

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII  
ASSOCIATION FOR JUSTICE (HAJ) IN SUPPORT OF S.B. NO. 341, SD 1, SD 2**

DATE: Thursday, March 14, 2013

TIME: 5:30 pm

To: Chairman Angus McKelvey and Members of the House Committee on Consumer Protection and Commerce:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in support of S.B. No. 341, SD 1, SD 2 , Relating to Disposition of Remains.

The proponents of this bill, the Hawaii Funeral & Cemetery Association, and the Hawaii Association for Justice collaborated to resolve the language in section 11 on Immunity during the Senate hearings. Both parties have agreed to the current version in the SD 2. HAJ had proposed that the word “reasonably” be placed at the beginning of line 4 on page 17; and that the gross negligence exception on lines 8-10 in the earlier version be deleted. The requirement that funeral homes and cemeteries “reasonably” believe they can rely on authorizations is already found on page 14, line 16, so this proposal mirrors the standard already found in the bill.

Thank you for the opportunity to testify on this measure. Please feel free to contact me should there be any questions.

**HAWAII FUNERAL AND CEMETERY ASSOCIATION, INC.  
PRESENTED BY ITS BOARD OF DIRECTORS AND OFFICERS**

**Written Testimony in SUPPORT of  
SB341, SD2 – Relating to Disposition of Remains**

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: March 14, 2013, at 5:30 p.m.

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

My name is Jay Morford and I am a Director of the Hawaii Funeral and Cemetery Association, Inc. (“HFCA”). The HFCA is made up of members in the funeral, mortuary, cemetery and crematory industries, and certain vendors of those industries. The HFCA is comprised of 24 members. The HFCA Board is comprised of nine directors. There are four officers. All directors and officers are persons who are principals, officers and/or employees of Hawaii entities in the industries. None of the vendor members are directors or officers.

The HFCA Board and its officers support SB341, SD2. SB341, SD2 also has wide support from the HFCA members.

Funeral establishments, cemeteries, mortuaries and crematories (individually and collectively referred to as “Establishment” or “Establishments”) are often approached by persons who have a relationship to a decedent and wish to direct or assist with the decedent’s direction for the disposition of the decedent’s remains. In some instances, the decedent has, prior to death, indicated the decedent’s wishes as to disposition through a written instrument, for example, a will or pre-need contract. In a best case scenario, the person informs the Establishment of the decedent’s written wishes or the Establishment has on record the pre-need contract that includes the decedent’s indication for disposition and there is no contrary wish of any other surviving person. In some instances, the decedent has not provided any written direction for disposition and the person provides direction to the Establishment presumably based on the person’s understanding of the decedent’s wishes or, in some cases, the person’s belief as to what the decedent would have wished. In other instances, there may be a dispute as to the decedent’s wishes, even if there is an indication by the decedent in a will or pre-need contract, or a dispute amongst surviving persons as to the most appropriate disposition under the circumstances.

Forty-eight states have some form of legislation that specifies the priority of the persons who may control the disposition of a decedent’s remains or the arrangements for funeral goods and services, which includes the decedent as a person who has priority. The HFCA believes that it is important for Hawaii to have a law that clearly establishes these priorities so that Establishments may rely on the direction of the decedent or the direction of those people with priority in cases where persons in different priority categories have differing wishes as to the disposition. Setting forth the priority will also minimize disputes between persons who are in different priority categories.

Equally important is specifying a reasonable time by which persons who may have a right in the decision must respond after reasonable efforts to notify them have been made. Currently, if there are multiple persons in the same category, such as children of the decedent, Establishments are requiring that all of the children agree in writing to an indicated disposition. Frequently, this process delays, sometimes significantly, the final disposition of the decedent. In some instances, the persons working with the Establishment do not have information on how to notify other persons in the same category. In some instances, notification has been given but no response, not even an objection or a preference, has been received. Such delays cause anger and frustration amongst the surviving persons who are working with the Establishment and those who have agreed to the indicated disposition. Passage of SB341, SD2 will permit the prompt disposition as directed by those persons who have a right to direct the disposition where other persons in the same category have not timely responded after reasonable efforts.

The HFCA also believes that Establishments should be permitted to rely on the representations of the person who holds the right of disposition and to carry out the instructions of that person without liability and without having to independently verify the right, priority or the existence of others who may have priority, provided the Establishment has not been given written notice from a person who is in the same priority category that such person objects. The law should permit Establishments to rely and act upon written directions from the decedent, if there are written directions, or any persons who have the right of disposition without liability.

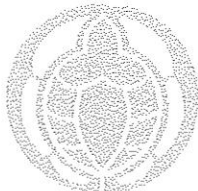
In instances where there is no person who has the right to control the disposition or no such person can be found, the law should permit Establishments to control the disposition and dispose of the decedent's remains by any means that are not prohibited by Hawaii law. Currently, Establishments cannot dispose of remains that have been delivered to the Establishment where it is determined post-delivery that there is no person to direct the disposition. E.g., an Establishment may be asked to pick up a decedent's body and after the body is picked up and is in the possession of the Establishment the person who requested the pick-up notifies the Establishment that he or she will not give any direction or cannot pay for any disposition, or the person or any next of kin cannot subsequently be found. In those cases, the Establishment should be permitted to dispose of the remains provided all stated conditions as provided in the statute have been satisfied.

The law should also permit Establishments to dispose of cremated remains that have not been picked-up by the person with the right of disposition. There are occasions where after a properly authorized cremation, the person or persons with the right of disposition does not/do not return to take custody of the cremated remains. Establishments have been retaining the cremated remains without knowing whether they will ever be picked up. It is unreasonable to require Establishments to indefinitely hold, store and care for cremated remains that have not been picked up. Establishments that are holding cremated remains for 60 days or more, because the person with the right of disposition has not taken custody of the cremated remains, should be permitted to dispose of the cremated remains in any manner that is not inconsistent with Hawaii law. Disposal could include releasing the cremated remains to a person who does not have the right of disposition due to that person's lower priority.

It is noted that Representative McKelvey introduced companion bill HB134 and this Committee passed HB134 out with amendments as set forth in House Committee Standing Report No. 191 and HB134, HD1. SB341, SD1 made similar amendments. The amendment found in Section 11 (Immunity) resulted from testimony from the Hawaii Association for Justice ("HAJ") and the agreement by the HFCA. However, SB341, SD1 was subsequently further

amended by deleting the added sentence that was requested by the HAJ (i.e., “The immunity contained in this section shall not apply to gross negligence, intentional, willful or wanton conduct.”) and adding the word “reasonably” before the word “rely” in Section 11. See, Section 11 of SB341, SD2. No further amendments are requested by the HFCA.

The inability of Establishments to act where there are multiple surviving family members or there is disagreement amongst persons who wish to direct the disposition of the decedent, even if there is a will or pre-need contract in which the decedent specified a manner of disposition, results from the uncertainty of what an Establishment is authorized to do by law. Passage of SB341, SD2 will provide a statutory scheme that may be relied on by Establishments and will indemnify Establishments and their officers, directors, members, partners, funeral directors, managers, and employees who reasonably rely in good faith upon the instructions of persons claiming the right of disposition.



# HOSOI GARDEN MORTUARY, INC.

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

**March 13, 2013**

**Written Testimony in SUPPORT of  
SB341, SD2 – Relating to Disposition of Remains**

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

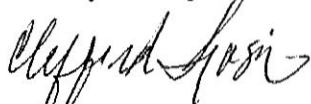
HEARING DATE: March 14, 2013 HEARING TIME: 5:30 p.m.

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

My name is Clifford Hosoi and I am the President for Hosoi Garden Mortuary, Inc. Hosoi Garden Mortuary, Inc. is a member of the Hawaii Funeral and Cemetery Association, Llc. ("HFCA"). We support SB341, SD2. We believe that it is important for Hawaii to have a law that clearly establishes the priorities of those persons who may direct the disposition of a decedent and that permits funeral establishments, cemeteries, mortuaries and crematories to reasonably rely in good faith on those directions without liability. The law will minimize disputes between persons who are in different priority classes and will permit the prompt disposition as directed by those persons who have a right to direct the disposition.

Thank you for your consideration,



Clifford Hosoi

# *Leeward Funeral Home*

849 4<sup>th</sup> Street • Pearl City, Oahu Hawaii, 96782  
Tel: (808) 455-1041 Fax: (808) 456-3121

## **Written Testimony in SUPPORT of SB341, SD2 – Relating to Disposition of Remains**

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: March 14, 2013, at 5:30 p.m.

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

My name is David Morikami, Vice-President and Operations Manager of Leeward Funeral Home (est. 1967), in Pearl City, Hawaii. Our funeral home is a member of the Hawaii Funeral and Cemetery Association and the National Funeral Directors Association.

I am testifying in support of SB341, SD2 which would establish clear priorities of who may direct the disposition of a decedent. These priorities would serve to address these issues: 1) the ability to rely upon representations made by family members so that we can carry out our duties in good faith and without liability; 2) the minimizing of disputes which commonly occur today, which often delay the funeral and disposition of the decedent; 3) allowing for an individual to control his/her own funeral and/or disposition; 4) addressing decedent(s) remains abandoned at the funeral establishment; 5) decedents with next of kin who are missing or estranged

In closing, passage of SB341, SD2 would not only benefit our funeral and cemetery establishments, but it would most importantly, assist the families that we serve. Thank you for the opportunity to testify.



David Morikami  
V.P./Operations Manager  
Leeward Funeral Home



**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

March 14<sup>th</sup> 2013

### **Written Testimony in SUPPORT of SB341, SD2 – Relating to Disposition of Remains**

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: March 14, 2013, at 5:30 p.m.

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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 support SB341, SD2. We believe that it is important for Hawaii to have a law that clearly establishes the priorities of those persons who may direct the disposition of a decedent and that permits funeral establishments, cemeteries, mortuaries and crematories to reasonably rely in good faith on those directions without liability. The law will minimize disputes between persons who are in different priority classes and will permit the prompt disposition as directed by those persons who have a right to direct the disposition.

*Jay Morford*

Jay Morford  
Vice President, HMLP, Ltd.



# MILILANI GROUP, INC.

## Written Testimony in SUPPORT of SB341, SD2 – Relating to Disposition of Remains

**HEARING DATE/TIME:** March 14, 2013, at 5:30 p.m.

**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

**FROM:** Eadean Buffington, Vice President for Mililani Group, Inc. dba Mililani Memorial Park and Mortuary and Vice President and Board Member for the Hawaii Funeral and Cemetery Association, Inc.

**DATE:** March 13, 2013

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

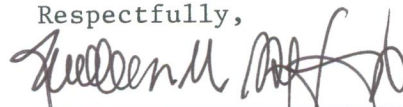
I am a Board Member of the Hawaii Funeral and Cemetery Association, Inc. (“HFCA”) as well as the Vice President for Mililani Group, Inc. and **stand in strong support of SB341, SD2.**

It is critical for our families that we have a law that clearly establishes the priorities of those persons who may direct the disposition of a decedent and allows us to reasonably rely in good faith on those directions.

Without this directive, we at Mililani have been requiring that all family members within the family group sign for authorization. If any of these persons are minors or otherwise legally incapacitated, should we expect the family to secure a guardian before we proceed with the disposition requested by the family? Many times the family members have grown apart and have no contact information for certain other members; even with the consensus of those here making arrangements, we are unable to proceed for lack of perhaps a single signature.

This law will minimize disputes between persons who are in different priority classes and provide the decedent’s family with reasonable requirements permitting the prompt disposition as directed by those persons who will have the right to do so.

Respectfully,



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Eadean M. Buffington  
Vice President

**Downtown**

38 S. Kukui St., Honolulu, Hawai‘i  
96813-2319  
Tel. (808) 524-5211  
Fax (808) 533-7489

**Waipio**

P.O. Box 457, Pearl City, Hawai‘i  
96782-0457  
Tel. (808) 677-5631  
Fax (808) 677-9267

exec@mdmhi.com  
www.mililanigroup.com



The following individuals from Mililani Group, Inc. have submitted the same written testimony in strong support of SB341, SD2:

Eadean Buffington

Michael Oh

Miles Okamura

Peter Dilwith

**kawakami2 - Rise**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, March 13, 2013 4:32 PM  
**To:** CPCtestimony  
**Cc:** idawoolsey@hotmail.com  
**Subject:** \*Submitted testimony for SB341 on Mar 14, 2013 17:30PM\*

**SB341**

Submitted on: 3/13/2013

Testimony for CPC on Mar 14, 2013 17:30PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Ida Woolsey		Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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