

JAN 23 2009

A BILL FOR AN ACT

RELATING TO UNCLAIMED PROPERTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 441-22.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§441-22.5 Mortuary, cemetery, or pre-need funeral
4 authority; disclosure requirements. (a) No cemetery property,
5 interment services, funeral services, and related commodities
6 shall be sold unless the mortuary, cemetery, or pre-need funeral
7 authority first satisfies the requirements stated in section
8 441-22.6.

9 (b) Every cemetery or pre-need funeral authority shall be
10 required to provide to the purchaser of cemetery property, pre-
11 need interment, or pre-need funeral services and related
12 commodities a written contract which shall contain the following
13 disclosures:

14 (1) The names and addresses of the cemetery or pre-need
15 funeral authority, purchaser, and contract
16 beneficiary, if the beneficiary is someone other than
17 the purchaser[+], and the date of birth of the



1 purchaser or contract beneficiary if the beneficiary
2 is someone other than the purchaser;

3 (2) A clear and concise itemized statement of the
4 property, including, for cemetery property, the
5 location of the plot, crypt, or niche by its unique
6 identifier, and any services and related commodities
7 to be supplied or not supplied and by whom,
8 particularly if the authority is not to be the
9 provider under the terms of the contract;

10 (3) The purchase price of each item of property, services,
11 and related commodities to be supplied, the total
12 purchase price, and how the total purchase price is
13 payable, including any credit terms, if applicable;
14 provided that, pursuant to section 441-22.7,
15 disclosure shall also be made that further additional
16 charges or fees for perpetual care subsequent to the
17 execution of the contract are prohibited for any
18 purpose and on any occasion, except for reasonable
19 fees related to the administrative costs of
20 transferring ownership rights, including the cost of
21 research, document and file preparation, photocopying,
22 notary fees, records transfer and storage, and any



- 1 other costs directly related to the transfer of
2 ownership rights;
- 3 (4) Related costs covered under the contract;
- 4 (5) The basis on which funds are to be deposited in trust,
5 including:
- 6 (A) The name and address of the trustee; provided
7 that the disclosure shall not preclude the
8 cemetery or pre-need funeral authority from
9 changing the trustee named;
- 10 (B) The percentage of the contract price for
11 trustable items to be placed in trust; provided
12 that the percentage shall be no less than seventy
13 per cent;
- 14 (C) The percentage of the contract price for
15 trustable items that the cemetery or pre-need
16 funeral authority will retain and not deposit
17 into the trust; provided that the percentage
18 shall not be more than thirty per cent; and
- 19 (D) Where a portion of the contract price relates to
20 property, services, or related commodities that
21 are not trustable items, a clear description of
22 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 that cemetery property and moneys paid
2 toward preneed services shall be treated as abandoned
3 property for the purposes of chapter 523A if:

4 (A) The property or preneed services remain unused as
5 of the one hundred fifteenth birthdate of the
6 purchaser or the contract beneficiary, if the
7 beneficiary is someone other than the purchaser,
8 and;

9 (B) The cemetery or preneed funeral authority does
10 not receive a response within ninety days of a
11 written inquiry sent through certified or
12 registered mail to the last known address of the
13 purchaser or contract beneficiary, if the
14 beneficiary is someone other than the purchaser.

15 (c) No mortuary, cemetery, or pre-need funeral authority
16 shall charge a price for the cemetery property, interment, or
17 funeral services, whether it be at-need or pre-need, which is
18 greater than the price on the itemized price list or contract
19 which the purchaser had signed, unless the purchaser or the
20 purchaser's authorized representative requests an additional
21 item, the authority discloses the price for the additional item,
22 and the purchaser or its authorized representative approves the



1 price for the additional item. The mortuary, cemetery, or pre-
2 need funeral authority may charge the higher price for the
3 additional item but shall collect in payment only that sum which
4 is the difference between the higher price and the price listed
5 on the itemized price list or contract which the purchaser had
6 previously signed."

7 SECTION 2. Section 523A-3, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "[+]§523A-3[+] Presumptions of abandonment. (a) Property
10 is presumed abandoned if it is unclaimed by the apparent owner
11 during the time set forth below for the particular property:

- 12 (1) Traveler's check, fifteen years after issuance;
13 (2) Money order, seven years after issuance;
14 (3) Stock or other equity interest in a business
15 association or financial organization, including a
16 security entitlement under article 8 of the Uniform
17 Commercial Code - Investment Securities, five years
18 after the earlier of:

- 19 (A) The date of the most recent dividend, stock
20 split, or other distribution unclaimed by the
21 apparent owner; or



- 1 (B) The date of the second mailing of a statement of
2 account or other notification or communication
3 that was returned as undeliverable or after the
4 holder discontinued mailings, notifications, or
5 communications to the apparent owner;
- 6 (4) Debt of a business association or financial
7 organization, other than a bearer bond or an original
8 issue discount bond, five years after the date of the
9 most recent interest payment unclaimed by the apparent
10 owner;
- 11 (5) A demand, savings, or time deposit, including a
12 deposit that is automatically renewable, five years
13 after the earlier of maturity or the date of the last
14 indication by the owner of interest in the property;
15 provided that a deposit that is automatically
16 renewable is deemed matured for purposes of this
17 section upon its initial date of maturity, unless the
18 owner has consented to a renewal at or about the time
19 of the renewal and the consent is in writing or is
20 evidenced by a memorandum or other record on file with
21 the holder;



- 1 (6) Money or credits owed to a customer as a result of a
2 retail business transaction, five years after the
3 obligation accrued;
- 4 (7) Gift certificate not exempt under section 523A-3.5,
5 five years after December 31 of the year in which the
6 certificate was sold, but if redeemable in merchandise
7 only, the amount abandoned shall be deemed to be one
8 hundred per cent of the certificate's face value;
- 9 (8) Amount owed by an insurer on a life or endowment
10 insurance policy or an annuity that has matured or
11 terminated, five years after the obligation to pay
12 arose or, in the case of a policy or annuity payable
13 upon proof of death, three years after the insured has
14 attained, or would have attained if living, the
15 limiting age under the mortality table on which the
16 reserve is based;
- 17 (9) Property distributable by a business association or
18 financial organization in a course of dissolution, one
19 year after the property becomes distributable;
- 20 (10) Property received by a court as proceeds of a class
21 action, and not distributed pursuant to the judgment,
22 one year after the distribution date;



- 1 (11) Property held by a court, government, governmental
2 subdivision, agency, or instrumentality, one year
3 after the property becomes distributable;
- 4 (12) Wages or other compensation for personal services, one
5 year after the compensation becomes payable;
- 6 (13) Deposit or refund owed to a subscriber by a utility,
7 one year after the deposit or refund becomes payable;
- 8 (14) Property in an individual retirement account, defined
9 benefit plan, or other account or plan that is
10 qualified for tax deferral under the income tax laws
11 of the United States, three years after the earliest
12 of the date of the distribution or attempted
13 distribution of the property, the date of the required
14 distribution as stated in the plan or trust agreement
15 governing the plan, or the date, if determinable by
16 the holder, specified in the income tax laws of the
17 United States by which distribution of the property
18 shall begin to avoid a tax penalty; [~~and~~]
- 19 (15) Cemetery property, preneed funeral services, and
20 preneed internment services, ninety days after the one
21 hundred fifteenth birthdate of the purchaser or



1 contract beneficiary, if the beneficiary is someone
2 other than the purchaser; and

3 ~~[-(15)]~~ (16) All other property, five years after the owner's
4 right to demand the property or after the obligation
5 to pay or distribute the property arises, whichever
6 first occurs.

7 (b) At the time that an interest is presumed abandoned
8 under subsection (a), any other property right accrued or
9 accruing to the owner as a result of the interest, and not
10 previously presumed abandoned, shall also be presumed abandoned.

11 (c) Property is unclaimed if, for the applicable period
12 set forth in subsection (a), the apparent owner has not
13 communicated in writing or by other means reflected in a
14 contemporaneous record prepared by or on behalf of the holder,
15 with the holder concerning the property or the account in which
16 the property is held, and has not otherwise indicated an
17 interest in the property. A communication with an owner by a
18 person other than the holder or ~~[its]~~ the holder's
19 representative ~~[who has not in writing identified]~~ and which
20 does not identify the property to the owner in writing shall not
21 be an indication of interest in the property by the owner.



1 (d) An indication of an owner's interest in property

2 includes:

3 (1) The presentment of a check or other instrument of
4 payment of a dividend or other distribution made with
5 respect to an account or underlying stock or other
6 interest in a business association or financial
7 organization or, in the case of a distribution made by
8 electronic or similar means, evidence that the
9 distribution has been received;

10 (2) Owner-directed activity in the account in which the
11 property is held, including a direction by the owner
12 to increase, decrease, or change the amount or type of
13 property held in the account;

14 (3) The making of a deposit to or withdrawal from a bank
15 account; and

16 (4) The payment of a premium with respect to a property
17 interest in an insurance policy; but the application
18 of an automatic premium loan provision or other
19 nonforfeiture provision contained in an insurance
20 policy shall not prevent a policy from maturing or
21 terminating if the insured has died or the insured or
22 the beneficiary of the policy has otherwise become



1 entitled to the proceeds before the depletion of the
2 cash surrender value of a policy by the application of
3 those provisions.

4 (e) Property shall be payable or distributable for
5 purposes of this part notwithstanding the owner's failure to
6 make demand or present an instrument or document otherwise
7 required to obtain payment."

8 SECTION 3. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 4. This Act shall take effect on July 1, 2009.

11

INTRODUCED BY:

[Signature]

Shiranne Chun Cleveland

Randy H. Bell



Report Title:

Preneed Funeral Trusts; Unclaimed Property

Description:

Includes cemetery property, preneed funeral services, and preneed interment in definition of unclaimed property; requires notice. Creates presumption.



TESTIMONY BY GEORGINA K. KAWAMURA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE SENATE COMMITTEE ON COMMERCE AND CONSUMER
PROTECTION
ON
SENATE BILL NO. 660

February 11, 2009

RELATING TO UNCLAIMED PROPERTY

Senate Bill No. 660, adds a provision for Mortuary, cemetery, or pre-need funeral authority and disclosure requirements to the unclaimed property law.

The Department of Budget and Finance supports the intent of the reporting of cemetery property, preneed funeral services, and preneed interment services to the unclaimed property program. In order to protect owners' rights, however, the age of the purchaser or contract beneficiary should be reduced from the 115 birth date to an age based on a life expectancy table, currently it would be approximately 80, based on a United Nations report. The unclaimed property program has been unable to assist individuals where records are not available, an age such as 115 would probably result in very little if any property in this category being reported.

Unrelated to this proposal but related to the unclaimed property program, the department recommends the following amendment to make consistent with the current provisions of Chapter 523A, amending the Section 523A-9, HRS, which will be enacted on July 1, 2009 pursuant to Act 55, SLH 2008, to allow the reporters of

unclaimed property the ability to return property to the owners before remitting property to the state by adding the following to Section 523A-9, HRS:

(e) If the owner establishes the right to receive the abandoned property to the satisfaction of the holder before the property has been delivered or it appears

-2-

that for some other reason the presumption of abandonment is erroneous, the holder need not pay or delivery the property to the director, and the property will no longer be presumed abandoned. In that case, the holder shall file with the director a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

(f) Property reported under section 523A-8 for which the holder is not required to report the name of the apparent owner shall be delivered to the director at the time of the filing of the report.

The department would also amend Section 523A-10, HRS, to be enacted on July 1, 2009 as follows:

(3) A statement explaining that property of the owner is presumed to be abandoned and has been taken into the protective custody of the administrator that if proof of claim is not presented by the owner to the holder and the owner's right to receive the property is not established to the holder's satisfaction before April 20, the property will be placed not later than May 1, in the custody of the director and all further claims shall thereafter be directed to the director.

Senator Rosalyn H. Baker
Chairman
Commerce and Consumer Protection Committee Members

Honorable Rosalyn Baker,

Two years ago working with the funeral industry and the Department of Commerce & Consumer Affairs the legislature passed Act 188.

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 solution to consumer concerns. Now we are faced with three bills SB 660, SB 661 and SB 1099 to which the Hawaii Allied Memorial Council is opposed. These bills include establishing a board and establishing a governance fund of which there would be a charge of \$2.00 per pre-need contract sold since 1992. There was a prior board sunset about 15 years ago for the following reasons;

- A. Meetings were no productive because there were hardly any new licenses to consider.
- B. There were no complaints to discuss.
- C. It cost the state to pay for board members to attend meetings especially for board members from outer island.
- D. Most of the matters could be handled as minstrel matters by staff of DCCA.
- E. The staff of DCCA could respond to matters more quickly than waiting for a board meeting.
- F. The board was deemed not essential to administration of Chapter 441 and the DCCA could promulgate rules to effectively administrate the chapter.
- G. The director of DCCA could respond to concerns of the public more effectively than passing it on to a board to deliberate.

It has been a practice by our industry to provide adequate training to ensure that sales people identify themselves, who they represent and to give a sales presentation that truthfully represents their company with all the appropriate paper work information to the consumer. 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. Since by our pre-need contracts are "trust-funded", the contract license indemnify the depository officials. We don't encourage solicitation to persons in hospitals, nursing homes, or other long term facilities unless requested by family members. This bill also requires the trustee to send

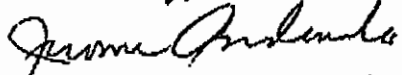
confirmation notice that payments have been deposited within 30 days. This poses an additional astronomic cost to the company. Clients are given receipts of payments when payments are made and a certificate of completion is sent when the plan is fully paid. These onerous requirements will balloon our cost to the point that it makes it difficult to operate business.

Further regulation and cost burden on our industry is not something we want to incur in this economic climate of today, and is not necessary. It is not a good idea to charge a fee per contract to be maintained by DCCA as a trusted fund. The DCCA would be burdened with the management of the fund which must be audited for compliance. It will mean extra time spent to account for the fee, transmitting it to DCCA and making sure the DCCA monitors the timeliness of each submission.

The public has not been harmed by the lack of regulations. The funeral and cemetery industry has very little documented complaints. Instead of proposing more regulations we should leave the decision of the future of our business to the consumer. The consumer should have the right to choose whether they purchase our services or not. Our business is about helping people during a difficult time in their lives. We should be spending our time comforting our consumers rather than following up on unnecessary paperwork.

It is the position of our industry to operate under the current laws and legislation that were accepted and dually agreed upon by both DCCA and Funeral and Cemetery Industry. For the reasons stated above I would like to submit this testimony against SB 660, SB 661 and SB 1099.

Yours truly,



Jerome Andrade

President

Hawaii Allied Memorial Council

1330 Maunakea Street

Honolulu, Hawaii 96817

Ph: (808)522-5200 Fax: (808) 522-5206



Ballard Family Mortuary

Senator Rosalyn H. Baker
Chairman
Commerce and Consumer Protection Committee

Honorable Rosalyn Baker,

Two years ago the legislature passed Act 188, Working with the funeral industry, Department of Commerce & Consumer Affairs and legislature. Our forms have been revised, and we are now in compliance with Chapter 441 as amended by Act 188. Although we have incurred additional costs, we were happy to be a part of the solution to consumer concerns. We are now faced with three bills, SB 660, SB 661 and SB 1099, and the Hawaii Allied Memorial Council is opposed to establishing a board, and governance fund, which would add a charge of \$2.00 per pre-need contract sold since 1992. The board was sunset about 15 years ago for the following reasons:

- A. Meetings were no longer productive because there were hardly any new licenses to consider.
- B. There were no complaints to discuss.
- C. Costs were incurred by the state for board member attendees, from here and the outer islands.
- D. Most of the matters could be handled as minstel matters by staff of DCCA.
- E. The DCCA staff could respond to matters more quickly than waiting for a board meeting.
- F. The board was deemed not essential to the administration of Chapter 441, and the DCCA could promulgate rules to effectively administrate the chapter.
- G. The director of DCCA could respond to public concerns more effectively than passing it on to the board to deliberate.

It is common knowledge that sales people introduce themselves, and the company they represent when discussing funeral planning. It is good business sense not to make solicitation call late in the evenings, and we don't need a law to tell us that. Since by law our pre-need contracts are "trust-funded", it would be difficult to not tell clients about the trust fund as a depository of funds. 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. This bill also requires that the trustee send confirmation notices that payments have been deposited. This poses a problem because we give our client's monthly payment options. Clients are given receipts of payments when payments are made, and a certificate of completion is sent when the plan is paid in full. These onerous requirements will balloon our costs to the point that it makes it difficult operating a business.

In this bad economic times, charging a fee per contract, which will be maintained by DCCA as a trust fund, increase the cost of doing business, and is not a good idea. It would be a burden to



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Ballard Family Mortuary

account for each fee and transmitting it to DCCA. How will DCCA monitor timely submissions?

The public has not been harmed by lack of regulations. Rather than proposing more regulations for the funeral and cemetery 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 the reason stated above, I would like to submit this testimony against SB 660, SB 661, and SB 1099.

Yours Truly,

Mark Ballard
President
Ballard Family Mortuary





February 10, 2009

Senator Rosalyn H. Baker, Chairman
Committee on Commerce and Consumer Protection
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

Re: SB 660, SB661, SB 1099 (Relating to preneed funeral trusts)

Dear Senator Baker:

I would like to offer this testimony against the passage of Senate Bills 660, 661, and 1099, all relating to preneed funeral trusts.

The Department of Commerce & Consumer Affairs (DCCA) has already been entrusted by the state to provide consumers with an agency one can refer to if problems arise with preneed funeral plans. The proposal made, especially by Senate Bill No. 661, seems to be redundant in asking for the creation of a separate "board" to handle the responsibilities of what DCCA currently does. Asking for an up to \$2.00 fee per contract since 1992 to fund the board would be met with opposition by all preneed providers affected.

Preneed service providers in the state have a long history of working with DCCA to resolve issues that arise from time to time. Adding another level of regulation, in the form of a preneed board, would only lengthen the amount of time it takes to assist a consumer if complaints arise due to a board meeting having to be called. In this respect, the staff of DCCA can react more quickly, efficiently, accurately, and cost effectively when responding to an issue needing attention.

The number of complaints concerning preneed funeral trusts has historically been quite limited. The number of new licensees to be considered are even less. The reality of the situation is that a proposed board would have a limited amount of work and regular meetings would not be considered productive.

Ultimately, the consumer makes the final decision about purchasing a preneed contract or not. Adding more regulation to an industry which already handles itself well does not appear beneficial. For these reasons I submit this testimony against Senate Bills 660, 661, and 1099 in entirety. I also support the testimony submitted by the Hawaii Funeral & Cemetery Association (formerly the Hawaii Allied Memorial Council) against these bills.

Sincerely,

Mitchell M. Dodo
Vice-President / Operations Manager
Exclusive servicing mortuary to the Dodo Mortuary Life Plan preneed contracts

199 Wainaku Street - Hilo, Hawaii 96720
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James Arakaki
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Jimarakaki@hawaii.rr.com
February 7, 2009

Chairperson Rosalyn Baker and members of the Senate Consumer Protection Committee

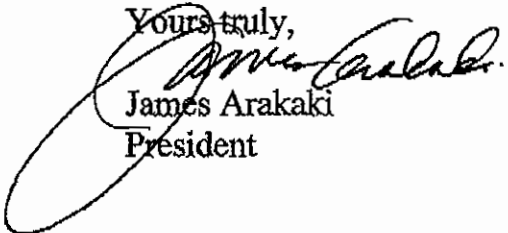
Honorable Senate Baker and committee members:

Our company is opposed to SB 660 and SB 661 for the following reasons: SB 660 "treating cemetery property and pre-need funds as abandoned property." This bill is not needed because cemetery property and pre-need funds become part of person's estate when not used.

SB 661 "proposes to establish a cemetery and funeral trust board." A cemetery, funeral and pre-need board was sun setted many years ago, as a board not needed. It was determined that Chapter HRS 441 could be effectively administered by the department and it's executive director. I served on this board before it was sun setted and attended numerous meetings with nothing substantial on the agenda. We are also not in favor with charging \$2.00 per contract to be forwarded to DCCA. There is no other industry that is required to send in \$2.00 per transaction sold ie. Insurance, real estate, auto sales, mortgage loans, banking, etc.

The director of DCCA has all the authority to examine all phases of our industry. We are the most regulated industry under DCCA as we are required to submit annual audited financials, actuarial study, and a bond. As a small business we also must provide health insurance, workman comp. TDI and all the expenses and taxes that a business must incur. We feel we provide a good service to the public by offering them a voluntary opportunity to pre-arrange a funeral. Moreover consumer advocacy groups can always approach DCCA with ideas to protect the consumer without going before a board.

Yours truly,



James Arakaki
President

Hawaiian Memorial Life Plan

DBA; Hawaiian Memorial Park Cemetery, Green Haven Memorial Park,
Borthwick Mortuary Honolulu/Kauai
1330 Maunakea Street
Honolulu, Hawaii 96817
Office (808) 522-5233

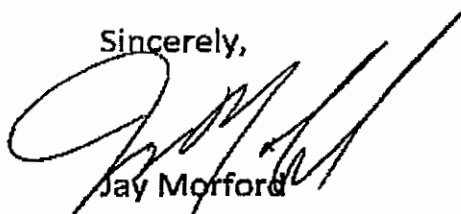
Senator Rosalyn H. Baker
Chairman
Commerce and Consumer Protection Committee

2/9/09

Honorable Rosalyn Baker,

Please accept this written testimony to express our strong opposition to SB 660, SB 661 and SB 1099. We support the position of both the Hawaii Allied Memorial Council and the Hawaii Funeral Directors Association in opposition of these Bills.

Sincerely,



Jay Morford

Vice President; Hawaiian Memorial Life Plan