

JAN 21 2011

S.B. NO. 938

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 it is necessary to
2 ensure that consumers who purchase cemetery and pre-need
3 cemetery or funeral services are able to make informed
4 decisions, are protected against the loss of pre-paid funds, and
5 are able to deal with ethical and licensed pre-need funeral
6 service authorities.

7 The purpose of this Act is to adopt measures to increase
8 oversight and regulation of Hawaii's funeral industry to protect
9 consumers. This Act establishes an advisory committee;
10 establishes a pre-need cemetery and funeral special fund with
11 proceeds used for investigations, audits, and legal actions
12 including retention of legal counsel, certified public
13 accountants, personnel, and consultants; requires new
14 information in reports submitted by cemetery and pre-need
15 authorities; requires annual reports from the department of
16 commerce and consumer affairs; and introduces other provisions
17 to increase protection of funeral industry consumers.



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

4 "§441- Advisory committee. (a) In addition to any
5 other powers and duties authorized by law, the director shall
6 appoint an advisory committee consisting of cemetery authorities
7 and pre-need funeral authorities licensed under this chapter and
8 members of the public; provided that:

9 (1) At least two of the committee members shall be
10 licensees; and

11 (2) At least three of the committee members shall be
12 public members, including:

13 (A) A certified public accountant licensed pursuant
14 to chapter 466 who is experienced in trust-
15 related financial accounting;

16 (B) An actuary who at minimum has earned the
17 designation of associate of the Society of
18 Actuaries and who has experience in preparing
19 actuarial reports;

20 (C) A public member with not less than five years of
21 experience in analyzing financial information
22 including but not limited to credit analysis; and



1 (D) A public member who is associated with an
2 advocacy group having an interest in the program.

3 The director may also appoint members as may be recommended by
4 industry organizations and consumer organizations.

5 (b) The advisory committee, at the request of the
6 director, shall advise the director:

7 (1) On an on-going basis, in carrying out the director's
8 duties under section 441-19(1) and any administrative
9 rules adopted thereunder;

10 (2) In determining the availability, efficacy, associated
11 costs, and possible revenue sources related to the
12 development, collection, and reporting of additional
13 licensee and trust financial information;

14 (3) On enforcement of this chapter or chapter 436B and
15 related administrative rules;

16 (4) In proposing and developing amendments to this chapter
17 or to any rules adopted pursuant to this chapter; and

18 (5) On any other matter of concern regarding the funeral
19 industry.

20 (c) The members of the advisory committee shall serve
21 without compensation, but shall be reimbursed for expenses,



1 including travel expenses, necessary for the performance of
2 their duties.

3 (d) No member of the advisory committee shall bear any
4 civil liability for any act done in furtherance of the purpose
5 for which the advisory committee was established.

6 §441- Pre-need cemetery and funeral special fund; use of
7 fund; fees. (a) The director shall establish and maintain a
8 trust fund that shall be known as the pre-need cemetery and
9 funeral special fund, the proceeds of which may be used by the
10 department to investigate any violation of this chapter or
11 chapter 436B, and any related administrative rules.

12 (b) The director shall collect a one time fee of not more
13 than \$ _____ per contract from each cemetery authority,
14 pre-need funeral authority, or other operator defined by the
15 department for deposit into the pre-need cemetery and funeral
16 special fund, as provided in rules adopted by the director
17 pursuant to chapter 91. The fee shall apply to every contract
18 accepted by the cemetery authority, pre-need funeral authority,
19 or other operator on or after July 1, 2011. The fee may be
20 reduced proportionately for each contract that terminates or is
21 cancelled within the first six months of the life of the
22 contract. Each cemetery authority, pre-need funeral authority,



1 or other operator shall provide payment to the director on
2 January 31 and June 15 of every year for all contracts accepted
3 by the authority during the prior six-month period.

4 (c) The director, as the trustee of the pre-need cemetery
5 and funeral special fund, shall be authorized to expend moneys
6 in the fund to:

7 (1) Enforce this chapter, chapter 436B, and any related
8 administrative rules;

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

13 (3) Retain a certified public accountant for accounting
14 and auditing of pre-need trusts, perpetual care funds,
15 providers of funeral service, and cemetery
16 authorities;

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

21 (5) Retain a consultant to recover and collect any
22 payments to the pre-need cemetery and funeral special



1 fund, including interest, from cemetery authorities
2 and pre-need funeral authorities.

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

16 SECTION 3. Section 441-1, Hawaii Revised Statutes, is
17 amended by adding three new definitions to be appropriately
18 inserted and to read as follows:

19 "Board" means the board of cemetery and funeral trusts.

20 "Consumer organization" means an organization that
21 advocates for the interests of consumers under this chapter.



1 "Industry organization" means an organization composed of
2 businesses in the funeral industry."

3 SECTION 4. Section 441-23, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "~~§~~441-23 **Fine, revocation, suspension, and renewal of**
6 **authority licenses.** In addition to any other actions authorized
7 by law, the director may fine an authority, revoke any authority
8 license, ~~[or]~~ suspend the right of the licensee to use the
9 license, impose restrictions, conditions, or limitations upon
10 the authority's license, deny, or refuse to renew, reinstate, or
11 restore any license for any cause authorized by law, including
12 but not limited to the following:

- 13 (1) ~~[Any dishonest or fraudulent act as a cemetery or pre-~~
14 ~~need funeral authority that causes substantial damage~~
15 ~~to another;]~~ Making one or more untrue statements,
16 omitting one or more material facts, committing a
17 dishonest or fraudulent act, or engaging in conduct
18 that is deceptive, unfair, misleading, coercive, or
19 intimidating;
- 20 (2) Making ~~[repeated]~~ one or more misrepresentations or
21 false promises through advertising or otherwise;



- 1 (3) Violation of this chapter or the rules adopted
- 2 pursuant thereto[+], or failure to comply with
- 3 requirements for licensure, including any
- 4 restrictions, conditions, or limitations imposed by
- 5 the director;
- 6 (4) Commingling the money or other property of others with
- 7 that of the licensee;
- 8 (5) Having been adjudicated insane or incompetent;
- 9 (6) Selling or offering to sell any cemetery property,
- 10 pre-need interment, funeral services, or pre-need
- 11 funeral services based on speculation or promises of
- 12 profit from resale;
- 13 (7) Failing to timely file the actuarial study or an
- 14 audited financial statement or to maintain in effect
- 15 the bond [as] required by section 441-22;
- 16 (8) Failing to maintain pre-need trusts or perpetual care
- 17 funds as required by this chapter; or
- 18 (9) Violating section 441-22.7."

19 SECTION 5. Section 441-24, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "**§441-24 Inspection of cemetery or pre-need funeral**
22 **authority books.** The books, records, and papers of every



1 cemetery authority whether or not a corporation, which operates
2 or claims to operate a perpetual care cemetery, and of every
3 pre-need funeral authority shall be subject to examination by
4 the director as provided by law, and every cemetery authority
5 operating a perpetual care cemetery, and every pre-need funeral
6 authority shall submit [such] the information as may be required
7 by the director to furnish information as to whether or not the
8 cemetery or pre-need funeral authority has complied with this
9 chapter.

10 The records of every cemetery authority shall include the
11 information required under section 441-3(b). The records of
12 every cemetery and pre-need funeral authority shall also include
13 a record of any and all notifications from purchasers or
14 representatives of purchasers regarding:

15 (1) Any change in address; and

16 (2) Notice of cancellation,

17 and shall include copies of any and all written notices of
18 termination that were sent to purchasers. Change of address
19 notices, cancellation notices, [~~and~~] notices of termination, and
20 all other records altering or amending the contract, or
21 otherwise relating to each contract containing any pre-need
22 funeral services or pre-need interment services shall be



1 maintained by the authority at all times prior to delivering
2 goods or rendering services on the contract and for a period of
3 at least [~~six months~~] three years after all goods have been
4 delivered or all services have been rendered."

5 SECTION 6. Section 441-24.5, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§441-24.5 Pre-need trusts and perpetual care funds;**
8 **audited financial statements.** (a) Every cemetery authority
9 operating a perpetual care cemetery or which engages in pre-need
10 sales [~~or~~] and holds money in trust for pre-need interment
11 services, and every pre-need funeral authority which engages in
12 pre-need sales or holds money in trust for pre-need funeral
13 services shall submit an audited financial statement and
14 actuarial report of its pre-need trusts and perpetual care funds
15 to the director within ninety days after the close of the
16 authority's books on a fiscal or calendar year basis.

17 (b) The director shall impose restrictions on sales and
18 withdrawals for a period of time determined by the director to
19 be adequate to ensure the integrity of the trust; provided that
20 the period of time shall in no event be less than thirty days.
21 All costs of the audit imposed by the director shall be borne by
22 the pre-need funeral authority or cemetery authority.



1 (c) During any period that sales are suspended or
2 withdrawals are prohibited under subsection (b), the cemetery
3 authority or pre-need funeral authority shall honor all
4 contracts that were entered into prior to the suspension of
5 sales and become due. The director shall authorize withdrawals
6 from the trust to fulfill these contracts."

7 SECTION 7. Section 441-24.6, Hawaii Revised Statutes, is
8 amended by amending its title and subsection (a) to read as
9 follows:

10 "[+]§441-24.6[+] **Pre-need trusts and perpetual care funds;**
11 **actuarial studies.** (a) Every cemetery authority operating a
12 perpetual care cemetery and every cemetery or pre-need funeral
13 authority offering pre-need services shall contract with an
14 independent actuary to conduct an annual study of its level of
15 funding. In the case of a perpetual care cemetery, the study
16 shall [~~be to~~] determine whether the authority's perpetual care
17 fund will provide sufficient income to cover the costs of the
18 perpetual care of the cemetery. In the case of a cemetery or
19 pre-need funeral authority, the study shall [~~be to~~] determine
20 whether the amount in the authority's pre-need trust as of the
21 end of the fiscal year will be sufficient to cover the future



1 claims of pre-need plan participants[-] as of the end of the
2 fiscal year."

3 SECTION 8. Section 441-24.7, Hawaii Revised Statutes, is
4 amended by amending its title and subsection (a) to read as
5 follows:

6 " [H]§441-24.7[H] Actuarial study, audited financial
7 statement, trust agreement; available for review. (a) The
8 actuarial study, audited financial statement, and trust
9 agreement filed by a cemetery or pre-need funeral authority, as
10 required by this chapter, shall be available for review by any
11 member of the general public upon request. The review of these
12 documents shall be done during the department's normal business
13 hours. The director shall have the right to deny review for
14 reasons specified in rules adopted by the director pursuant to
15 chapter 91. The department shall submit a report annually to
16 the legislature that describes the status of the audited
17 financial reports and actuarial reports of licensees. The
18 report shall include but not be limited to the following:

- 19 (1) A list of all licensees required to submit reports;
- 20 (2) Licensees granted extensions for filing reports;
- 21 (3) Penalties assessed for late reports;



- 1 (4) The total estimated aggregate dollar amount required
2 to perform contracts in all trusts;
- 3 (5) The total estimated aggregate dollar amount due to all
4 trusts as of the date of execution of contracts not
5 yet performed;
- 6 (6) The total aggregate dollar amount in all trusts; and
- 7 (7) Recommendations for improving the reporting system for
8 licensees and oversight of the cemetery and pre-need
9 funeral industry."

10 SECTION 9. Section 441-38, Hawaii Revised Statutes, is
11 amended by amending subsection (b) to read as follows:

12 "(b) [A] No less than seventy per cent of the funds paid
13 by the purchaser shall be transferred to the trustee to remain
14 in trust; provided that a cemetery or pre-need funeral authority
15 may take and receive, but shall transfer to the trustee as part
16 of or incident to the pre-need trust, all payments received
17 after the recovery of acquisition costs, which shall be the
18 lesser of thirty per cent of the contract price or the
19 difference between the contract price and the cost of the pre-
20 need interment or pre-need funeral services contracted to be
21 provided. The transfer shall be made not later than thirty days
22 after receipt of payment from the purchaser and shall be



1 immediately deposited in the trust. The cemetery authority or
 2 pre-need funeral authority shall provide an annual statement to
 3 the purchaser within thirty days after the close of the cemetery
 4 authority or pre-need funeral authority's prior fiscal year."

5 SECTION 10. Statutory material to be repealed is bracketed
 6 and stricken. New statutory material is underscored.

7 SECTION 11. This Act shall take effect on July 1, 2011.
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INTRODUCED BY:

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[Signature]



Report Title:

Funeral Industry; Commerce and Consumer Protection; Advisory Committee; Fees

Description:

Establishes an advisory committee to assist the director of commerce and consumer affairs regarding regulation of the funeral industry. Establishes a pre-need cemetery and funeral special fund. Clarifies prohibited practices. Authorizes the director of commerce and consumer affairs to prohibit a pre-need authority from engaging in sales and withdrawals for failure to submit required audits.

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

