

JAN 20 2012

A BILL FOR AN ACT

RELATING TO CEMETERY AND FUNERAL TRUSTS.

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

1 SECTION 1. Section 441-22.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§441-22.5 Mortuary, cemetery, or pre-need funeral**
4 **authority; disclosure requirements.** (a) No cemetery property,
5 interment services, funeral services, and related commodities
6 shall be sold unless the mortuary, cemetery, or pre-need funeral
7 authority first satisfies the requirements stated in section
8 441-22.6.

9 (b) Every cemetery or pre-need funeral authority shall be
10 required to provide to the purchaser of cemetery property, pre-
11 need interment, or pre-need funeral services and related
12 commodities a written contract which shall contain the following
13 disclosures:

14 (1) The names and addresses of the cemetery or pre-need
15 funeral authority, purchaser, and contract
16 beneficiary, if the beneficiary is someone other than
17 the purchaser;



- 1 (2) A clear and concise itemized statement of the
2 property, including, for cemetery property, the
3 location of the plot, crypt, or niche by its unique
4 identifier, and any services and related commodities
5 to be supplied or not supplied and by whom,
6 particularly if the authority is not to be the
7 provider under the terms of the contract;
- 8 (3) The purchase price of each item of property, services,
9 and related commodities to be supplied, the total
10 purchase price, and how the total purchase price is
11 payable, including any credit terms, if applicable;
12 provided that, pursuant to section 441-22.7,
13 disclosure shall also be made that further additional
14 charges or fees for perpetual care subsequent to the
15 execution of the contract are prohibited for any
16 purpose and on any occasion, except for reasonable
17 fees related to the administrative costs of
18 transferring ownership rights, including the cost of
19 research, document and file preparation, photocopying,
20 notary fees, records transfer and storage, and any
21 other costs directly related to the transfer of
22 ownership rights;



- 1 (4) Related costs covered under the contract;
- 2 (5) The basis on which funds are to be deposited in trust,
- 3 including:
- 4 (A) The name and address of the trustee; provided
- 5 that the disclosure shall not preclude the
- 6 cemetery or pre-need funeral authority from
- 7 changing the trustee named;
- 8 (B) The percentage of the contract price for
- 9 trustable items to be placed in trust; provided
- 10 that the percentage shall be no less than seventy
- 11 per cent;
- 12 (C) The percentage of the contract price for
- 13 trustable items that the cemetery or pre-need
- 14 funeral authority will retain and not deposit
- 15 into the trust; provided that the percentage
- 16 shall not be more than thirty per cent; and
- 17 (D) Where a portion of the contract price relates to
- 18 property, services, or related commodities that
- 19 are not trustable items, a clear description of
- 20 what those non-trustable items are;
- 21 (6) The refund, cancellation, and default provisions of
- 22 the contract, including an explanation of the



1 requirements of section 441-22.8, and a statement in
2 twelve-point bold type in substantially the following
3 form:

4 "YOU HAVE REFUND, CANCELLATION AND DEFAULT RIGHTS
5 UNDER STATE LAW AND UNDER THE CONTRACT. PLEASE READ
6 THE CONTRACT CAREFULLY FOR AN EXPLANATION OF THESE
7 RIGHTS";

8 (7) The date and place of execution of the contract;

9 (8) The cemetery or pre-need funeral authority's or its
10 duly authorized agent's signature on the contract and
11 the identification of this person by name and title;

12 (9) A statement that the written contract, when signed,
13 shall constitute the entire agreement between the
14 parties relative to its subject matter and that all
15 obligations of both parties shall be fixed and
16 enforceable by the other parties of the contract;

17 [and]

18 (10) A statement that the contract may not waive any rights
19 of the consumer or duties of the cemetery or pre-need
20 funeral authority under the law[-]; and

21 (11) A statement in twelve-point bold type that complaints
22 concerning the cemetery or pre-need authority may be



1 filed with the department's regulated industries
2 complaints office. The statement shall include the
3 current address, telephone number, and electronic mail
4 address for the regulated industries complaints
5 office.

6 (c) No mortuary, cemetery, or pre-need funeral authority
7 shall charge a price for the cemetery property, interment, or
8 funeral services, whether it be at-need or pre-need, which is
9 greater than the price on the itemized price list or contract
10 which the purchaser had signed, unless the purchaser or the
11 purchaser's authorized representative requests an additional
12 item, the authority discloses the price for the additional item,
13 and the purchaser or its authorized representative approves the
14 price for the additional item. The mortuary, cemetery, or pre-
15 need funeral authority may charge the higher price for the
16 additional item but shall collect in payment only that sum which
17 is the difference between the higher price and the price listed
18 on the itemized price list or contract which the purchaser had
19 previously signed.

20 (d) At the time the services or merchandise are provided
21 under the terms of the contract, the cemetery or pre-need
22 authority shall also provide a written notice to the person



1 requesting the services or merchandise of that person's right to
 2 file a complaint with the department's regulated industries
 3 complaints office. The written notice shall include the current
 4 address, telephone number, and electronic mail address for the
 5 regulated industries complaints office."

6 SECTION 2. Statutory material to be repealed is bracketed
 7 and stricken. New statutory material is underscored.

8 SECTION 3. This Act shall take effect on August 15, 2012.

9

INTRODUCED BY:

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S.B. NO. 2316

Report Title:

Mortuary, Cemetery, or Pre-need Funeral Authority; Disclosure Requirements; Complaints

Description:

Requires a mortuary, cemetery, or other such funeral authority to provide the current address, telephone number, and electronic mail address for the regulated industries complaints office in the disclosures of the written contract and in a written notice provided at the time that merchandise or services are delivered. Effective 8/15/2012.

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

