two of
10 the members engaged in the industry of cemetery and funeral
11 trusts and two of the members who are representatives of
12 consumer organizations shall serve a term of one year, and the
13 remaining three members shall serve a term of two years.

14 **§441- Board; powers and duties.** The board shall assist
15 the director in carrying out the director's duties under section
16 441-19. In addition, and pursuant to chapter 91, the board
17 shall:

18 (1) Assist the director in establishing the qualifications
19 for the licensing of a cemetery or pre-need funeral
20 authority as necessary for the welfare of the public
21 and of the cemetery and pre-need funeral authority
22 industry; and

1 (2) Inquire into the practices and policies of the
2 cemetery and pre-need funeral authority industry and
3 recommend to the director practices and policies that
4 the board deems necessary for the welfare of the
5 public and of the cemetery and pre-need funeral
6 authority industry.

7 **§441- Pre-need cemetery and funeral special fund; use of**
8 **fund; fees.** (a) The director shall establish and maintain a
9 trust fund that shall be known as the pre-need cemetery and
10 funeral special fund, the proceeds of which may be used by the
11 department to investigate any violation or complaint that
12 alleges fraud, misrepresentation, deceit against any pre-need
13 funeral authority, or purposes authorized in subsection (c).
14 (b) The director shall collect a one time fee of not more
15 than \$ _____ per contract from each cemetery authority,
16 pre-need funeral authority, or other operator defined by the
17 department for deposit into the pre-need cemetery and funeral
18 special fund, as provided in rules adopted by the director
19 pursuant to chapter 91. The fee shall apply to every contract
20 accepted by the cemetery authority, pre-need funeral authority,
21 or other operator on or after July 1, 2009. The fee may be
22 reduced proportionately for each contract that terminates or is

1 cancelled within the first six months of the life of the
2 contract. Each cemetery authority, pre-need funeral authority,
3 or other operator shall provide payment to the director on
4 January 31 and June 15 of every year for all contracts accepted
5 by the authority during the prior six month period.

6 (c) The director, as the trustee of the pre-need cemetery
7 and funeral special fund, shall be authorized to expend moneys
8 in the fund to:

9 (1) Retain private legal counsel to represent the interest
10 of the department in any action that involves, or that
11 may result in the enforcement of any payment from a
12 cemetery authority or a pre-need funeral authority;

13 (2) Retain a certified public accountant for accounting
14 and auditing of pre-need trusts, perpetual care funds,
15 providers of funeral service, and cemetery
16 authorities;

17 (3) Employ necessary personnel, not subject to chapter 76,
18 to assist the director and the department in
19 exercising their respective powers and duties in
20 accordance with this chapter; and

21 (4) Retain a consultant to recover and collect any
22 payments to the pre-need cemetery and funeral

1 governance fund, including interest, from cemetery
2 authorities and pre-need funeral authorities.

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

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

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

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

1 SECTION 4. Section 441-23, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§441-23 Fine, revocation, suspension, and renewal of**
4 **authority licenses.** (a) All cemetery authorities and pre-need
5 funeral authorities, their employees, agents, or anyone
6 soliciting on their behalf, are prohibited from:

- 7 (1) Making untrue statements or omitting any material fact
8 when engaged in solicitation of pre-need interment
9 services or pre-need funeral services;
- 10 (2) Using advertisements or offers of pre-need interment
11 or pre-need funeral services that are false,
12 misleading, deceptive, unfair, coercive, or
13 intimidating;
- 14 (3) Soliciting consumers by telephone any time between the
15 hours of 9:00 p.m. and 8:00 a.m.;
- 16 (4) Using the term "trust" or "trust-funded" in any way
17 that is misleading in any advertisement or
18 solicitation; and
- 19 (5) Directly soliciting persons in hospitals, rest homes,
20 nursing homes, or similar health care facilities
21 in-person or by telephone without having been

1 expressly requested to do so by that person or that
2 person's legal representative.

3 (b) In addition to any other actions authorized by law,
4 the director may fine an authority, revoke any authority
5 license, ~~[or]~~ suspend the right of the licensee to use the
6 license, impose restrictions, conditions, or limitations upon
7 the authority's license, deny, or refuse to renew, reinstate, or
8 restore any license for any cause authorized by law, including
9 but not limited to the following:

- 10 (1) ~~[Any dishonest or fraudulent act as a cemetery or pre-~~
11 ~~need funeral authority that causes substantial damage~~
12 ~~to another;]~~ Making one or more untrue statements,
13 omitting one or more material facts, committing a
14 dishonest or fraudulent act, or engaging in conduct
15 that is deceptive, unfair, misleading, coercive, or
16 intimidating;
- 17 (2) Making ~~[repeated]~~ one or more misrepresentations or
18 false promises through advertising or otherwise;
- 19 (3) Violation of this chapter or the rules adopted
20 pursuant thereto~~[+]~~, or failure to comply with
21 requirements for licensure, including any

- 1 restrictions, conditions, or limitations imposed by
2 the director;
- 3 (4) Commingling the money or other property of others with
4 that of the licensee;
- 5 (5) Having been adjudicated insane or incompetent;
- 6 (6) Selling or offering to sell any cemetery property,
7 pre-need interment, funeral services, or pre-need
8 funeral services based on speculation or promises of
9 profit from resale;
- 10 (7) Failing to timely file the actuarial study or an
11 audited financial statement or to maintain in effect
12 the bond [~~as~~] required by section 441-22;
- 13 (8) Failing to maintain pre-need trusts or perpetual care
14 funds as required by this chapter; or
- 15 (9) Violating section 441-22.7."

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

18 "**§441-24 Inspection of cemetery or pre-need funeral**
19 **authority books.** The books, records, and papers of every
20 cemetery authority whether or not a corporation, which operates
21 or claims to operate a perpetual care cemetery, and of every
22 pre-need funeral authority shall be subject to examination by

1 the director as provided by law, and every cemetery authority
2 operating a perpetual care cemetery, and every pre-need funeral
3 authority shall submit [~~such~~] the information as may be required
4 by the director to furnish information as to whether or not the
5 cemetery or pre-need funeral authority has complied with this
6 chapter.

7 The records of every cemetery authority shall include the
8 information required under section 441-3(b). The records of
9 every cemetery and pre-need funeral authority shall also include
10 a record of any and all notifications from purchasers or
11 representatives of purchasers regarding:

12 (1) Any change in address; and

13 (2) Notice of cancellation,

14 and shall include copies of any and all written notices of
15 termination that were sent to purchasers. Change of address
16 notices, cancellation notices, [~~and~~] notices of termination, and
17 all other records altering or amending the contract, or
18 otherwise relating to each contract containing any pre-need
19 funeral services or pre-need interment services shall be
20 maintained by the authority at all times prior to delivering
21 goods or rendering services on the contract and for a period of

1 at least [~~six months~~] three years after all goods have been
2 delivered or all services have been rendered."

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

5 **"§441-24.5 Pre-need trusts and perpetual care funds;**
6 **audited financial statements.** (a) Every cemetery authority
7 operating a perpetual care cemetery or which engages in pre-need
8 sales [~~or~~] and holds money in trust for pre-need interment
9 services, and every pre-need funeral authority which engages in
10 pre-need sales or holds money in trust for pre-need funeral
11 services shall submit an audited financial statement and
12 actuarial report of its pre-need trusts and perpetual care funds
13 to the director within ninety days after the close of the
14 authority's books on a fiscal or calendar year basis. The
15 audited financial statement and actuarial report required by
16 this section shall include:

- 17 (1) The total dollar amount required to fully perform all
18 contracts in each trust;
19 (2) The total dollar amount due to each trust as of the
20 date of execution of contracts not yet performed;
21 (3) The total dollar amount in each trust; and

1 (4) The total outstanding dollar amount due from consumers
2 for each trust.

3 (b) A late fee of \$ shall be assessed for each
4 day that a cemetery authority or pre-need funeral authority
5 fails to file an audited financial statement within the time
6 requirements of subsection (a).

7 (c) In the event that any required audited financial
8 statement is not provided to the department within sixty days
9 after it is due or within the time established by any extension
10 granted by the director, the director may issue immediate notice
11 to the cemetery authority or pre-need funeral authority to
12 suspend pre-need sales or prohibit further withdrawal from the
13 perpetual care funds and pre-need trusts. The director shall
14 commence an immediate audit of trust funds held by the cemetery
15 authority or pre-need funeral authority that engaged in the sale
16 of pre-need funeral services or pre-need interment services and
17 failed to submit on a timely basis the required financial
18 statement in accordance with this section. Pending completion
19 of the audit ordered by the director or submission of the
20 audited financial statement by the pre-need funeral authority or
21 cemetery authority, the director shall impose restrictions on
22 sales and withdrawals for a period of time determined by the

1 director to be adequate to ensure the integrity of the trust;
2 provided that the period of time shall in no event be less than
3 thirty days. All costs of the audit imposed by the director
4 shall be borne by the pre-need funeral authority or cemetery
5 authority.

6 (d) During any period that sales are suspended or
7 withdrawals are prohibited under subsection (c), the cemetery
8 authority or pre-need funeral authority shall honor all
9 contracts entered into prior to the suspension of sales that
10 become due. The director shall authorize withdrawals from the
11 trust in order to fulfill these contracts."

12 SECTION 7. Section 441-24.6, Hawaii Revised Statutes, is
13 amended by amending its title and subsection (a) to read as
14 follows:

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

1 perpetual care of the cemetery. In the case of a cemetery or
2 pre-need funeral authority, the study shall ~~[be to]~~ determine
3 whether the amount in the authority's pre-need trust as of the
4 end of the fiscal year will be sufficient to cover the future
5 claims of pre-need plan participants~~[.]~~ as of the end of the
6 fiscal year."

7 SECTION 8. Section 441-24.7, Hawaii Revised Statutes, is
8 amended by amending its title and subsection (a) to read as
9 follows:

10 "~~[.]~~**\$441-24.7**~~[.]~~ **Actuarial study, audited financial**
11 **statement, trust agreement; complaints, consultants reports, and**
12 **contractor reports; available for review.** (a) The actuarial
13 study, audited financial statement, and trust agreement filed by
14 a cemetery or pre-need funeral authority, as required by this
15 chapter, shall be available for review by any member of the
16 general public upon request. The review of these documents
17 shall be done during the department's normal business hours.
18 The director shall have the right to deny review for reasons
19 specified in rules adopted by the director pursuant to chapter
20 91. The department shall submit a report annually to the
21 legislature that describes the status of the audited financial

1 reports and actuarial reports of licensees. The report shall
2 include, but not be limited to, the following:

- 3 (1) A list of all licensees required to submit reports;
4 (2) Licensees granted extensions for filing reports;
5 (3) Reports due, but not filed;
6 (4) Penalties assessed for late reports;
7 (5) Total aggregate dollar amount required to perform
8 contracts in all trusts;
9 (6) Total aggregate dollar amount due to all trusts as of
10 the date of execution of contracts not yet performed;
11 (7) Total aggregate dollar amount in all trusts; and
12 (8) Recommendations for improving the reporting system for
13 licensees and oversight of the cemetery and pre-need
14 funeral industry."

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

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

1 lesser of thirty per cent of the contract price or the
2 difference between the contract price and the cost of the
3 pre-need interment or pre-need funeral services contracted to be
4 provided. The transfer shall be made not later than thirty days
5 after receipt of payment from the purchaser and shall be
6 immediately deposited in the trust. The cemetery authority or
7 pre-need funeral authority shall provide an annual statement to
8 the purchaser within thirty days of the close of the prior
9 month."

10 SECTION 10. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 11. This Act shall take effect on July 1, 2050.

Report Title:

Funeral Industry; Commerce and Consumer Protection; Board of Cemetery and Funeral Trusts

Description:

Establishes a board of cemetery and funeral trusts. Establishes a pre-need cemetery and funeral special fund. Prohibits additional practices. Authorizes the director of commerce and consumer affairs to prohibit a pre-need authority from engaging in sales and withdrawals for failure to submit required audits.
(SD1)