



NEIL ABERCROMBIE
GOVERNOR

SHAN S. TSUTSUI
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
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KEALI'I S. LOPEZ
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

**PRESENTATION OF THE PROFESSIONAL AND
VOCATIONAL LICENSING DIVISION**

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION & COMMERCE

TWENTY-SEVENTH LEGISLATURE
Regular Session of 2013

Wednesday, January 30, 2013
2:00 p.m.

TESTIMONY ON HOUSE BILL NO. 537, RELATING TO THE FUNERAL INDUSTRY.

TO THE HONORABLE ANGUS L.K. MCKELVEY, 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 House Bill No. 537, Relating to the Funeral Industry.

The purpose of House Bill No. 537 is to require (1) the interest earned by the trust to remain as the property of the purchaser and be refunded to the purchaser upon cancellation of the pre-need contract, (2) 100% of payments made by purchasers of pre-need plans be deposited to trust, subject to certain deductions, and (3) the trustee to provide confirmation notice to purchasers, as well as an annual statement.

The Department supports initiatives that will help consumers as long as those initiatives do not jeopardize the financial stability and solvency of the licensees.

The Department supports the intent of the following provisions in the bill, subject to the recommendations set forth below.

- SECTION 2 – The purchaser be entitled to a refund of interest earned by trust;
- SECTION 3 – 100% of purchaser payments be deposited to trust, except that the Department recommends for clarification purposes, that disbursements be only from the “income of the trust”, to be consistent with HRS sections 441-39 and 441-40;
- SECTION 3 – Confirmation notice to be provided by the trustee. The Department does not object to this language provided the requirement is not onerous on the trustee or unduly increases costs to purchasers of pre-need services and merchandise. Additionally, the Department suggests clarification of when such notice is to be provided (e.g. with each payment, quarterly, semi-annually, yearly) in order for impacts to be determined;
- SECTION 3 – An annual statement be provided to the purchaser by the trustee or pre-need funeral authority. The Department does not object to this language provided the requirements not onerous on the trustee or authority or unduly increases costs to purchasers of pre-need services and merchandise. The addition of “or cemetery authority” should be added to line 9, page 3, following “pre-need authority”, to correctly reflect both authorities that offer pre-need services; and

- SECTION 5 – The effective date of this bill (July 1, 2013) may need to be reconsidered if more lead time is needed by authorities and trustees to prepare for implementation.

Thank you for the opportunity to provide testimony on House Bill No. 537.

STATEMENT FROM

ASSOCIATION OF PRE-NEED FUNERAL PLANS, INC.

TO THE COMMITTEE ON COMMERCE, AND CONSUMER PROTECTION

SUBJECT: HOUSEBILL 537 A Bill Relating to Pre-Need Funeral Trusts

HEARING DATE: Wednesday January 30, 2013 at 2:00 p.m.

THIS ASSOCIATION STRONG OPPOSES the proposed changes to Chapter 441 of the Hawaii Revised Statutes, entitled "RELATING TO PRE-NEED FUNERAL TRUSTS"

This Association consists of several preneed authorities doing business in the State of Hawaii. Hawaii Pre-Need authorities have reviewed this Bill and feel that any change to the entrusting requirements jeopardizes their ability to continue offering this pre-need service to the people of Hawaii. Should this bill pass, many of our members, especially the smaller industry operators will be forced to cease offering these plans. It is simply inconceivable how curtailing this program can be of any benefit to the public.

THE 100% FUNDING OF THE CONTRACT PRICE AS PORPOSED BY THE HOUSE BILL DOES NOT ENSURE A HIGHTER LEVEL OF CONSUMER PROTECTION.

The current requirements of annual audits and actuarial reports provide adequate consumer protection.

Consumer protection is achieved through proper enforcement of existing laws.

THE 100% FUNDING OF THE CONTRACT PRICE AS PROPOSED BY THE HOUSE WILL CAUSE PRE-NEED AUTHORITIES TO WITHDRAW THIS SERVICE FROM THE MARKET.

Requiring 100 % funding of pre-need contracts will result in the termination of Sales of pre-need contracts. The direct effect will be the loss of over 200 jobs within the State. Given the present state of economy, there is no justification for closing these additional work opportunities.

- Many families depend on these contracts to assist them with at need cost of providing funeral services for family members. There is **no justification** for closing this option for families in the State of Hawaii.

REQUIRING THAT THE INTEREST INCOME BE HELD FOR THE CONTRACTHOLDER IS NOT FEASIBLE.

- Each pre-need trust administration would have to take on the task of a mutual fund administrator.
- The costs to maintain each account separately given that the average contract is less than \$8,000.00, would result in consumption of all interest in addition to principal reductions. This lies in direct conflict with the intent of preserving the principal of the trust.
- The Trust administration would have to send each contractholder an annual statement of earnings, the cost for which would likely be more than the earnings of the entrusted amounts.
- The Trustee would be responsible for contract administration, and would not be willing to perform the task for the statutory compensation.
- Given the average size of the pre-need funeral contract at \$8,000.00, the cost of trust administration would be prohibitive.

We are extremely troubled by the proposed actions and do not believe there is any justification for its enactment.

RESPECTFULLY SUBMITTED,

Eadean M. Buffington, for the Association

BORTHWICK MORTUARY

1330 Maunakea Street

Honolulu, Hawaii 96817

Phone: (808) 522-5200 FAX: (808) 522-5206

Fax Cover Sheet

Date: **January 28, 2013**
To: **Representative Angus McKelvey**
Company: **Commerce and Consumer Protection**
Fax No.: **586-8437**
From: **Jerome Andrade**
Subject: **HB 537**

Remarks:

Testimony in Opposition to HB537 Re Funeral Pre-need Trusts.

Number of pages including this cover sheet: 4

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To The House Committee on Commerce and Consumer Protection
The Honorable Angus L.K. McKeivey
And Committee Members

Testimony against HB 537

It is the position of our industry to operate under the current laws and legislation that were accepted and dually agree upon by DCCA and Funeral and Cemetery Industry. For this reasons stated below I would to submit testimony against HB 537 We feel DCCA has enough authority to enforce the problems that may occur in the funeral and cemetery industry. There is a current law which requires the filing of a annual report with DCCA.

In summary this proposal bill would put a hardship on our industry and likely force the closure of all pre-need funeral plans and pre-need cemetery plans Pre-need plans actually keep down the price for funeral services as the plans are used for future service at today's prices. The emotional side of pre-arranging is just as important as the financial side and most people pre arrange to help there families make handling death in family easier at the worse time of their lives.

The public has not been harmed by lack of regulations. Rather than proposing more regulations for the funeral and cemetery industry, which has very little documented complaints, it may be more prudent to leave the decision of the future of our business to the consumer with their right to purchase our services or not. Our business is about helping people during a difficult time in their lives. We should be spending our time comforting our consumers rather than following up on unnecessary paperwork.

Yours truly,



Jerome Andrade , Past President
Hawaii Funeral & Cemetery Association
1330 Maunakea Street
Honolulu, Hawaii 96817
PH: 522-5200 Fax: 522-5206
E-Mail Jerome.Andrade@sci-us.com

January 28, 2013

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TO THE COMMITTEE ON COMMERCE, AND CONSUMER PROTECTION

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RESPECTFULLY SUBMITTED,

Eadean M. Buffington, for the Association



**HAWAII
MARKET DIRECTOR**

MEMORANDUM



Hawaiian Memorial Life Plan

Db. Hawaiian Memorial Park Cemetery/Borthwick (Honolulu/Kauai)

P.O Box 1246, Kaneohe, Hawaii 96744
Main Line (808)233-4400 Fax (808) 522-9310

January 28, 2013

Written Testimony in OPPOSITION of HB537 – Preneed Trust

TO: House Committee on Consumer Protection and Commerce
The Honorable Angus L.K. McKelvey, Chair
The Honorable Derek S.K. Kawakami, Vice-Chair
Members of the Committee

HEARING DATE/TIME: Wednesday, January 30, 2013, 2:00 p.m.

Chair McKelvey, Vice-Chair Kawakami and members of the Committee:

My name is Jay Morford and I am the Vice President for Hawaiian Memorial Life Plan, Ltd. Hawaiian Memorial Life Plan, Ltd., Borthwick Mortuary, Hawaiian Memorial Park Cemetery and Green Haven Cemetery is a member of the Hawaii Funeral and Cemetery Association, Inc. ("HFCA"). All the Business entities listed OPPOSE HB537. We support the position of the Hawaii Funeral and Cemetery Association in the opposition of this Bill. We feel that Statue 441 that regulates the preneed funeral authorities and trusting requirements is sufficient and no additional regulation is necessary. HB537 will place undue financial burden on the Hawaii funeral authorities and if enacted will cause loss of employment, and less competition in the market place.

Jay Morford
Vice President, HMLP, Ltd.

HOSOI GARDEN MORTUARY, INC.

30 North Kukui Street Honolulu, Hawaii 96817 Tel: (808) 538-3877 Fax: (808) 533-4981

COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

Presentation by Clifford Hosoi
President Hosoi Garden Mortuary, Inc. and Hosoi Life Plan, Inc.
Monday, January 28, 2013

TESTIMONY AGAINST HB537
Wednesday January 30, 2013 2:00 p.m. Room 325

Representative Angus L.K. McKelvey, Chair
Representative Derek S.K. Kawakami, Vice Chair

Dear Chair McKelvey and Committee Members:

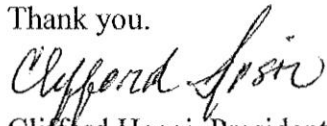
On behalf of Hosoi Garden Mortuary, Inc. and its pre-need subsidiaries, Hosoi Life Plan, Inc. and Garden Life Plan, Ltd., we thank you for the opportunity to comment on this bill before the Committee.

We are against the proposed bill as this would cause the current trusted funeral plan to be unworkable. This bill's effect would be to have the pre-need authorities without a means to offset its current costs at the time of sale. This will ultimately cause a reduction in benefits presently enjoyed by the buyer and if carried forth would damage the viability for us to offer the plan. The very benefits a purchaser enjoys from the trusted plan would be lost. The lost benefit is the fixed guaranteed funeral price. The current law allows us to offset our current selling cost with the 30% portion of the contract. Most pre-need authorities including ours have expenses exceeding the 30% portion. With the proposed increased reporting requirements administration costs would increase with this bill. Without the costs offset at time of sale and increased administrative reporting, there will be a need to make up that shortfall upon servicing the contract and the offering of the fixed guaranteed funeral price would be in jeopardy.

Another benefit that would be lost to the purchaser is the advantages of the Qualified Funeral Trust. At this time the trust pays the income taxes on the earnings. It has been accepted that the buyer does not want to pay taxes on earnings or benefits that are deferred to them. In short, we feel the current model would be lost and the advantages and benefits of the current trusted plans could no longer exist under this proposed legislation.

We have been operating under the current laws for the last fifty years and have serviced over 10,000 plans. While portability is an issue for our clients the trusted funeral plans offer full transfer of rights and privileges. Our company is small but we believe that our funeral counselors offer more than just plans that fixed costs, but also educate the buyer in the funeral process, responsibility to take care of funeral expenses before the need, and comfort in knowing that the burden is not passed to family or any agency. We offer term life insurance at no additional costs to pay off outstanding balances upon the passing of the buyer. We feel that this choice for consumers should not be taken away from them. The more products the consumer has to choose from the better it will be. Products already exist that offers portability. HB537 is attempting to damage current pre need practices to something that just will not work. Keep the trusted funeral plan and allow consumers to decide what option they desire.

Thank you.

A handwritten signature in cursive script that reads "Clifford Hosoi".

Clifford Hosoi, President
Hosoi Garden Mortuary, Inc.



BALLARD FAMILY MORTUARY

MAUI'S ONLY LOCALLY OWNED AND OPERATED MORTUARY

WE ARE A FULL SERVICE MORTUARY LOCATED NEAR KAHULUI AIRPORT THE GATEWAY TO MAUI. CREMATORY ON PREMISES.

DATE: 1-28-13

FROM: Mark Ballard

TO: _____

Fax #: (808)877-1497

ATTN: Representative Angus McKelvey's office, CPC Committee

FAX #: 800-586-6659

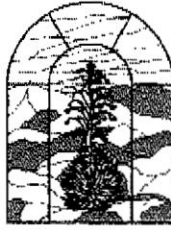
PAGES INCLUDING COVER PAGE: 2

Comments: Regarding HB537

Phone (808) 871-7911

Fax (808) 877-1497

440 Ala Makani St. Kahului, HI 96732



January 28, 2013

Ballard Family Mortuary

RE: HOUSE BILL 537

Dear Representative Angus McKelvey,

As the owner of Ballard Family Mortuary on Maui, we have striven to give our families the best service in Hawaii. We have sold Pre-Funded funerals for 14 years, and have a very good reputation.

I strongly oppose House Bill 537, as this bill will force us to lay off over 30 people on Maui who sell funeral plans. This will also put us in the position of either selling or closing our business as we depend on this income to survive.

I would be very happy to talk with you if that will help you to vote no against House Bill 537. Thank you very much.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Ballard". The signature is written in a cursive, flowing style with a long horizontal line extending to the right.

Mark Ballard, President

DODO MORTUARY LIFE PLAN INCE.
459 WAIANUENUE AVENUE, HILO, HAWAII 96720
PH: 808-9356886 FAX: 808-9615078
jimarakaki@hawaii.rr.com
January 22, 2013

Representative Angus McKelvey and members
Consumer Protection and Commerce Committee
Rm 320, Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Honorable Chairman Angus McKelvey and members of CPCC,

We at Dodo Mortuary life Plan Inc., in Hilo, DO NOT support HB 537. This bill requires 100% trusting of funds paid into a funeral plan contract. The present law allows 70% trusting and 30% operating funds to operate our company. All businesses need to pay the government first through taxes, then pay for all statute requirements such as bonding, audit, actuary and licensing fees. Then we need to pay our payroll, utilities, supplies, mortgages or rent, accounting and legal fees, maintenance, computer services and all other expenses necessary to run a business. Hopefully there is a profit in the end which does not always happen.

This bill also requires "full disclosure to the consumer of all funds and interest earned through an annual statement", which is very onerous as our book keeping is not like a bank with a set rate of interest per account. The cost to set up a system will drive us out of business. This bill also requires the trustees to provide the purchaser a confirmation notice of all payments deposited with the trustee within 30 days and shall annually provide the purchaser with a written statement containing information on the amount of funds deposited to date, where the funds are deposited, and interest earned. Most trustees who manage these funds are not set up to do what this bill requires and the cost to conform to the bill language will amount to a huge expense when the bill requires a refund of interest earned. Most trustees of these funds may chose not be trustees as these requirements are just too costly and difficult to administer.

Every legislative year our industry see the same kind of bills introduced at the legislature and we have to come down from the neighbor islands to plead you to not pass these bills. Bill 537 if passed will mean that our company will close our doors to pre-need sales and lay off all our employees and farm out the accounting of our present trust funds account to another company. Once you kill off the pre-need funeral plans the "At need Mortuaries" can raise their prices to whatever the market will bear and the consumer will just have to pay the cost for an "at need" funeral. Pre-need funeral plans give the public an option to plan ahead and lock in a price for a funeral that will happen sometime in the future. Monthly payments make purchasing a funeral plan affordable as buying a car on an installment plan.

I hope that you will confer with members of our industry to find out the facts and also DCCA to see if our industry benefits the consumer under the present laws.

Yours truly,

A handwritten signature in black ink, appearing to read "James Arakaki". The signature is written in a cursive style with a large, looping initial "J".

James Arakaki

President