

JAN 21 2011

S.B. NO. 942

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# 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, according to a  
2 report by the American Association of Retired Persons, as of  
3 1999, funds in outstanding pre-need funeral contracts exceeded  
4 \$25 billion. This number is projected to grow substantially as  
5 the population continues to age and to plan for death expenses.

6       The purpose of this Act is to strengthen the State's  
7 consumer protection laws governing cemetery and funeral trusts  
8 by allowing full portability of pre-need funeral plans and one  
9 hundred per cent trusting with interest and earnings to be  
10 applied at the time the plan is redeemed. This Act also  
11 provides for full disclosure to the consumer of all funds and  
12 interest earned through an annual statement.

13       SECTION 2. Section 441-22.8, Hawaii Revised Statutes, is  
14 amended by amending subsection (d) to read as follows:

15       "(d) If the contract is canceled or terminated pursuant to  
16 subsection (a) or (b) or for any other reason, the purchaser  
17 shall be entitled to a refund of the amounts paid by the  
18 purchaser[7] plus interest earned, less amounts that may be



1 retained by the cemetery or pre-need funeral authority for its  
2 costs pursuant to section 441-38(b). The cemetery or pre-need  
3 funeral authority shall make the refund to the purchaser within  
4 thirty days of:

- 5 (1) Receipt of the purchaser's written notice of  
6 cancellation; or
- 7 (2) Termination of the contract."

8 SECTION 3. Section 441-38, Hawaii Revised Statutes, is  
9 amended by amending subsection (b) to read as follows:

10 "(b) [A] One hundred per cent of the funds paid by the  
11 purchaser shall be transferred to the trustee to remain in trust  
12 where the principal and the interest earned remain the property  
13 of the purchaser; provided that a cemetery or pre-need funeral  
14 authority may take and receive[, but shall transfer to the  
15 trustee as part of or incident to the pre-need trust, all  
16 payments received after the recovery of acquisition costs, which  
17 shall be the lesser of] amounts necessary to pay for any  
18 applicable sales tax, licensing fees owed to the department,  
19 trustee fees, trust administration expenses, or cancellation or  
20 termination fees permitted by law; provided further that the  
21 total amount taken or received shall not exceed thirty per cent  
22 of the contract price [~~or the difference between the contract~~



1 ~~price and the cost of the pre-need interment or pre-need funeral~~  
 2 ~~services contracted to be provided].~~ The transfer shall be made  
 3 not later than thirty days after receipt of payment from the  
 4 purchaser and shall be immediately deposited in the trust. The  
 5 trustee shall provide the purchaser with a confirmation notice  
 6 that the payments have been deposited with the trustee within  
 7 thirty days of the receipt of payment by the cemetery or  
 8 pre-need funeral authority. The trustee or pre-need funeral  
 9 authority shall annually provide the purchaser with a written  
 10 statement containing information on the amount of funds  
 11 deposited to date, where the funds are deposited, and interest  
 12 earned."

13 SECTION 4. Statutory material to be repealed is bracketed  
 14 and stricken. New statutory material is underscored.

15 SECTION 5. This Act shall take effect on July 1, 2011.

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INTRODUCED BY:

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**Report Title:**

Funeral Industry; Pre-need Funeral Trusts

**Description:**

Requires the deposit into trust of one hundred per cent of all funds paid to purchase a pre-need funeral plan plus all interest earned. Allows a cemetery or pre-need authority to deduct certain allowable expenses from a trust. Requires annual statements of the disposition of trust funds.

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