



HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE
The Honorable Mark M. Nakashima, Chair
The Honorable Jackson D. Sayama, Vice Chair

**H.C.R. NO. 9 REQUESTING THAT THE STATE AUDITOR CONDUCT A SUNRISE
ANALYSIS OF FUNERAL DIRECTORS AND CEMETERY SALESPERSONS**

Hearing: Wednesday, March 29, 2023, 2:10 p.m.

The Office of the Auditor offers the following comments on H.C.R. No. 9, which requests the Auditor to conduct a sunrise review of the licensing of funeral directors and cemetery salespersons as proposed by an unspecified house bill. We note that the concurrent resolution does not identify the specific bill to be analyzed, as required by Section 26H-6, Hawai'i Revised Statutes (HRS). If the relevant measure is House Bill No. 1229 (HB1229), we offer the following comments.

Section 26H-6, HRS, states “New regulatory measures being considered for enactment that, if enacted, would subject *unregulated professions and vocations* to *licensing or other regulatory controls* shall be referred to the auditor for analysis.” (Emphasis added.) HB1229 creates licensure for cemetery salespersons and funeral directors by amending an existing licensing chapter, Chapter 469 Undertakers, Embalmers, Funeral Directors, HRS, and creating the “Death Care Industry Board,” which is responsible to create and adopt administrative rules pursuant to Chapter 91, HRS, for granting, revoking, suspending, or refusing to renew the licenses for “funeral directors” and “cemetery salespersons.” More specifically, the board is empowered to approve examinations for both funeral directors and cemetery salespersons.

The Hawai'i Regulatory Licensing Reform Act, Chapter 26H, HRS, reflects the Legislature's intent to regulate professions and vocations only where reasonably necessary to protect the health, safety, or welfare of the consumers of the services. The Auditor is required to analyze the proposed regulation against the criteria for professional and vocational licensing in the statute. Among other things, the Auditor is required to determine whether the proposed regulation may artificially increase the costs of the goods and services to consumers; and whether regulation may unreasonably restrict entry into the professions or vocations. Because the bill directs the Death Care Industry Board to establish the specifics relating to the proposed regulation, we may be unable to completely analyze whether the regulation proposed in HB1229 is consistent with the State's policy regarding regulation of professions and vocations.

We note the death care *industry* currently is subject to existing state regulatory structures. Mortuaries, cemeteries, embalmers, and undertakers are regulated under Chapter 469, HRS. Chapter 11-22, Hawai'i Administrative Rules (HAR), additionally requires certain licensees to be registered with the Department of Health. Mortuaries are licensed by the Department of Health and are devoted exclusively to the business of providing funeral services which include

arranging for or providing for pick-up of human remains, embalming, placing the same on display, or otherwise providing final disposition of human remains. These mortuaries are also subject to annual inspection by the Department of Health. HB1229 describes “financial director” as a person who engages in practices that include the “disposing human remains” and “making arrangements to provide funeral services”; however, this is a practice of mortuaries as defined by Chapter 11-22, HAR.

We also note Chapter 441, HRS, regulates cemeteries and funeral trusts and requires licensure for cemeteries or pre-need funeral authorities. Oversight is by the Director of the Department of Commerce and Consumer Affairs.

As written, HB1229 seems to propose regulation of professions or occupations that are part of an industry that currently is subject to certain state oversight.

Thank you for considering our testimony related to H.C.R. No. 9



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Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Consumer Protection and Commerce
Wednesday, March 29, 2023
2:10 p.m.
Conference Room 329 and Videoconference**

**On the following measure:
H.C.R. 9, REQUESTING THAT THE STATE AUDITOR CONDUCT A SUNRISE
ANALYSIS OF FUNERAL DIRECTORS AND CEMETERY SALESPERSONS**

Chair Nakashima and Members of the Committee:

My name is Chelsea Fukunaga, and I am the Executive Officer for the Department of Commerce and Consumer Affairs' (Department), Professional and Vocational Licensing Division's, Cemetery and Funeral Trusts Program. The Department opposes this resolution and offers comments.

The purposes of this resolution are for the Auditor to conduct a sunrise analysis of the licensing of funeral directors and cemetery salespersons as proposed under H.B. No. , which was introduced during the Regular Session of 2023.

For the Committee's information, in 1981, the State Auditor issued the sunset evaluation report titled "[Sunset Evaluation Report, Cemeteries, Mortuaries, Pre-Need Funeral Authorities, and Salesmen, Chapter 441, Revised Statutes \(Report No. 81-8\)](#)". An analysis was conducted to determine whether public interest was best served by reenactment, modification, or repeal of Hawaii Revised Statutes (HRS) chapter 441.

The report examined the history of the statute on licensing cemeteries, mortuaries, pre-need authorities and salesmen and the public health, safety, or welfare that the statute was designed to protect. In addition, the report also assessed the effectiveness of the statute in preventing public injury and the continuing need for the statute.

The report (page 21, paragraph 1) indicated that during the time of evaluation, many of the known cases of misrepresentation involved alleged false statements by salespeople regarding the terms of the sales contract. The report went on to recommend that the statute require plain language in readable type and a disclosure of each service, merchandise, and related cost covered under the contract considered necessary to prevent further occurrences of misleading sales practices. The Legislature amended HRS section 441-22.5 four times, since 1980. For consumer protection, in 2007, the Legislature added an entirely new provision, HRS section 441-22.8, which ensures proper notice be provided to the consumer by a cemetery or pre-need funeral authority prior to the termination of a contract.

Because the principal statutory provisions relating sales practices at that time were the licensing and bonding of salespeople (page 21, paragraph 2), the report recommended that the bonding of salespersons be deleted from the statute as an aggrieved consumer can and would most likely look to the company for restitution. The report concluded that since the bond was the primary requirement for a salesperson's license, licensing was also unnecessary.

In addition, the Federal Trade Commission's (FTC) Funeral Rule 16 Code of Federal Regulations (CFR) Part 453, which was established in 1984, regulates funeral providers, which includes both funeral directors and cemetery salespersons. 16 CFR §453.1(i) defines "Funeral provider" as, "any person, partnership or corporation that sells or offers to sell funeral goods and funeral services to the public." Violators of the Funeral Rule may be subject to penalties of up to \$50,120 per violation.

While the Department appreciates the intent of this measure, it finds it unnecessary because the 1981 Sunset Evaluation Report found that the regulation of cemetery salespersons to be superfluous; and regulation by the FTC provides oversight

of funeral directors and cemetery salespersons, which negates the need to establish provisions within the State.

For these reasons, additional regulation of these professions are not necessary. Therefore, we respectfully request that this resolution be held in committee.

Thank you for the opportunity to testify on this measure.



Hawaii Funeral & Cemetery Association, Inc.
1330 Maunakea Street, Honolulu, Hawaii 96817

Written Testimony in **Opposition of H.C.R. 9**
REQUESTING THAT THE STATE AUDITOR CONDUCT A SUNRISE ANALYSIS
OF FUNERAL DIRECTORS AND CEMETERY SALESPERSONS.

March 27th 2023

To: COMMITTEE ON CONSUMER PROTECTION & COMMERCE
Rep. Mark M. Nakashima, Chair
Rep. Jackson D. Sayama, Vice Chair
Committee Members

HEARING DATE/TIME: Wednesday, March 29th 2023 / 2:10 PM

STATEMENT FROM THE HFCA BOARD OF DIRECTORS

The Hawaii Funeral & Cemetery Association, Inc. is a Domestic Nonprofit Corporation, comprised of 12 independent Board of Directors representing 13 mortuaries and 10 cemeteries that serve the largest majority of Hawaii's families. The HFCA is an independent association that acts in the best interest of its members and the community.

Dear Rep. Mark M. Nakashima, Chair, Rep. Jackson D. Sayama, Vice Chair and Committee Members

My name is Jay Morford, President and Legislative Chair for the Hawaii Funeral and Cemetery Association, Inc. ("HFCA"). The HFCA is in Opposition of H.C.R. 9 for the following reasons.

A Sunshine Analysis was conducted in 1981, the State Auditor issued the sunset evaluation report that concluded that bonding and licensing for a sales person was unnecessary. HRS441 has been amended numerous times since 1981. The HFCA worked with the DCCA staff in 2007, amended the language to HRS441, and added additional language that gave additional protection to the consumer. We believe that this proposed SUNRISE ANALYSIS is unnecessary based on existing Federal and State laws.

FTC "Funeral Rule"

Federal Law protecting Consumers falls under the 1984 Federal Trade Commission:

- The Funeral Rule gives you the right to: **Buy only the funeral arrangements you want.** You have the right to buy separate goods (such as caskets) and services (such as embalming or a memorial service). You do not have to accept a package that may include items you do not want.
- The Funeral Rule prohibits **funeral homes from telling consumers state or local law require embalming.** If state law does require embalming, the funeral home may tell the family embalming is required under specific circumstances.
- Consumers have the right to get a general price list from a funeral provider when they ask about pricing for funeral arrangements.

Hawaii State HRS441**CEMETERY AND FUNERAL TRUSTS**

https://www.capitol.hawaii.gov/hrscurrent/vol10_ch0436-0474/hrs0441/hrs_0441-.htm

HRS441 provides comprehensive requirements for funeral and cemetery establishments that protect the consumer. A funeral home or cemetery establishment assume the liability and risk of any wrongdoing within their organization. Should a Consumer complaint arise there are a number of options available for restitution in the event of an alleged violation.

1. Contact management of the cemetery or funeral establishment for resolution.
2. Call the Regulated Industries Compliant Office (“RICO”) and file a complaint. [Regulated Industries Complaints Office | Cemeteries and Pre-Need Funeral Providers \(hawaii.gov\)](#)
3. Call the Better Business Bureau.
4. Contact the Federal Trade Commission
5. Hire an Attorney.

In summary, requesting the State Auditor to do a new Sunrise Analysis is unnecessary when the current laws are fully protecting the consumer.

Thank you for your consideration and opportunity to testify on this measure.

Hawaii Funeral & Cemetery Association