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# HOUSE CONCURRENT RESOLUTION

REQUESTING THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS TO  
STUDY THE STATE'S LAWS GOVERNING CEMETERY AND FUNERAL  
TRUSTS AND PROVIDE RECOMMENDATIONS TO ENSURE CONSUMER  
PROTECTION.

1           WHEREAS, Hawaii has a growing, aging population, and needs  
2 strong, comprehensive legislation for cemetery and funeral  
3 trusts to protect consumers; and  
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5           WHEREAS, adequate oversight of these so-called pre-need  
6 funeral contracts are often hampered by non-existent rules and  
7 state regulators' lack of authority and resources; and  
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9           WHEREAS, in 1998, the average cost of a traditional funeral  
10 was more than \$4,600, and an in-ground burial was an additional  
11 \$2,400, according to national statistics, making funeral and  
12 burial purchases the third highest lifetime expenditure, ranking  
13 behind a home and automobile; and  
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15           WHEREAS, most funeral and burial purchases are made when  
16 buyers are vulnerable emotionally and lack the time and  
17 information to negotiate prices effectively; and  
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19           WHEREAS, this is a major reason why consumers enter into  
20 pre-need funeral contracts to purchase funeral and burial goods  
21 and services prior to death; and  
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23           WHEREAS, according to a report by the American Association  
24 of Retired Persons, as of 1999, funds in outstanding pre-need  
25 funeral contracts exceeded \$25 billion; and



1           WHEREAS, funds in outstanding pre-need funeral contracts  
2 are projected to grow substantially as the population continues  
3 to age and to plan for death expenses; and  
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5           WHEREAS, nationwide, problems such as the following have  
6 been experienced with respect to pre-need funeral contracts:  
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- 8           (1) Mishandling of trust funds that may go undetected for  
9           years since there is generally a significant length of  
10           time between the signing of the contract and the need  
11           for the goods and services described in the contract;  
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13           (2) Overpaying for goods or services since it is often  
14           difficult to determine whether specific provisions of  
15           the contract were fulfilled since the person who  
16           signed the contract is likely deceased; and  
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18           (3) Increasing potential for fraud since pre-need  
19           contracts are becoming increasingly complex, with more  
20           decisions, creating opportunity for criminal  
21           misconduct;

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23 and  
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25           WHEREAS, Hawaii could follow the example of New York, a  
26 state that has some of the strongest pre-need funeral contract  
27 laws in the nation in connection with trust accounts,  
28 portability, and the disclosure of financial information; now,  
29 therefore,  
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31           BE IT RESOLVED by the House of Representatives of the  
32 Twenty-sixth Legislature of the State of Hawaii, Regular Session  
33 of 2011, the Senate concurring, that the Department of Commerce  
34 and Consumer Affairs is requested to study the State's laws  
35 governing cemetery and funeral trusts, and provide  
36 recommendations to ensure consumer protection by:  
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- 38           (1) Allowing full portability of pre-need funeral plans;  
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40           (2) Requiring placement into trust of 100 percent of  
41           moneys paid with interest and earnings to be applied  
42           at the time the plan is redeemed;



- 1 (3) Providing deadlines for the transfer of funds to the
- 2 trust after receipt from the purchaser and notice
- 3 confirming such transfer;
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- 5 (4) Allowing a cemetery or pre-need authority to deduct
- 6 certain allowable expenses from a trust;
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- 8 (5) Requiring annual statements of the disposition of
- 9 trust funds, including the amount of funds deposited,
- 10 where the funds are deposited, and the amount of
- 11 interest earned;
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- 13 (6) Requiring that if the pre-need funeral contract is
- 14 canceled or terminated, the purchaser should be
- 15 entitled to a refund of the amounts paid by the
- 16 purchaser plus interest earned, less amounts that may
- 17 be retained by the cemetery or pre-need funeral
- 18 authority for its costs; and
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- 20 (7) Requiring that refunds to the purchaser be made within
- 21 30 days of receipt of the purchaser's written notice
- 22 of cancellation or termination of the contract;
- 23

24 and

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26 BE IT FURTHER RESOLVED that the Department of Commerce and  
27 Consumer Affairs report its findings and recommendations to the  
28 Legislature no later than 20 days prior to the convening of the  
29 Regular Session of 2012; and

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31 BE IT FURTHER RESOLVED that certified copies of this  
32 Concurrent Resolution be transmitted to the Director of Commerce  
33 and Consumer Affairs, Governor, and Chief Executive Officer of  
34 the National Funeral Directors Association.

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36 OFFERED BY: *Rich R. Catbelle*

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MAR 15 2011

