



LINDA LINGLE
GOVERNOR
JAMES R. AIONA, JR.
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
www.hawaii.gov/dcca

LAWRENCE M. REIFURTH
DIRECTOR
RONALD BOYER
DEPUTY DIRECTOR

**PRESENTATION OF THE
CEMETERY AND FUNERAL TRUSTS PROGRAM**

TO THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

TWENTY-FIFTH STATE LEGISLATURE
Regular Session of 2009

LATE

Wednesday, February 11, 2009
8:30 a.m.

TESTIMONY ON SENATE BILL NO. 661, RELATING TO THE FUNERAL INDUSTRY.

TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Candace Ito, Executive Officer of the Cemetery and Funeral Trusts Program in the Department of Commerce and Consumer Affairs ("Department"). We appreciate the opportunity to present testimony on S.B. 661, Relating to the Funeral Industry.

S.B. 661 proposes amendments to the cemetery and pre-need funeral trust statute including new provisions and changes to current requirements. The Department's position on these proposals is discussed below.

With regard to the new provisions to Chapter 441, HRS, the bill proposes a board of cemetery and funeral trusts; a pre-need cemetery and funeral governance fund to be

administered by the Director; a standardized audited financial statement form that may be created by the department, to be an additional document to be completed by licensees; sanctions on the licensee for filing a late audited financial statement; and new monthly reporting requirements by the trustee of the trusts and by the licensee, to the department and to purchasers who request similar reporting. We address each of these as follows:

- Creation of a board and specified powers of the board (section 2 of the bill). First, although we appreciate the interest in providing more targeted attention to this program and are open to the proposal, the provisions relating to the criteria for board member selection appear to be too complex. We suggest instead, a simpler approach of having a set number of board members, no designated affiliations by the members, provide that a specified number shall be licensees (and stating that licensees from both the cemetery and pre-need funeral industry shall be represented), and provide that a specified number shall be members of the public. This is the approach used with almost all other licensing statutes which have a board, and thus would ensure consistency. Further, while the bill proposes a 7 member board, we suggest a board no larger than 5, with the majority being licensees (for example if a 5 member board, 3 would be licensees and 2 members would represent the public). This is because there are a very small number of licensees (14 cemetery authorities and 12 pre-need funeral authorities in total) and selecting

licensee members for the board will come from a limited pool. Also, if the above alternative is considered, there would no longer be any necessity to include a definition for “consumer” and “consumer organization” (page 8, lines 15-22) inserted, we believe, to clarify the affiliations of the public members on the board. Further we believe the provision regarding the expenses incurred by board members and the terms each member shall serve (page 4, lines 11-21) do not appear to be necessary as such provisions are already incorporated in HRS §§26-34 and 26-35 and need not be re-stated in the licensing law.

With regard to the specified powers of the board, most of the provisions are consistent with other licensing laws with boards with the exception of those provisions that speak to the Board receiving and investigating complaints and recommending disciplinary action for violations. Pursuant to HRS §26-9, all boards, commissions and programs within the Department/Professional and Vocational Licensing Division delegate their authority to receive, arbitrate, investigate, and prosecute complaints to the Department’s Regulated Industries Complaints Office (“RICO”). Further, licensing boards do not typically recommend disciplinary action; they are the final authority on the disciplinary action. In light of the above, either section 26-9, HRS would need to be amended to reflect a different approach by this board or the proposal itself should be amended to recognize RICO’s role.

- Pre-need cemetery and funeral governance fund (section 2 of the bill).

The Department takes no position on this issue but offers the following comments:

- The Committee may wish to consider the financial impact that the required contributions to the governance fund may have on licensees and whether this will negatively impact cemetery and pre-need purchasers by increasing costs for services and merchandise.
 - While it appears the fund is to address issues relating to both cemetery and pre-need funeral authority, the provision in the bill does not clearly set forth its applicability to both industries. Therefore the section should be revised accordingly.
 - We believe subsection (a) (page 6, lines 2-7) conflicts with subsection (c) (page 7, lines 1-19) because subsection (a) limits the use of the funds to investigate complaints that allege fraud, misrepresentation, or deceit, whereas subsection (c) provides for much broader use of the fund. Use of the fund should be clearly set forth.
- Standardized audited financial statement form (section 6 of the bill). The Department appreciates the desire to provide more useful information to consumers of pre-need services, and appreciates also that the proposal here does not mandate but only authorizes us to create a standardized

audited financial statement form, but we have previously consulted with accountants familiar with the industry on this subject and have not been able to develop such a form to date due to the numerous variables involved. Incorporating such a provision in the law will create expectations that we are unlikely to be able to meet. Instead, we ask if the Committee could clarify what information is being sought so that we can explore other options to a standardized audited financial statement form.

- Sanctions for late filing of an audited financial statement (section 6 of the bill). The Department does not object to assessing a fee for the late filing of an audited financial report, but, in light of HRS §441-19(8) (in the bill), conforming amendments would also need to be made to this section as it allows for the extension of the statutory deadline to file periodic reports, including audited financial statements. A decision for the Committee is whether the ability to extend the filing deadline should be repealed from HRS §441-19(8), thereby allowing the newly proposed fine to be applied immediately after the deadline has passed, or leave HRS §441-19(8) in tact, but revise the text in the bill on when the new proposed fine is to be applied in consideration of the ability to extend the filing deadline. Also, another amendment is needed (specifically page 13, lines 14-19) to provide that during the period a license is suspended, the cemetery and pre-need funeral authority shall be required to honor all consumer contracts that it has entered into and which have become due, and that

money from the trust may be used to fulfill these contracts. Minimally, uninterrupted services to purchasers are critical, however the text in the bill does not provide for this. Finally, the process in subsection (c) is confusing and we recommend further clarification.

- Monthly reporting requirements by the trustee of the trusts and by the licensee, to the department and to purchasers who request similar reporting (section 9 of the bill). We believe this reporting could be informative, however we suggest that consideration be given to whether this requirement would be onerous on the trustee, licensee and consumers who would ultimately pay the additional costs.

With regard to amendments to current provisions in the law, we address each item as follows:

- Accounting methodology for the audited financial statements (section 6 of the bill). We prefer continuation of the existing cash basis for audited financial statements because the benefit of using the accrual method would only be fully realized if the licensee is also audited using the accrual method which is very costly. In addition, the Department's CPA consultant concurs with continuance of the existing cash basis method. We suggest that consideration be given to the additional costs that will be incurred to provide audited financial statements using the accrual method, as this may result in increased costs to consumers.

- Disclosure of consultant work products (section 8 of the bill). Making public the reports or work product provided by a departmentally-contracted CPA is a double-edged sword. As it stands, the department uses these items in its regulatory pre-decisional and deliberative process and, as such, is able to obtain information with the understanding that it will be maintained as confidential. Making these records public would hinder the program's ability to obtain that information, and thus would frustrate a legitimate government function if disclosed. The Office of Information Practices (OIP) has issued several opinions on similar situations (see OIP Numbers 90-21 and 91-16) and opined that work products that are pre-decisional and part of the deliberative process are exempt from disclosure. We respectfully submit that we should focus on how to improve the type and amount of information available to consumers without imposing the unintended consequence of restricting the program's ability to get needed information.

Thank you for the opportunity to testify on SB 661.

LATE

STATEMENT FROM
ASSOCIATION OF PRENEED FUNERAL PLANS, INC.

TO THE COMMITTEE ON HUMAN SERVICES AND PUBLIC HOUSING
SUBJECT: SENATE BILL 661, A Bill Relating to the Funeral Industry
SENATE BILL 1099, A Bill Relating to the Funeral Industry
HEARD ON: Wednesday, February 11, 2009
8:30 P.M.

THIS ASSOCIATION OPPOSES the proposed changes to Chapter 441 of the Hawaii Revised Statutes, entitled "RELATING TO FUNERALS" and offers the additional testimony set forth below.

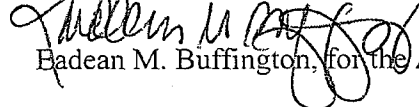
This Association consists of several pre-need authorities doing business in the State of Hawaii together with those entities currently seeking application for pre-need licenses. Discussions within our organization confirm that the enactment of either of these bills in their present state would unfairly impose the sole financial sponsorship on the Pre-need associations.

The most direct impact would be the immediate assessment of fees as a result of contracts that were entered into over the last fifteen years. This assessment was not anticipated by any of the pre-need authorities and would be an undue burden to those entities who may be faced with large payment from current operations.

The establishment of the board is to oversee funeral and mortuary operators, cemetery and pre-need funeral authorities. It is not appropriate to have the pre-need authorities be the sole financial sponsors for the board. Contributions should be collected from all related operators in the industry.

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,


Eadean M. Buffington, for the Association

To: Senator Rosalyn Baker, Chair
 Committee on Commerce and Consumer Protection
 From: Hawaii Funeral Directors Association
 Date: Wednesday, February 11, 2009
 Subject: Opposition to SB 661, SB1099

LATE

The Hawaii Funeral Directors Association (HFDA) is a non-profit trade association of licensed funeral establishments in the State of Hawaii.

The members of the HFDA oppose SB661 and SB1099, which attempt to further regulate the funeral and cemetery pre-need industry through the formation of a regulatory oversight board. We feel that the measure in the proposed legislation are superfluous and do not truly protect the consumer any better than current law.

In these current economic times, asking the funeral and cemetery industry to fund a regulatory oversight board is an unreasonable request. The HFDA feels that not enough consideration was given to all of the factors which impact the Hawaii Funeral and Cemetery Industry. Thank you for this opportunity to testify.



David Morikami
 President
 Hawaii Funeral Directors Association