

JAN 23 2009

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 pre-need funeral goods and services;
6 however, no state agency or department has the resources or
7 familiarity with the industry to provide sufficient oversight.
8 Therefore, the legislature finds that it is in the best interest
9 of the consumers of Hawaii's pre-need funeral services industry
10 to create a regulatory oversight board.

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

16 The legislature finds that in order to protect Hawaii's
17 consumers, a board of cemetery and funeral trusts must be



1 created within the department of commerce and consumer affairs.
2 This board creates uniformity in licensing of cemetery or
3 pre-need funeral authorities. It also provides for the uniform
4 oversight of the industry by creating a method of receiving and
5 investigating consumer complaints against members of the
6 industry. Additionally, this board creates uniformity in
7 financial reporting of the industry and has the authority to
8 audit members of industry. The legislature also deems that it
9 is necessary for such a board to create a fee-based pre-need
10 cemetery and funeral governance fund that provides for the
11 necessary funding of investigations and board operations.

12 The purpose of this Act is to adopt measures that provide
13 for the uniform regulation and oversight of Hawaii's funeral
14 industry in order to protect Hawaii's consumers. The adoption
15 of these measures significantly enhances the level of consumer
16 protection afforded to Hawaii's funeral service consumers.
17 These measures allow for the uniform regulation of the funeral
18 industry by creating an oversight board, creating a means of
19 regulating licensing of pre-need funeral service providers,
20 providing for a uniform process for handling complaints against
21 pre-need funeral service providers, providing for a means of



1 investigation and audit of pre-need funeral service providers,
2 and creating uniform reporting requirements.

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

6 "§441- Board; appointment. (a) There is established a
7 board of cemetery and funeral trusts within the department of
8 commerce and consumer affairs for administrative purposes, which
9 shall consist of seven members appointed in accordance with
10 section 26-34, unless otherwise provided in this section. The
11 board shall consist of:

12 (1) Three members engaged in the industry of cemetery and
13 funeral trusts, appointed by the governor from
14 nominations submitted by:

15 (A) An organization representing the cemetery
16 industry;

17 (B) An organization representing the pre-need
18 industry; and

19 (C) An organization representing funeral directors;
20 provided that one member shall be appointed from each
21 organization's submitted nominations;



- 1 (2) One member of the public not connected with the
2 industry, appointed by the governor; and
- 3 (3) Three members who are representatives of consumer
4 organizations, appointed by the governor from
5 nominations submitted by the three most active
6 consumer organizations in Hawaii with priorities that
7 include protecting consumer interest in the industry
8 of cemetery and funeral trusts;
9 provided that one member shall be appointed from each
10 consumer organization's submitted nominations.
- 11 (b) The members shall serve without compensation, but
12 shall be reimbursed their necessary and reasonable expenses
13 incurred in the performance of their duties, including travel
14 expenses.
- 15 (c) The term of the initial members shall be for two
16 years. Thereafter, the governor shall reduce the terms of four
17 of the members initially appointed to the board so that two of
18 the members engaged in the industry of cemetery and funeral
19 trusts and two of the members who are representatives of
20 consumer organizations shall serve a term of one year, and the
21 remaining three members shall serve a term of two years.



1 §441- Board; powers and duties. The board shall assist
2 the director in carrying out the director's duties under section
3 441-19. In addition, and pursuant to chapter 91, the board
4 shall:

5 (1) Assist the director in establishing the qualifications
6 for the licensing of a cemetery or pre-need funeral
7 authority as necessary for the welfare of the public
8 and of the cemetery and pre-need funeral authority
9 industry;

10 (2) Receive complaints and assist and advise the director
11 in investigating the actions of any person who acts in
12 the capacity of a licensee under this chapter;

13 (3) Make recommendations for proper courses of action
14 against any person, if there is reason to believe that
15 the person may have violated this chapter or the rules
16 adopted pursuant to this chapter; and

17 (4) Inquire into the practices and policies of the
18 cemetery and pre-need funeral authority industry and
19 recommend to the director practices and policies that
20 the board deems necessary for the welfare of the
21 public and of the cemetery and pre-need funeral
22 authority industry.



1 §441- Pre-need cemetery and funeral governance fund; use
2 of fund; fees. (a) The director shall establish and maintain a
3 trust fund that shall be known as the pre-need cemetery and
4 funeral governance fund, the proceeds of which may be used by
5 the department to investigate any violation or complaint that
6 alleges fraud, misrepresentation, or deceit against any pre-need
7 funeral authority.

8 (b) The director shall collect a one time fee of not more
9 than \$2 per contract from each pre-need funeral authority for
10 deposit into the pre-need cemetery and funeral governance fund,
11 as provided in rules adopted by the director pursuant to chapter
12 91. The fee shall apply to every contract accepted by the
13 pre-need funeral authority on or after July 1, 2009 and to every
14 contract that was accepted by the pre-need funeral authority on
15 or after January 1, 1992 that is still in effect as of July 1,
16 2009. The fee may be reduced proportionately for each contract
17 that terminates or is cancelled within the first six months of
18 the life of the contract. Each pre-need funeral authority shall
19 provide payment to the director on January 31 and June 15 of
20 every year for all contracts accepted by the authority during
21 the prior six month period.



1 (c) The director, as the trustee of the pre-need cemetery
2 and funeral governance fund, shall be authorized to expend
3 moneys in the fund to:

4 (1) Retain private legal counsel to represent the interest
5 of the department in any action that involves, or that
6 may result in the enforcement of any payment from a
7 pre-need funeral authority;

8 (2) Retain a certified public account for accounting and
9 auditing of pre-need trusts, perpetual care funds,
10 providers of funeral service, and cemetery
11 authorities;

12 (3) Employ necessary personnel, not subject to chapter 76,
13 to assist the director and the department in
14 exercising their respective powers and duties in
15 accordance with this chapter; and

16 (4) Retain a consultant to recover and collect any
17 payments to the pre-need cemetery and funeral
18 governance fund, including interest, from cemetery
19 authorities and pre-need funeral authorities.

20 (d) The sums received by the director for deposit into the
21 pre-need cemetery and funeral governance fund shall be held by
22 the department in trust for carrying out the purpose of the



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

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

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

15 "Consumer" means any person who:

16 (1) Has purchased cemetery property, pre-need interment
17 services, or pre-need funeral services and related
18 commodities from a mortuary, cemetery, or pre-need
19 funeral authority; or

20 (2) Is the purchaser's contract beneficiary.

21 "Consumer organization" means an organization that
22 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, or refuse to renew any license for any cause authorized
7 by law, including but not limited to the following:

- 8 (1) Any dishonest or fraudulent act as a cemetery or pre-
9 need funeral authority that causes substantial damage
10 to another;
- 11 (2) Making repeated misrepresentations or false promises
12 through advertising or otherwise;
- 13 (3) Violation of this chapter or the rules adopted
14 pursuant thereto;
- 15 (4) Commingling the money or other property of others with
16 that of the licensee;
- 17 (5) Having been adjudicated insane or incompetent;
- 18 (6) Selling or offering to sell any cemetery property,
19 pre-need interment, funeral services, or pre-need
20 funeral services based on speculation or promises of
21 profit from resale;



- 1 (7) Failing to file the actuarial study or an audited
- 2 financial statement or to maintain in effect the bond
- 3 [as] required by section 441-22;
- 4 (8) Failing to maintain pre-need trusts or perpetual care
- 5 funds as required by this chapter; or
- 6 (9) Violating section 441-22.7."

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

9 **"§441-24 Inspection of cemetery or pre-need funeral**
10 **authority books.** The books, records, and papers of every
11 cemetery authority whether or not a corporation, which operates
12 or claims to operate a perpetual care cemetery, and of every
13 pre-need funeral authority shall be subject to examination by
14 the director as provided by law, and every cemetery authority
15 operating a perpetual care cemetery, and every pre-need funeral
16 authority shall submit [~~such~~] the information as may be required
17 by the director to furnish information as to whether or not the
18 cemetery or pre-need funeral authority has complied with this
19 chapter.

20 The records of every cemetery authority shall include the
21 information required under section 441-3(b). The records of
22 every cemetery and pre-need funeral authority shall also include



1 a record of any and all notifications from purchasers or
 2 representatives of purchasers regarding:

- 3 (1) Any change in address; and
- 4 (2) Notice of cancellation,

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

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

17 **"§441-24.5 Pre-need trusts and perpetual care funds;**
 18 **audited financial statements.** (a) Every cemetery authority
 19 operating a perpetual care cemetery or which engages in pre-need
 20 sales ~~[or]~~ and holds money in trust for pre-need interment
 21 services, and every pre-need funeral authority which engages in
 22 pre-need sales or holds money in trust for pre-need funeral



1 services shall submit an audited financial statement of its
2 pre-need trusts and perpetual care funds, using a method of
3 accounting that employs generally accepted accounting practices,
4 to the director within ninety days after the close of the
5 authority's books on a fiscal or calendar year basis. The
6 director may create a standardized audited financial statement
7 form and require that every cemetery authority or pre-need
8 funeral authority submit this form annually with reports
9 mandated pursuant to this section.

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

14 (c) In the event that any required audited financial
15 statement is not provided to the department within sixty days
16 after it is due, the director may issue immediate notice to the
17 cemetery authority or pre-need funeral authority to suspend
18 pre-need sales or prohibit further withdrawal from the perpetual
19 care funds and pre-need trusts. Pending completion of the audit
20 ordered by the director or submission of the audited financial
21 statement by the pre-need funeral authority or cemetery
22 authority, the director shall impose restrictions on sales and



1 withdrawals for a period of time determined by the director to
2 be adequate to ensure the integrity of the trust; provided that
3 the period of time shall in no event be less than thirty days.
4 The director shall also commence an immediate audit of trust
5 funds held by the cemetery authority or pre-need funeral
6 authority that engaged in the sale of pre-need funeral services
7 or pre-need interment services and failed to submit on a timely
8 basis the required financial statement in accordance with this
9 section. All costs of the audit imposed by the director shall
10 be borne by the pre-need funeral authority or cemetery
11 authority."

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,**
12 **and contractor reports; available for review.** (a) The
13 actuarial study, audited financial statement, and trust
14 agreement filed by a cemetery or pre-need funeral authority, as
15 required by this chapter, shall be available for review by any
16 member of the general public upon request. The review of these
17 documents shall be [~~done~~] conducted during the department's
18 normal business hours. The director shall have the right to
19 deny public review for these documents together with any other
20 complaints, consultant reports, and contracted support and audit
21 reviews, for reasons specified in rules adopted by the director
22 pursuant to chapter 91."



1 SECTION 9. Section 441-38, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:
3 "(b) [A] Seventy per cent of the funds paid by the
4 purchaser shall be transferred to the trustee to remain in
5 trust; provided that a cemetery or pre-need funeral authority
6 may take and receive, but shall transfer to the trustee as part
7 of or incident to the pre-need trust, all payments received
8 after the recovery of acquisition costs, which shall be the
9 lesser of thirty per cent of the contract price or the
10 difference between the contract price and the cost of the
11 pre-need interment or pre-need funeral services contracted to be
12 provided. The transfer shall be made not later than thirty days
13 after receipt of payment from the purchaser and shall be
14 immediately deposited in the trust. The trustee shall provide
15 the director with a monthly confirmation notice and, upon
16 request of the purchaser, shall provide notice to the purchaser
17 that the payments have been deposited with the trustee within
18 thirty days of the close of the prior month by the cemetery
19 authority or pre-need funeral authority. The cemetery authority
20 or pre-need funeral authority shall provide an annual statement
21 to the purchaser within thirty days of the close of the prior
22 month."



S.B. NO. 661

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

3 SECTION 11. This Act shall take effect on July 1, 2009.

4

INTRODUCED BY: 

Therese Cron Oakland

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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 governance 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.

