



MILILANI GROUP, INC.

February 19, 2013

**Written Testimony in SUPPORT of
SB341, SD1 – Relating to Disposition of Remains**

TO: Senate Committee on Judiciary and Labor
The Honorable Clayton Hee, Chair
The Honorable Maile S.L. Shimabukuro, Vice-Chair
Members of the Committee

HEARING DATE/TIME: February 20, 2013, 10:00 a.m.

Chair Hee, Vice-Chair Shimabukuro and members of the Committee:

My name is Eadean M. Buffington and I am the Vice President for Mililani Group, Inc. ("MGI"). MGI is a member of the Hawaii Funeral and Cemetery Association, Inc. ("HFCA"). MGI supports SB341, SD1. MGI believes 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 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.

Respectfully Submitted,

Eadean M. Buffington

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Leeward Funeral Home

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**Written Testimony in SUPPORT of
SB341, SD1 – Relating to Disposition of Remains**

TO: Senate Committee on Judiciary and Labor
The Honorable Clayton Hee, Chair
The Honorable Maile Shimabukuro, Vice-Chair
Members of the Committee

HEARING DATE/TIME: Wednesday, February 20, 2013, 10:00 a.m.

Chair Hee, Vice-Chair Shimabukuro 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, SD1 which would establish clear priorities of who may direct the disposition of a decedent. These priorities would serve to address these key 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 and 3) allowing for an individual to control his/her own funeral and/or disposition. Other notable issues are which are addressed in SB34, SD1 are decedent(s) abandoned at the funeral establishment, missing relatives of the decedent and unclaimed cremated remains.

In closing, passage of SB341, SD1 would greatly benefit our funeral and cemetery establishments and most of all, allow us to best serve the families that we work with.

Thank you for the opportunity to testify.


David Morikami
V.P./Operations Manager

Oahu Cemetery Association

2162 Nuuanu Avenue
HONOLULU, HAWAII 96817

February 18, 2013

Written Testimony in SUPPORT of SB341, SD1 – Relating to Disposition of Remains

TO: Senate Committee on Judiciary and Labor
The Honorable Clayton Hee, Chair
The Honorable Maile S.L. Shimabukuro, Vice-Chair
Members of the Committee

HEARING DATE/TIME: February 20, 2013, 10:00 a.m.

Chair Hee, Vice-Chair Shimabukuro and members of the Committee:

My name is Scott Power and I am the President and member of the Board of Trustees for Oahu Cemetery Association (OCA). OCA is a registered 501(c)(13) non-profit organization founded in 1844 and presently operates 3 of the 11 cremation chambers located on the Island of Oahu. OCA is also the resting place for over 37,000 of Hawaii's deceased residents. Oahu Cemetery Association is a member of the Hawaii Funeral and Cemetery Association, Inc. ("HFCA"). OCA supports SB341, SD1. The Board of Trustees of Oahu Cemetery Association believes 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 rely in good faith on those directions without liability. The law establishes critical guidelines that family members may look to and rely upon when making decisions regarding the remains of their loved ones. These guidelines will make a significant contribution towards minimizing 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.

e-mail: oahucem@hawaiiantel.net • website: www.OahuCemetery.org
Phone: (808) 538-1538 Fax: (808) 538-1490

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

**Written Testimony in SUPPORT of
SB341, SD1 – Relating to Disposition of Remains**

TO: Senate Committee on Judiciary and Labor
The Honorable Clayton Hee, Chair
The Honorable Maile S.L. Shimabukuro, Vice-Chair
Members of the Committee

HEARING DATE/TIME: February 20, 2013, 10:00 a.m.

Chair Hee, Vice-Chair Shimabukuro 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, SD1. SB341, SD1 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, SD1 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.

In cases where there is a dispute between persons who may have the right of disposition, the new law would specify that a petition may be filed by either a disputing party or an Establishment (although there is no obligation for an Establishment to file a petition) in the probate court for the county where the decedent resided. The new law would authorize the probate court to determine who has the right of disposition and would specify the factors that may be considered by the court in making its determination. It would also set forth in what manner an Establishment may act and specify that an Establishment need not act while an action is pending.

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 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.

The HFCA does request one revision to SB341, SD1. SSCR25 and SB341, SD1 include an amendment to SB341 that was added to the end of Section 11. The added language reads: "The immunity contained in this section shall not apply to gross negligence, intentional, willful or wanton conduct." The added language was requested by the Hawaii Association for Justice ("HAJ") during the hearing before the committee on Commerce and Consumer Protection on January 30, 2013. The written testimony submitted by the HAJ was late and the HFCA only learned of the HAJ's position through oral testimony. Although at the hearing the HFCA agreed to amend the bills due to its agreement in concept that the immunity provision should not apply in cases of gross negligence or other intentional misconduct, after reviewing the actual language that the HAJ had proposed, it became apparent that the language should be revised. Intentional or willful conduct would include conduct that is intended but not improper, wrongful, or wanton. When a person acts intentionally and willfully and the conduct is in good faith and reasonable, the immunity should apply. The HFCA proposes the following (additions are underscored, deletions are stricken):

"The immunity contained in this section shall not apply to gross negligence, intentional, or willful misconduct, or wanton conduct."

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, SD1, as amended, 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 rely in good faith upon the instructions of persons claiming the right of disposition.

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

February 15th 2013

**Written Testimony in SUPPORT of
SB341, SD1 – Relating to Disposition of Remains**

TO: Senate Committee on Judiciary and Labor
The Honorable Clayton Hee, Chair
The Honorable Maile S.L. Shimabukuro, Vice-Chair
Members of the Committee

HEARING DATE/TIME: February 20, 2013, 10:00 a.m.

Chair Hee, Vice-Chair Shimabukuro and members of the Committee:

My name is Jay Morford and I am the Vice President for Hawaiian Memorial Life Plan, Ltd. (HMLP, 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"). HMLP, Ltd. and its affiliates support SB341, SD1. HMLP, Ltd. believes 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 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.

Sincerely,

Jay Morford

Jay Morford
Vice President

HOSOI GARDEN MORTUARY, INC.

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

February 15, 2013

**Written Testimony in SUPPORT of
SB341, SD1 – Relating to Disposition of Remains**

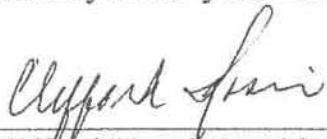
TO: Senate Committee on Judiciary and Labor
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Members of the Committee

HEARING DATE/TIME: February 20, 2013, 10:00 a.m.

Chair Hee, Vice-Chair Shimabukuro and members of the Committee:

My name is Clifford Hosoi and I am the President and Funeral Director for Hosoi Garden Mortuary, Inc. We are a member of the Hawaii Funeral and Cemetery Association, Llc. ("HFCA"). Hosoi Garden Mortuary, Inc. supports SB341, SD1. 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 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 and accepting this testimony,



Clifford Hosoi, President
Hosoi Garden Mortuary, Inc.

hee2 - Kathleen

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 16, 2013 11:21 AM
To: JDLTestimony
Cc: 0c2c9cec@opayq.com
Subject: *Submitted testimony for SB341 on Feb 20, 2013 10:00AM*

SB341

Submitted on: 2/16/2013

Testimony for JDL on Feb 20, 2013 10:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Troy Abraham	Individual	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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