

SB 2516

JAN 22 2010

S.B. NO. 2576

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 reporting methods
2 for financial statements and actuarial reports of cemetery and
3 pre-need funeral authorities lack conformity and
4 standardization, leaving the State with the need to contract
5 with private certified public accountants and actuaries to read
6 and analyze the audited financial statements and actuarial
7 reports.

8 The purpose of this Act is to materially advance and
9 improve the level of consumer protection by:

- 10 (1) Creating a standardized form for reporting financial
11 statements and actuarial reports;
- 12 (2) Ensuring sufficient funds are available to cover
13 future claims; and
- 14 (3) Requiring the department of commerce and consumer
15 affairs to submit annual reports to the legislature on
16 the status of licensees required to submit audited
17 financial statements and actuarial reports.



1 SECTION 2. Section 441-24.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§441-24.5 Pre-need trusts and perpetual care funds;**
4 **audited financial statements.** (a) Every cemetery authority
5 operating a perpetual care cemetery or ~~[which]~~ that engages in
6 pre-need sales ~~[or]~~ and holds money in trust for pre-need
7 interment services, and every pre-need funeral authority ~~[which]~~
8 that engages in pre-need sales ~~[or]~~ and holds money in trust for
9 pre-need funeral services shall submit an audited financial
10 statement and actuarial report of its pre-need trusts and
11 perpetual care funds to the director within ninety days after
12 the close of the authority's books on a fiscal or calendar year
13 basis~~[-]~~ and shall use a method of accounting in accordance with
14 generally accepted accounting practices. The director shall
15 create a standardized audited financial statement and
16 standardized actuarial report and require that every funeral
17 authority submit these reports annually. The audited financial
18 statement and actuarial report required by this section shall
19 include:

20 (1) The total dollar amount required to fully perform all
21 contracts in each trust;

1 (2) The total dollar amount due to each trust as of the
2 date of execution of contracts not yet performed;

3 (3) The total dollar amount in each trust; and

4 (4) The total outstanding dollar amount due from consumers
5 for each trust.

6 (b) A late fee of \$ shall be assessed for each
7 day that a cemetery authority or pre-need funeral authority
8 fails to file an audited financial statement or actuarial report
9 within the time requirement under subsection (a).

10 (c) If any required audited financial statement or
11 actuarial report is not provided to the department within sixty
12 days of its due date or within the time established by any
13 extension granted by the director, the director shall issue
14 immediate notice to the cemetery authority or pre-need funeral
15 authority to suspend pre-need sales, and the director shall
16 prohibit further withdrawal from the perpetual care funds and
17 pre-need trusts. The director shall commence an immediate audit
18 of trust funds held by the cemetery authority or pre-need
19 funeral authority that engaged in the sale of pre-need funeral
20 services or pre-need interment services and failed to submit on
21 a timely basis the required audited financial statement or
22 actuarial report, pursuant to this section. Pending completion



1 of the audit ordered by the director or submission of the
2 audited financial statement and actuarial report by the pre-need
3 funeral authority or cemetery authority, the director shall
4 impose restrictions on sales and withdrawals for a period of
5 time determined by the director to be adequate to ensure the
6 integrity of the trust; provided that the period of time shall
7 in no event be less than thirty days. All costs of the audit
8 imposed by the director shall be borne by the pre-need funeral
9 authority or cemetery authority.

10 (d) During any period that sales are suspended or
11 withdrawals are prohibited under subsection (c), the cemetery
12 authority or pre-need funeral authority shall honor all
13 contracts entered into prior to the suspension of sales that
14 become due. The director shall authorize withdrawals from the
15 trust in order to fulfill these contracts."

16 SECTION 3. Section 441-24.6, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

18 "(a) Every cemetery authority operating a perpetual care
19 cemetery and every cemetery or pre-need funeral authority
20 offering pre-need services shall contract with an independent
21 actuary to conduct an annual study of its level of funding. In
22 the case of a perpetual care cemetery, the study shall [~~be to~~]



1 determine whether the amount in the authority's perpetual care
2 fund will provide sufficient income to cover the costs of the
3 perpetual care of the cemetery. In the case of a cemetery or
4 pre-need funeral authority, the study shall [~~be to~~] determine
5 whether the amount in the authority's pre-need trust as of the
6 end of the fiscal year will be sufficient to cover the future
7 claims of pre-need plan participants[-] as of the end of the
8 fiscal year."

9 SECTION 4. Section 441-24.7, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "~~{}~~**\$441-24.7**~~}~~ **Actuarial study, audited financial**
12 **statement, trust agreement; reports to legislature; consultant**
13 **reports and contractor reports; available for review.** (a) The
14 actuarial study, audited financial statement, and trust
15 agreement filed by a cemetery or pre-need funeral authority, as
16 required by this chapter, shall be available for review by any
17 member of the general public upon request. The review of these
18 documents shall be done during the department's normal business
19 hours. The director shall have the right to deny review for
20 reasons specified in rules adopted by the director pursuant to
21 chapter 91. The department shall submit a report annually to
22 the legislature that describes the status of the audited



1 financial statements and actuarial reports of licensees. The
2 report shall include, but not be limited to, the following:

- 3 (1) A list of all licensees required to submit a financial
4 statement and actuarial report;
- 5 (2) Licensees granted extensions for filing the financial
6 statement and actuarial report;
- 7 (3) Financial statements or actuarial reports that are
8 past due and have not been filed;
- 9 (4) Penalties assessed for late financial statements and
10 actuarial reports;
- 11 (5) The total aggregate dollar amount required to perform
12 contracts in all trusts;
- 13 (6) The total aggregate dollar amount due to all trusts as
14 of the date of execution of contracts not yet
15 performed;
- 16 (7) The total aggregate dollar amount in all trusts; and
- 17 (8) Recommendations for improving the reporting system for
18 financial statements and actuarial reports by
19 licensees and oversight of the cemetery and pre-need
20 funeral industry.

21 (b) Upon delivery of an itemized price list to a
22 prospective purchaser and upon execution of a contract for

S.B. NO. 2516

1 perpetual care and pre-need services, the cemetery or pre-need
 2 funeral authority shall notify the person of the availability
 3 for review of the actuarial study, audited financial statement,
 4 and trust agreement on file with the department as provided in
 5 this section."

6 SECTION 5. Statutory material to be repealed is bracketed
 7 and stricken. New statutory material is underscored.

8 SECTION 6. This Act shall take effect upon its approval.
 9

INTRODUCED BY: *[Signature]*
Erinanne Ann Oakland

Rosalyn de Barb

Will Eyo

Jim

[Signature]

[Signature]



Report Title:

Funeral Industry; Standardized Reporting

Description:

Creates a standardized form for cemetery and pre-need funeral authorities' financial statements and actuarial reports. Ensures sufficient funds are available to cover future claims. Requires the department of commerce and consumer affairs to report to the legislature on the status of licensees required to submit audited financial statements and actuarial reports.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



To The Senate Committee on Commerce and Consumer Protection
The Honorable Rosalyn H. Baker, Chairman
And Committee Members

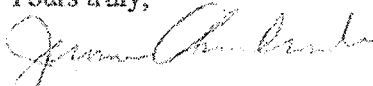
Testimony against SB2285 and SB2516

It is the position of our industry to operate under the current laws and legislation that were accepted and dually agree upon by DCCA and Funeral and Cemetery Industry. For this reasons stated below I would to submit testimony against SB2285 and SB2516. We feel DCCA has enough authority to enforce the problems that may occur in the funeral and cemetery industry. There is a current law which requires the filing of a annual report with DCCA.

In summary this proposal bill would put a hardship on our industry and likely force the closure of all pre-need funeral plans and pre-need cemetery plans. Pre-need plans actually keep down the price for funeral services as the plans are used for future service at today's prices. The emotional side of pre-arranging is just as important as the financial side and most people pre arrange to help there families make handling death in family easier at the worse time of their lives.

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 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.

Yours truly,



Jerome Andrade
President, Hawaii Funeral & Cemetery Association
1330 Maunakea Street
Honolulu, Hawaii 96817
PH: 522-5200 Fax: 522-5206
E-Mail Jerome.Andrade@sci-us.com
February 3, 2010



Funeral
Consumers
ALLIANCE

Protecting a consumer's right to choose meaningful, dignified, and affordable funerals since 1963

February 4, 2010

**Testimony on Hawaii Senate Bills 2285 and 2516, Relating to Prepaid Funerals
Submitted to the Committee on Commerce and Consumer Protection
Funeral Consumers Alliance, Inc.**

To the honorable senators:

Funeral Consumers Alliance, a nationwide federation of nonprofit consumer education and advocacy groups, asks you to amend, then pass, SB 2285 and SB 2516. The business of prepaid funerals and burials nationwide generates billions every year, yet there is no uniformity among state laws, leaving our parents' and grandparents' funeral investments vulnerable to theft and misuse. Hawaii's prepaid funeral laws are among the worst in the nation, tied only with Florida. Until Hawaii curtails predatory business practices to better protect its elderly citizens, we will continue to see state law as permitting legalized robbery of preneed consumers.

With amendments, these two bills would greatly improve the current situation. SB 2285's requirement for preneed sellers to give consumers an annual report on the state of their preneed funds on deposit is excellent, and we unreservedly endorse it. In addition, we enthusiastically support SB 2516, which would require preneed sellers to submit uniform financial reports to the state detailing their preneed sales and investment activity.

But while SB 2285 aims to require the deposit and safekeeping of all money prepaid by consumers, the bill allows cemeteries or funeral homes to continue to skim as much as **30 percent** of that prepayment off the top. This leaves the consumer with a refund of only 70 percent should she cancel or change her mind before the funeral or burial is performed. This is **no different from current Hawaii law**, and it must be amended. We suggest following New York State's excellent model: all money prepaid must be deposited, with interest to accrue. Fees are capped at $\frac{3}{4}$ of 1 percent, an amount sufficient to pay for running the trust. Because of these stringent requirements, the prepaid funeral business in New York is thriving, preneed shortfalls and scandals are rare, and consumers are well protected.

Respectfully submitted,

Joshua Slocum
Executive Director

 **Dodo Mortuary, Inc.**

February 3, 2010

RE: Senate Bill No. 2516 (Relating to the Funeral Industry)

I would like to submit this testimony in opposition to the passage of S.B. No. 2516 (Relating to the Funeral Industry).

This proposed amendment calls to create an unusually large amount of new regulation that would appear to be considered burdensome to those involved. The funeral industry in Hawaii has been able to service the community well for many years with a nominal degree of regulation. What S.B. No 2516 proposes can be viewed as excessive and unnecessary.

Furthermore, the entity entrusted with the responsibility of overseeing the funeral industry (Department of Commerce and Consumer Affairs office), which S.B. No. 2516 names, already oversees multiple businesses in the state and adding to their long list of responsibilities, such as an "immediate audit", does not seem feasible or realistic in expectation. If current economic conditions persist and the State of Hawaii continues to operate on the working schedule it follows now (i.e. "Furlough Fridays") the D.C.C.A. would not be readily available to react to a situation nor would an immediate response be able to given to them if any funeral business were to be reprimanded and sales should be prohibited or forbidden.

Overall, I feel the passage of S.B. No. 2516 would not work in the best interest of the funeral industry, the state (D.C.C.A.), and ultimately the consumer. An attempt by the funeral industry to comply with this proposed legislation would amount to extra fees ultimately passed on to the consumer at this inappropriate economic time. For these reasons I would like to submit this testimony against S.B. No. 2516 and ask you do not pass this proposed measure.

Sincerely,

Mitchell M. Dodo
Vice-President / Operations Manager
Dodo Mortuary, Inc.

199 Wainaku Street - Hilo, Hawaii 96720
Phone: (808) 935-5751 - Fax: (808) 935-1074
www.dodomortuary.com

Hawaiian Memorial Life Plan

1330 Maunakea Street
Honolulu, Hawaii 96817
Office (808) 522-9309

Senator Rosalyn H. Baker
Chairman
Commerce and Consumer Protection Committee

2/1/2010

Honorable Rosalyn Baker,

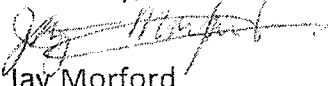
Please accept this written testimony to express our strong opposition to SB 2285 and SB 2516. We support the position of the Hawaii Funeral and Cemetery Association in opposition of these Bills.

The current laws are sufficient to protect the consumer and govern the Cemetery and Funeral Industry. SB 2285 and SB 2516 will put a financial burden on the local Funeral and Cemetery operations that is not needed; it will increase operating cost and possibly put some institutions out of business.

Senate Bill 2285 and SB 2516 will drive Funeral and Cemetery Prices up significantly and will decrease Competition in the Market Place.

Hawaii's cost of doing business along with this type of financial burden will be detrimental to our industry.

Sincerely,



Jay Morford
Vice President; Hawaiian Memorial Life Plan



Nuuanu Memorial Park & Mortuary, LLC

2233 Nuuanu Avenue
Honolulu, Hawaii 96817
Ph. (808) 537-5255 / Fax (808) 537-5440.

February 3, 2010

RE: Senate Bill No. 2285 & 2516 (Relating to Pre-Need Funeral Plans)

I would like to submit this testimony in opposition to the passage of S.B. No. 2285 & 2516 (Relating to Pre-Need Funeral Plans).

This proposed amendment to convert current pre-need funeral plan monies held in trust to 100% trusting, versus the current 70% is unwarranted. We are closely regulated and provide reports and audited financial statements to account for our fund. Additional reporting would add more cost to the expense of the pre-need funeral plans.

The industry deals with many people who find that purchasing a pre-need funeral plan brings them peace of mind that they have chosen the type of service they want and most importantly, feel that they have not left this burden and expense for their loved ones. The passage of this bill which requires 100% trusting and more regulations, may eventually lead to close many pre-need industries in this state. If passed, the potential loss of employment for pre-need salespersons and related office personnel.

Our pre-need customers have peace of mind that the cost they pay today for their pre-need plan is guaranteed and when the plan is used many years from now, they will be provided that service at no additional cost.

The consumers have a choice to many options when planning for and deciding on end-of-life issues. The purchase of a pre-need plan is only one of many options and choices should be available to them. Because the industry has had very few documented complaints, I would like to submit this testimony against S.B. No. 2285 and ask that you not pass this proposed measure.

Sincerely,

Derwin Tsutsui
Director of Mortuary Operations
Nuuanu Memorial Park & Mortuary, LLC



Laura Manis Testifier

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Rosalyn H. Baker, Chair

Senator David Y. Ige, Vice Chair

Thursday, February 04, 2010 9:00 a.m. Conference Room 229

SB 2516 RELATING TO THE FUNERAL INDUSTRY

Creates a standardized form for cemetery and pre-need funeral authorities' financial statements and actuarial reports. Ensures sufficient funds are available to cover future claims. Requires the department of commerce and consumer affairs to report to the legislature on the status of licensees required to submit audited financial statements and actuarial reports

SUPPORT

Kokua Council whose mission includes advocating for the health of the elderly and those vulnerable populations who cannot advocate for themselves supports this bill. I am also submitting this testimony on behalf of PABEA. My testimony does not represent the views of the EOA but of the PABEA Board.

Criticism of the funeral industry and especially the pre-need trust is well known and has generated much bad publicity.

This bill we believe, is an effort to improve the reporting and oversight of the industry. Apparently every funeral business has their own method of bookkeeping making it impossible or very difficult to keep track or compare companies.

As a result, consumers have no way of assessing the service. It is also questionable as to whether the Consumer Protection Agency can adequately assess services when they can't compare like expenditures.

We ask that you will support this bill.

Laura G. Manis, Legislative Chair, Kokua Council, Legislative Committee PABEA

tel. 597-8838

2.4
Thurs

1666 St. Louis Drive
Honolulu HI 96816

Senate Committee on Commerce
and Consumer Protection
State Capitol
Honolulu HI 96813

Dear Sir / Madam:

I would like to offer my support for SB 2516 Relating to the Funeral Industry and qualified support for SB 2285 Relating to Pre-Need Funeral Plans.

In regard to SB 2516, it makes sense that the funeral industry be expected to provide disclosure of its financial state of affairs in a standardized format. This should have been required before.

In regard to SB 2285 Relating to Pre-Need Funeral Plans, there ought to be one hundred per cent trusting of the principal paid into the plan by the consumer but the bill ought to be amended to require a one hundred per cent refund of the principal to the consumer if the plan is cancelled for any reason. Pre-need funeral plans ought to be treated as insurance policies. Too many members

Gau to State Senate

2 Feb 10

P-2

of the public erroneously assume that pre-need funeral plans are governed by the same conditions and terms by which insurance operates.

Yours truly,

Tel. 737-5654

Right Rev. Wayne W. Gau
President, St. Louis Heights
Community Association