
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 it is necessary to
2 ensure that consumers who purchase cemetery and pre-need
3 cemetery or funeral services are able to make informed
4 decisions, are protected against the loss of pre-paid funds, and
5 are able to deal with ethical and licensed pre-need funeral
6 service authorities.

7 The purpose of this Act is to adopt measures to increase
8 oversight and regulation of Hawaii's funeral industry in order
9 to protect consumers. This measure establishes an advisory
10 committee; establishes a pre-need cemetery and funeral special
11 fund with proceeds used for investigations, audits, and legal
12 actions including retention of legal counsel, certified public
13 accountants, personnel, and consultants; requires new
14 information in reports submitted by cemetery and pre-need
15 authorities; requires annual reports from the department; and
16 introduces other provisions to increase protection of funeral
17 industry consumers.

1 SECTION 2. Chapter 441, Hawaii Revised Statutes, is
2 amended by adding two new sections to be appropriately
3 designated and to read as follows:

4 "§441- Advisory committee. (a) In addition to any
5 other powers and duties authorized by law, the director shall
6 appoint an advisory committee consisting of cemetery authorities
7 and pre-need funeral authorities licensed under this chapter and
8 members of the public. At least two of the committee members
9 shall be licensees, and at least three of the committee members
10 shall be public members, at least one of whom shall be either a
11 certified public accountant licensed pursuant to chapter 466 who
12 is experienced in trust-related financial accounting or an
13 actuary who at minimum has earned the designation of associate
14 of the Society of Actuaries and who has experience in preparing
15 actuarial reports, and at least one of whom shall have not less
16 than five years of experience in analyzing financial information
17 including, but not limited to credit analysis, and at least one
18 of whom shall be associated with an advocacy group having an
19 interest in the program. The director may also appoint members
20 as may be recommended by industry organizations and consumer
21 organizations. The advisory committee, at the request of the
22 director, shall advise the director:

1 (1) On an on-going basis, in carrying out the director's
2 duties under section 441-19(1) and any administrative
3 rules adopted thereunder;

4 (2) In determining the availability, efficacy, associated
5 costs, and possible revenue sources related to the
6 development, collection, and reporting of additional
7 licensee and trust financial information;

8 (3) On enforcement of this chapter or chapter 436B and
9 related administrative rules;

10 (4) In proposing and developing amendments to this chapter
11 or to any rules adopted pursuant to this chapter; and

12 (5) On any other matter of concern regarding the funeral
13 industry.

14 (b) The members of the advisory committee shall serve
15 without compensation, but shall be reimbursed for expenses,
16 including travel expenses, necessary for the performance of
17 their duties.

18 (c) No member of the advisory committee shall bear any
19 civil liability for any act done in furtherance of the purpose
20 for which the advisory committee was established.

21 **§441- Pre-need cemetery and funeral special fund; use of**

22 **fund; fees.** (a) The director shall establish and maintain a

1 trust fund that shall be known as the pre-need cemetery and
2 funeral special fund, the proceeds of which may be used by the
3 department to investigate any violation of this chapter or
4 chapter 436B, and any related administrative rules.

5 (b) The director shall collect a one time fee of not more
6 than \$ _____ per contract from each cemetery authority,
7 pre-need funeral authority, or other operator defined by the
8 department for deposit into the pre-need cemetery and funeral
9 special fund, as provided in rules adopted by the director
10 pursuant to chapter 91. The fee shall apply to every contract
11 accepted by the cemetery authority, pre-need funeral authority,
12 or other operator on or after July 1, 2009. The fee may be
13 reduced proportionately for each contract that terminates or is
14 cancelled within the first six months of the life of the
15 contract. Each cemetery authority, pre-need funeral authority,
16 or other operator shall provide payment to the director on
17 January 31 and June 15 of every year for all contracts accepted
18 by the authority during the prior six-month period.

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

- 1 (1) Enforce this chapter, chapter 436B, and any related
2 administrative rules;
- 3 (2) Retain private legal counsel to represent the interest
4 of the department in any action that involves, or that
5 may result in the enforcement of any payment from a
6 cemetery authority or a pre-need funeral authority;
- 7 (3) Retain a certified public accountant for accounting
8 and auditing of pre-need trusts, perpetual care funds,
9 providers of funeral service, and cemetery
10 authorities;
- 11 (4) Employ necessary personnel, not subject to chapter 76,
12 to assist the director and the department in
13 exercising their respective powers and duties in
14 accordance with this chapter; and
- 15 (5) Retain a consultant to recover and collect any
16 payments to the pre-need cemetery and funeral special
17 fund, including interest, from cemetery authorities
18 and pre-need funeral authorities.
- 19 (d) The sums received by the director for deposit into the
20 pre-need cemetery and funeral special fund shall be held by the
21 department in trust for carrying out the purpose of the fund.
22 The director, as trustee of the fund, shall be authorized to

1 expend the funds as set forth in this section, and shall hold
2 the funds for investment and reinvestment in the same manner as
3 funds of the state employees' retirement system under chapter
4 88. The interest from these investments shall be deposited to
5 the credit of the fund. The director, as trustee, may combine,
6 for the purpose of investing, these sums with other funds held
7 in the same manner; provided that the director shall have the
8 duty to keep separate and distinct accounting records for the
9 pre-need cemetery and funeral special fund."

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

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

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

16 "Industry organization" means an organization composed of
17 businesses in the funeral industry."

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

20 **"§441-23 Fine, revocation, suspension, and renewal of**
21 **authority licenses.** In addition to any other actions authorized
22 by law, the director may fine an authority, revoke any authority

1 license, ~~[or]~~ suspend the right of the licensee to use the
2 license, impose restrictions, conditions, or limitations upon
3 the authority's license, deny, or refuse to renew, reinstate, or
4 restore any license for any cause authorized by law, including
5 but not limited to the following:

- 6 (1) ~~[Any dishonest or fraudulent act as a cemetery or pre-~~
7 ~~need funeral authority that causes substantial damage~~
8 ~~to another;]~~ Making one or more untrue statements,
9 omitting one or more material facts, committing a
10 dishonest or fraudulent act, or engaging in conduct
11 that is deceptive, unfair, misleading, coercive, or
12 intimidating;
- 13 (2) Making ~~[repeated]~~ one or more misrepresentations or
14 false promises through advertising or otherwise;
- 15 (3) Violation of this chapter or the rules adopted
16 pursuant thereto~~[+]~~, or failure to comply with
17 requirements for licensure, including any
18 restrictions, conditions, or limitations imposed by
19 the director;
- 20 (4) Commingling the money or other property of others with
21 that of the licensee;
- 22 (5) Having been adjudicated insane or incompetent;

- 1 (6) Selling or offering to sell any cemetery property,
2 pre-need interment, funeral services, or pre-need
3 funeral services based on speculation or promises of
4 profit from resale;
- 5 (7) Failing to timely file the actuarial study or an
6 audited financial statement or to maintain in effect
7 the bond [~~as~~] required by section 441-22;
- 8 (8) Failing to maintain pre-need trusts or perpetual care
9 funds as required by this chapter; or
- 10 (9) Violating section 441-22.7."

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

13 **"§441-24 Inspection of cemetery or pre-need funeral**
14 **authority books.** The books, records, and papers of every
15 cemetery authority whether or not a corporation, which operates
16 or claims to operate a perpetual care cemetery, and of every
17 pre-need funeral authority shall be subject to examination by
18 the director as provided by law, and every cemetery authority
19 operating a perpetual care cemetery, and every pre-need funeral
20 authority shall submit [~~such~~] the information as may be required
21 by the director to furnish information as to whether or not the

1 cemetery or pre-need funeral authority has complied with this
2 chapter.

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

8 (1) Any change in address; and

9 (2) Notice of cancellation,

10 and shall include copies of any and all written notices of
11 termination that were sent to purchasers. Change of address
12 notices, cancellation notices, ~~[and]~~ notices of termination, and
13 all other records altering or amending the contract, or
14 otherwise relating to each contract containing any pre-need
15 funeral services or pre-need interment services shall be
16 maintained by the authority at all times prior to delivering
17 goods or rendering services on the contract and for a period of
18 at least ~~[six months]~~ three years after all goods have been
19 delivered or all services have been rendered."

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

1 "**§441-24.5 Pre-need trusts and perpetual care funds;**
2 **audited financial statements.** (a) Every cemetery authority
3 operating a perpetual care cemetery or which engages in pre-need
4 sales [~~or~~] and holds money in trust for pre-need interment
5 services, and every pre-need funeral authority which engages in
6 pre-need sales or holds money in trust for pre-need funeral
7 services shall submit an audited financial statement and
8 actuarial report of its pre-need trusts and perpetual care funds
9 to the director within ninety days after the close of the
10 authority's books on a fiscal or calendar year basis.

11 (b) The director shall impose restrictions on sales and
12 withdrawals for a period of time determined by the director to
13 be adequate to ensure the integrity of the trust; provided that
14 the period of time shall in no event be less than thirty days.
15 All costs of the audit imposed by the director shall be borne by
16 the pre-need funeral authority or cemetery authority.

17 (c) During any period that sales are suspended or
18 withdrawals are prohibited under subsection (b), the cemetery
19 authority or pre-need funeral authority shall honor all
20 contracts entered into prior to the suspension of sales that
21 become due. The director shall authorize withdrawals from the
22 trust in order to fulfill these contracts."

1 SECTION 7. Section 441-24.6, Hawaii Revised Statutes, is
2 amended by amending its 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 the fiscal year will be sufficient to cover the future
16 claims of pre-need plan participants[-] as of the end of the
17 fiscal year."

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

21 "[+]§441-24.7[+] **Actuarial study, audited financial**
22 **statement, trust agreement; available for review.** (a) The

1 actuarial study, audited financial statement, and trust
2 agreement filed by a cemetery or pre-need funeral authority, as
3 required by this chapter, shall be available for review by any
4 member of the general public upon request. The review of these
5 documents shall be done during the department's normal business
6 hours. The director shall have the right to deny review for
7 reasons specified in rules adopted by the director pursuant to
8 chapter 91. The department shall submit a report annually to
9 the legislature that describes the status of the audited
10 financial reports and actuarial reports of licensees. The
11 report shall include, but not be limited to, the following:
12 (1) A list of all licensees required to submit reports;
13 (2) Licensees granted extensions for filing reports;
14 (3) Penalties assessed for late reports;
15 (4) Total estimated aggregate dollar amount required to
16 perform contracts in all trusts;
17 (5) Total estimated aggregate dollar amount due to all
18 trusts as of the date of execution of contracts not
19 yet performed;
20 (6) Total aggregate dollar amount in all trusts; and

1 (7) Recommendations for improving the reporting system for
2 licensees and oversight of the cemetery and pre-need
3 funeral industry."

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

6 "(b) [~~A~~] No less than seventy per cent of the funds paid
7 by the purchaser shall be transferred to the trustee to remain
8 in trust; provided that a cemetery or pre-need funeral authority
9 may take and receive, but shall transfer to the trustee as part
10 of or incident to the pre-need trust, all payments received
11 after the recovery of acquisition costs, which shall be the
12 lesser of thirty per cent of the contract price or the
13 difference between the contract price and the cost of the
14 pre-need interment or pre-need funeral services contracted to be
15 provided. The transfer shall be made not later than thirty days
16 after receipt of payment from the purchaser and shall be
17 immediately deposited in the trust. The cemetery authority or
18 pre-need funeral authority shall provide an annual statement to
19 the purchaser within thirty days of the close of the prior
20 month."

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

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

2

Report Title:

Funeral Industry; Commerce and Consumer Protection; Advisory
Committee; Fees

Description:

Establishes an advisory committee to assist the director of commerce and consumer affairs regarding regulation of the funeral industry. Establishes a pre-need cemetery and funeral special fund. Clarifies prohibited 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. (SD2)