

JAN 26 2009

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# A BILL FOR AN ACT

RELATING TO THE FUNERAL INDUSTRY.

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

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

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

11           (b) The director shall collect a one time fee of not more  
12 than \$2 per contract from each pre-need funeral authority for  
13 deposit into the pre-need cemetery and funeral governance fund,  
14 as provided in rules adopted by the director pursuant to chapter  
15 91. The fee shall apply to every contract accepted by the  
16 pre-need funeral authority on or after July 1, 2009 and to every  
17 contract that was accepted by the pre-need funeral authority on



1 or after January 1, 1992 that is still in effect as of July 1,  
2 2009. The fee may be reduced proportionately for each contract  
3 that terminates or is cancelled within the first six months of  
4 the life of the contract. Each pre-need funeral authority shall  
5 provide payment to the director on January 31 and June 15 of  
6 every year for all contracts accepted by the authority during  
7 the prior six month period.

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

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

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

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



1       (4) Retain a consultant to recover and collect any  
 2           payments to the pre-need cemetery and funeral  
 3           governance fund, including interest, from cemetery  
 4           authorities and pre-need funeral authorities.

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

18       SECTION 2. New statutory material is underscored.

19       SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY:

*Randy H. Pat*

*[Signature]*

*Franne Chun Aldland*

*John Miller*



**Report Title:**

Funeral Industry; Cemetery Authority; Pre-Need Funeral Authority

**Description:**

Establishes the pre-need cemetery and funeral governance fund;  
specifies fund uses and administration.



WRITTEN ONLY

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. 1099

February 11, 2009

RELATING TO THE FUNERAL INDUSTRY

Senate Bill No. 1099 establishes the pre-need cemetery and funeral governance fund to be administered by the Department of Commerce and Consumer Affairs to investigate any violation or complaint that alleges fraud, misrepresentation, or deceit against any pre-need funeral authority. This fund would receive deposits from a one-time fee collected from pre-need funeral authorities on each contract entered into.

As a matter of general policy, this department does not support the creation of any special fund which does not meet the requirements of Section 37-52.3 of the Hawaii Revised Statutes. Special or revolving funds should: 1) reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries of the program; 2) provide an appropriate means of financing for the program or activity; and 3) demonstrate the capacity to be financially self-sustaining. It is difficult to determine whether the fund will be self-sustaining.



Hawaii's Voice for a Better Future

Testifier: Laura G. Manis, tel. 597-8838

COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS  
Sen. Rosalyn Baker, Chair, Sen. David Y. Ige, Vice Chair

2/11/09, 8:30 a.m., Room

SB 1099, which creates a pre-need cemetery and funeral fund within the Department of Commerce and Consumer Affairs.

**SUPPORT**

Kokua Council supports this bill because we have heard numerous complaints from consumers of lost plans, no refunds when consumers try to cancel trusts when they move out of state or the funds being used by funeral homes to cover other expenses.

This fund would be used by the Department to investigate any violation or complaint of fraud, misrepresentation, or deceit practiced by the any organization selling pre-need cemetery or funeral plans. The fund would be used by the department to hire staff to investigate any such complaints and to assure payment of the appropriate fees by the industry. The industry itself would pay a very small (\$2.00) fee to the Department for each such plan in effect.

Hawaii's rules governing pre-need funeral and cemetery plans are among the most lax in the nation, and offer consumers inadequate protection. In particular, pre-need plans sold in this state do not meet the standards recommended by the national industry organization. Therefore it is important to provide the Department with the resources necessary to investigate any complaints which may arise.

Creation of this fund will bring our funeral industry into line with the more progressive policies found in most others states.

Please support this bill.



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

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**From:** Tony Lenzer [Tlenzer@hawaii.rr.com]  
**Sent:** Monday, February 09, 2009 2:56 PM  
**To:** CPN Testimony  
**Subject:** Testimony - Senate Committee on Commerce & Consumer Affairs, 2/11/09, 8:30 a.m., Room229

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

TESTIMONY IN SUPPORT OF SB 1099

Chair Baker:

My name is Anthony Lenzer. I am a Professor Emeritus of Public Health and former Director of the Center on Aging at the University of Hawaii. I am offering testimony on behalf of PABEA, the Policy Advisory Board for Elder Affairs, which is an appointed board tasked with advising the Executive Office on Aging (EOA). My testimony does not represent the views of EOA but of the Board.

PABEA support Senate Bill 1099, which creates a pre-need cemetery and funeral fund within the Department of Commerce and Consumer Affairs. This fund would be used by the Department to investigate any violation or complaint of fraud, misrepresentation, or deceit practiced by the any organization selling pre-need cemetery or funeral plans. The fund would be used by the department to hire staff to investigate any such complaints and to assure payment of the appropriate fees by the industry. As indicated in the bill, the industry itself would pay a a very modest (\$2.00) fee to the Department for each such plan in effect.

The need for such legislation is indicated by the fact that Hawaii's rules governing pre-need funeral and cemetery plans are among the most lax in the nation, and offer consumers inadequate protection. In particular, pre-need plans sold in this state do not meet the standards recommended by the national industry organization. Therefore it is important to provide the Department with the resources necessary to investigate any complaints which may arise.

Creation of this fund represents a small step in the direction of bringing our pre-need industry into line with the more progressive policies found in most others states.

Thank you for the opportunity to testify on this bill.