

Honolulu, Hawaii

FEB 04 2013

RE: S.B. No. 341

S.D. 1

Honorable Donna Mercado Kim
President of the Senate
Twenty-Seventh State Legislature
Regular Session of 2013
State of Hawaii

Madam:

Your Committee on Commerce and Consumer Protection, to which was referred S.B. No. 341 entitled:

"A BILL FOR AN ACT RELATING TO DISPOSITION OF REMAINS,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Determine the priority of the persons who may direct the disposition of a decedent's remains and the arrangements for funeral goods and services;
- (2) Permit funeral establishments, cemeteries, mortuaries, and crematories to rely and act upon written directions from the decedent or persons who have the right of disposition without liability; and
- (3) Permit funeral establishments, cemeteries, mortuaries, and crematories to control the disposition and dispose of a decedent's remains in certain circumstances.

Your Committee received testimony in support of this measure from Hawaii Funeral and Cemetery Association, Inc.; Mililani Group, Inc.; Oahu Cemetery Association; Leeward Funeral Home; Hosoi Garden Mortuary, Inc.; Hawaiian Memorial Life Plan, Ltd.; and Dodo Mortuary, Inc. Your Committee received testimony in opposition to this measure from the Hawaii Association for Justice.



Your Committee finds that funeral establishments, cemeteries, mortuaries, and crematories are often approached by persons who had a relationship to a decedent and who wish to direct or assist with the disposition of the decedent's remains. In a best case scenario, the decedent's wishes regarding disposition are indicated in a written instrument, the establishments have a record of the decedent's wishes, and there is no contrary wish of any surviving person. However, in some situations, the decedent may not have provided written direction for disposition or there may be a dispute amongst the decedent's survivors over the decedent's wishes.

Your Committee further finds that forty-eight states have enacted legislation that specifies the priority of persons who may control the disposition of a decedent's remains or the arrangements for funeral goods and services. This measure permits Hawaii to join these other states by clearly establishing the priority of the persons who may control the disposition of a decedent's remains and the arrangements for funeral goods and services, and providing certainty for funeral establishments, cemeteries, mortuaries, and crematories to take direction from these persons and promptly provide needed services.

Your Committee has amended this measure by:

- (1) Clarifying that a funeral establishment, cemetery, mortuary, or crematory may, rather than shall, rely on and act according to the instructions of the first of two or more persons in the same priority class to make funeral and disposition arrangements, under certain conditions;
- (2) Clarifying that the immunity for good faith reliance established in this measure shall not apply to gross negligence, intentional, willful, or wanton conduct; and
- (3) Making a conforming amendment to the purpose section for clarity.

As affirmed by the record of votes of the members of your Committee on Commerce and Consumer Protection that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 341, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 341, S.D. 1, and be referred to the Committee on Judiciary and Labor.



Respectfully submitted on
behalf of the members of the
Committee on Commerce and
Consumer Protection,



ROSALYN H. BAKER, Chair



The Senate
 Twenty-Seventh Legislature
 State of Hawai'i

Record of Votes
Committee on Commerce and Consumer Protection
CPN

Bill / Resolution No.:* SB 341	Committee Referral: CPN, JDL	Date: 1/30/13		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
BAKER, Rosalyn H. (C)	✓			
GALUTERIA, Brickwood (VC)	✓			
NISHIHARA, Clarence K.	✓			
SOLOMON, Malama	✓			
TANIGUCHI, Brian T.	✓			
WAKAI, Glenn				✓
SLOM, Sam	✓			
TOTAL	6	0	0	1
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: <input checked="" type="checkbox"/> Original <input type="checkbox"/> Yellow <input type="checkbox"/> Pink <input type="checkbox"/> Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes