

MAR 18 2009

SENATE CONCURRENT RESOLUTION

REQUESTING THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS TO
RECOMMEND PROCEDURES AND LEGISLATION TO REQUIRE CEMETERY
AND PRE-NEED FUNERAL AUTHORITIES TO COMPLY WITH UNCLAIMED
PROPERTY LAWS UNDER CHAPTER 523A, HAWAII REVISED STATUTES.

1 WHEREAS, as of 2008, there were more than 100,000 people in
2 Hawaii who had purchased a pre-need funeral plan with an
3 aggregate value of more than \$150,000,000, which are presently
4 held in trust; and

5
6 WHEREAS, previous incidents regarding several cemetery and
7 pre-need funeral businesses, such as Honolulu Memorial Park and
8 RightStar Properties, have raised issues of mismanagement and
9 illegal activity, prompting a need for greater consumer
10 protection; and

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12 WHEREAS, Hawaii laws regulating the pre-paid funeral
13 industry are among the weakest in the country, according to
14 national consumer and industry groups; and

15
16 WHEREAS, chapter 523A, Hawaii Revised Statutes, established
17 the Unclaimed Property Program, which is responsible for
18 collecting abandoned property from holders, holding the property
19 in a custodial capacity, and providing a process for returning
20 the held property to the rightful owners; and

21
22 WHEREAS, cemetery and pre-need funeral businesses are
23 required to comply with unclaimed property laws under chapter
24 523A, Hawaii Revised Statutes; however, stricter enforcement of
25 these businesses' compliance with the laws would provide greater
26 protection for consumers of these businesses' services; now,
27 therefore,

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29 BE IT RESOLVED by the Senate of the Twenty-fifth
30 Legislature of the State of Hawaii, Regular Session of 2009, the
31 House of Representatives concurring, that the Department of



S.C.R. NO. 115

1 Commerce and Consumer Affairs is requested to recommend
 2 procedures and proposed amendments to legislation to require
 3 cemetery and pre-need funeral authorities to comply with
 4 unclaimed property laws under chapter 523A, Hawaii Revised
 5 Statutes; and

6
 7 BE IT FURTHER RESOLVED that the Department of Commerce and
 8 Consumer Affairs is requested to submit to the Legislature not
 9 later than twenty days prior to the convening of the 2010
 10 Regular Session, recommended procedures and legislation for
 11 record maintenance, reporting of abandoned property, and
 12 relinquishment of unclaimed property to the State; and

13
 14 BE IT FURTHER RESOLVED that a certified copy of this
 15 Concurrent Resolution be transmitted to the Director of Commerce
 16 and Consumer Affairs.

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 19

OFFERED BY:

[Handwritten Signature]
Theranne Crown Oakland
[Handwritten Signature]
Randy H Baker
[Handwritten Signature]
 Arvid Y Ige





LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

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LAWRENCE M. REIFURTH
DIRECTOR

RONALD BOYER
DEPUTY DIRECTOR

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

TO THE SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION

TWENTY-FIFTH STATE LEGISLATURE
REGULAR SESSION, 2009

FRIDAY, APRIL 3, 2009
9:30 A.M.

TESTIMONY ON SENATE CONCURRENT RESOLUTION NO. 115/SENATE RESOLUTION NO. 74--REQUESTING THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS TO RECOMMEND PROCEDURES AND LEGISLATION TO REQUIRE CEMETERY AND PRE-NEED FUNERAL AUTHORITIES TO COMPLY WITH UNCLAIMED PROPERTY LAWS UNDER CHAPTER 523A, HAWAII REVISED STATUTES.

TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND TO THE HONORABLE DAVID Y. IGE, VICE-CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on Senate Concurrent Resolution No. 115 and Senate Resolution No. 74, which request that the Department recommend procedures and legislation to require cemetery and pre-need funeral authorities "to comply with unclaimed property law." My name is Jo Ann Uchida, Complaints and

Enforcement Officer for the Department's Regulated Industries Complaints Office ("RICO"). The Department has the following concerns with the proposal:

1) The Department is not the agency that administers the State's unclaimed property law and would defer to the Department of Budget and Finance as to whether legislation to revise Chapter 523A, Hawaii Revised Statutes ("HRS"), is necessary. For example, the Department does not know how cemetery property, which is owned outright by the purchaser under §441-1, HRS, would transfer under the unclaimed property law, and believes that these issues are better addressed by the administering agency.

2) Also, the Department is not aware of existing problems relating to cemetery and pre-need funeral authorities' compliance with the State's unclaimed property laws and would defer to the Department of Budget and Finance regarding compliance issues.

Thank you for the opportunity to testify on Senate Concurrent Resolution No. 115 and Senate Resolution No. 74. I will be happy to answer any questions that the members of the Committee may have.

**To the Senate Committee on Consumer Protection and Commerce
Honorable Rosalyn Baker, Chair
And Members of the Committee:**

The Hawaii Allied Council is opposed to SCR/115 SR 74 requesting the Department of Commerce and Consumer Affairs to recommend procedures and legislation to require cemetery and pre-need funeral authorities to comply with unclaimed property laws under chapter 523A, Hawaii Revised Statutes.

In checking the records with DCCA we believe that there have been no complaints on the above issues. Putting more restrictions on doing business in Hawaii is a burden to the industry as we have enough reports that are required on the yearly basis to DCCA. There is enough laws on books to protect the consumers from things happening if they are enforced by government when reports aren't filed on time.

Yours truly,



Jerome Andrade

President

Hawaii Allied Memorial Council

1330 Maunakea Street

Honolulu, Hawaii 96817

e-mail Jerome.Andrade@sci-us.com

Hawaiian Memorial Life Plan

1330 Maunakea Street
Honolulu, Hawaii 96817
Office (808) 522-5233

Senate Committee on Consumer Protection and Commerce

4/01/09

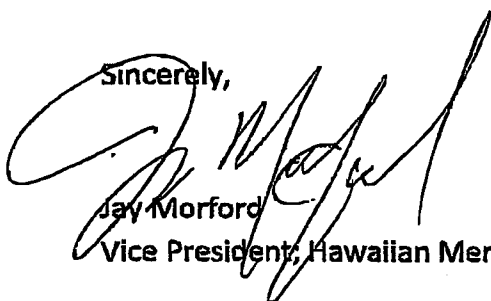
Honorable Rosalyn Baker, Chair
And Members of the Committee:

Please accept this written testimony to express our strong opposition to Resolution, SCR 115/SR 74. We support the position of the Hawaii Allied Memorial Council, Hawaii Funeral Directors Association as well as other independent Cemetery and Funeral authorities in opposition of this resolution.

1. We are unaware of any problem relating to the cemetery and preneed funeral authority in regards to unclaimed property laws. In addition in checking with the Department of Commerce and Consumer Affairs there have been no complaints referenced to unclaimed property laws under chapter 523A, Hawaii Revised Statutes. We feel there are currently enough laws regulating our industry to protect consumers.

Thank you for this opportunity to testify and your consideration in this matter.

Sincerely,



Jay Morford

Vice President, Hawaiian Memorial Life Plan

STATEMENT FROM
MILILANI GROUP, INC.

TO THE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

SUBJECT: SENATE RESOLUTION 74; Relating inclusion into Unclaimed Property
Laws

HEARD ON: Friday, April 3, 2009
9:30 A.M.

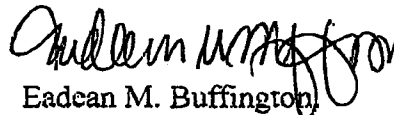
MILILANI GROUP, INC. **STRONGLY OPPOSES** the proposed changes to Chapter 523A of the Hawaii Revised Statutes, requiring cemetery and pre-need authorities to comply with the State laws as to unclaimed property interest and offers the additional testimony set forth below.

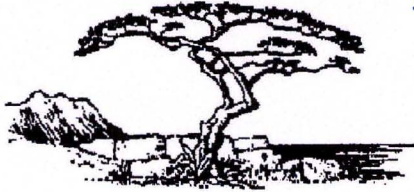
An interment right for the remains of a loved one is not a finite commodity which can be converted to an equivalent dollar amount. The owner of the right has the ability to use and employ the property interest long after his or her natural life. Therefore an arbitrary age is not the appropriate measuring stick to determine whether this property right has been abandoned.

Likewise, with our funeral plan, there is an election in some contracts for a beneficiary designation and therefore instances when the contract holder has passed away, leaving the beneficiary with valid rights under the contract. Again, an arbitrary age of the contractholder is not appropriate in determining whether the contract has been abandoned.

We are troubled by certain aspects of the proposed legislation, and do not believe there is sufficient support for its ratification in its present form.

RESPECTFULLY SUBMITTED,


Eadcan M. Buffington
for the Mililani Group, Inc.



Funeral Consumers Alliance of Hawai'i

PO Box 11949 · Honolulu, Hawaii 96829 · (808) 638-5580

Non-Profit Organization and Member of Funeral Consumers Alliance, Inc.

Testimony to the Senate Committee on Commerce and Consumer Protection

On

Friday, April 3, 2009 at 9:30AM

Reference: SR74 & SCR115

From Pedro E. Racelis III, Legislative Representative for
Funeral Consumers Alliance of Hawaii

To the Honorable Senator Rosalyn H. Baker, Chair and to the Honorable Senator David Y. Ige, Vice Chair, and Members of the Committee:

The Funeral Consumers Alliance of Hawaii is a non-profit educational organization, formerly known as the Memorial Society of Hawaii, and was incorporated in 1962. Our mission is to assist consumers in planning and educating our members with meaningful, dignified, and affordable services at the time of death in the State of Hawaii. Our services are free to the public and we have over 2,000 members throughout the State of Hawaii.

We sincerely appreciate the efforts of Senator Les Ihara Jr., which relates to requesting the Department of Commerce & Consumer Affairs to recommend procedures and enforcement to require cemetery and pre-need funeral authorities to comply with unclaimed property laws under Chapter 523A, Hawaii revised statutes as a means to further protect the rights of the consumer in the State of Hawaii. We **Support SR74 and SCR115** for the following reasons:

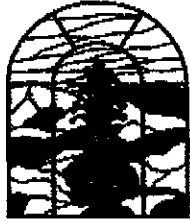
SR74 and SCR115 represent the interests of all consumers in the State of Hawaii because the State needs to begin to follow-through on legislation established under Chapter 523A to protect our consumers' rights with regards to unclaimed property. We believe that the Department of Commerce & Consumer Affairs is the State of Hawaii's policy and process agency when it comes to consumer protection since they are responsible for licensing funeral and cemetery service authorities.

We believe that SR74 and SCR115 will assist the Department of Commerce and Consumer Affairs to establish fiduciary responsible procedures in the recovery of unclaimed properties and a process of returning these properties to its rightful owners. In this way, the Department of Commerce and Consumer Affairs would be in a 'preventive' instead of a 'reactive' mode of operation. We also believe that oversight is an active responsibility for the Department of Commerce and Consumer Affairs, not an administrative process waiting for something to go wrong.

In closing, we believe SR74 and SCR115 are necessary at this time and ask your committee to endorse it.

Sincerely,

Pedro E. Racelis III
Legislative Representative
Funeral Consumers Alliance of Hawaii



Ballard Family Mortuary

April 01, 2009

**To the Senate Committee on Consumer Protection and Commerce
Honorable Rosalyn Baker, Chair
And Members of the Committee:**

The Ballard Family Mortuary is opposed to SCR/ 115 SR 74 requesting the Department of Commerce and Consumer Affairs to recommend procedures and legislation to require cemetery and pre- need funeral authorities to comply with unclaimed property laws under chapter 523 A, Hawaii Revised Statutes.

In checking the records with DCCA we believe that there have been no complaints on the above issues. Putting more restrictions on doing business in Hawaii is a burden to the industry as we have enough reports that are required on the yearly basis to DCCA. There is enough laws on books to protect the consumers from things happening if they are enforced by government when reports aren't filed on time.

Sincerely,

**Mark Ballard
President**

440 Ala Makani Street • Kahului, Maui, Hawaii 96732 • Phone (808) 871-7911 • Fax: 877-1497



From: mailinglist@capitol.hawaii.gov
Sent: Thursday, April 02, 2009 1:12 PM
To: CPN Testimony
Cc: Tlenzer@hawaii.rr.com
Subject: Testimony for SCR115 on 4/3/2009 9:30:00 AM

Testimony for CPN 4/3/2009 9:30:00 AM SCR115

Conference room: 229
Testifier position: support
Testifier will be present: No
Submitted by: Anthony Lenzer
Organization: Individual
Address: 222 Kuukama St. Kailua, HI
Phone: 261-2095
E-mail: Tlenzer@hawaii.rr.com
Submitted on: 4/2/2009

Comments:

My name is Anthony Lenzer. I am a professor emeritus of public health and former director of the Center on aging, University of Hawaii. I do not have either a pre-need funeral or cemetery plan, but strongly support the intent of this resolution, requesting DCCA to make recommendations on requiring cemetery and funeral pre-need licensees to comply with the state's unclaimed property law. It is my understanding that unclaimed funds or property held in trust for such contracts should be turned over to the state, just like abandoned savings/checking accounts and other financial instruments. I also understand that the DAGS unclaimed property office has reported not receiving any funds or property from unclaimed funeral trusts. Given the large number of such contracts which have been written in Hawaii, it is reasonable to assume that some represent unclaimed property, the funds or property for which should have been sent to DAGS. This is particularly important in a time when the state is in need of every source of revenue which can be found.

It is well-known that Hawaii has some of the nation's weakest consumer protection laws with regard to such pre-need contracts. The unclaimed property issue is but one example of the need for greater oversight of the pre-need industry. Please support this resolution, as a step towards making this industry more accountable to consumers and the public interest.

Thank you for the opportunity to testify.