

STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

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Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Health & Homelessness
Wednesday, February 7, 2024
9:45 a.m.
Conference Room 329 and Videoconference**

**On the following measure:
H.B. 2149, RELATING TO THE DEATH CARE INDUSTRY**

Chair Belatti 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 bill.

The purposes of this bill are to: (1) establish the death care industry board to regulate the practices of funeral directing and cemetery sales; (2) establish the death care industry board special fund; and (3) require funeral directors and cemetery salespersons to be licensed.

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 assessed the effectiveness of the statute in preventing public injury and the continuing need for the statute.

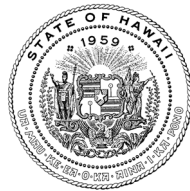
The report (page 21, paragraph 1) indicated that during the time of evaluation, many of the known cases of misrepresentation involved alleged false statements by salespeople regarding the terms of the sales contract. The report went on to recommend that the statute require plain language in readable 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. Since the report was issued, the Legislature has amended the requirements for contract disclosure three times. To further enhance 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 to 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 licensure, licensing was unnecessary. The report also found the regulation of cemetery salespersons to be superfluous, as regulation by the Federal Trade Commission (FTC) provides adequate oversight of funeral directors and cemetery salespersons, negating the need to establish separate provisions within State statute.

Subsequently, the FTC Funeral Rule (16 Code of Federal Regulations (CFR) Part 453), was enacted in 1984 (and amended in 1994) to protect consumers by requiring that consumers receive accurate, itemized price disclosures, and information about all the goods and services they may purchase from a funeral provider, which includes funeral directors and cemetery salespersons. The FTC may also impose penalties of up to \$50-120 per violation.

For these reasons, the Department opposes House Bill No. 2149 and respectfully requests that it be held in committee.

Thank you for the opportunity to testify on this measure.



JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LIEUTENANT GOVERNOR

LUIS P. SALAVERIA
DIRECTOR

SABRINA NASIR
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
OFFICE OF THE PUBLIC DEFENDER

STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE
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ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT

WRITTEN ONLY
TESTIMONY BY LUIS P. SALAVERIA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE HOUSE COMMITTEE ON HEALTH AND HOMELESSNESS
ON
HOUSE BILL NO. 2149

February 7, 2024
9:45 a.m.
Room 329 and Videoconference

RELATING TO THE DEATH CARE INDUSTRY

The Department of Budget and Finance (B&F) offers comments on this bill.

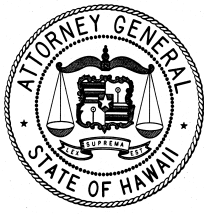
House Bill (H.B.) No. 2149 adds a new part to Chapter 469, HRS, entitled "Funeral Directors and Cemetery Salespersons" (FDCSP), to: 1) establish the Death Care Industry Board (DCIB) within the Department of Commerce and Consumer Affairs (DCCA) pursuant to Section 26-9, HRS, consisting of 11 appointed members; 2) grant DCIB powers to grant, revoke, and suspend licenses, conduct investigations, and adopt rules for the licensure for FDCSP, among other powers; 3) require DCIB to employ at least 1.00 full-time equivalent employee to perform inspections and aid in enforcement, in addition to any other personnel necessary to assist DCIB in its duties; 4) establish the DCIB Special Fund (DCIBSF) to enforce this part; 5) prohibit FDCSP from practicing in the State without a valid license, subject to penalties and fines; 6) require DCIB to adopt rules pursuant to Chapter 91, HRS; and 7) enact other provisions pertaining to licensing FDCSP. The bill further amends various sections of the HRS to update provisions and references pertaining to the licensure of FDCSP.

As a matter of general policy, B&F does not support the creation of any special fund which does not meet the requirements of Section 37-52.3, HRS. Special funds should:

- 1) serve a need as demonstrated by the purpose, scope of work, and an explanation why the program cannot be implemented successfully under the general fund appropriation process;
- 2) reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries or a clear link between the program and the sources of revenue;
- 3) provide an appropriate means of financing for the program or activity; and
- 4) demonstrate the capacity to be financially self-sustaining. Regarding H.B. No. 2149, it is difficult to determine whether the proposed DCIBSF would be self-sustaining.

B&F notes that this bill does not establish an expenditure ceiling for the DCIBSF, nor does it authorize any additional position counts necessary to employ DCIB's staff beyond the inspector position. Furthermore, requiring all fees collected by the DCIB be deposited into the DCIBSF would conflict with Section 26-9, HRS, which states: "the fees collected by the Professional and Vocational Licensing Division (PVLD) . . . shall be deposited into the Compliance Resolution Fund (CRF) under Subsection (o)." Therefore, it is unclear why the proposed DCIB cannot be funded by PVLD's CRF, which currently collects fees and funds all of DCCA's other licensing boards. Finally, B&F defers to DCCA regarding the programmatic merits of this bill.

Thank you for your consideration of our comments.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2024**

ON THE FOLLOWING MEASURE:

H.B. NO. 2149, RELATING TO THE DEATH CARE INDUSTRY.

BEFORE THE:

HOUSE COMMITTEE ON HEALTH AND HOMELESSNESS

DATE: Wednesday, February 7, 2024 **TIME:** 9:45 a.m.

LOCATION: State Capitol, Room 329 and Videoconference

TESTIFIER(S): Anne E. Lopez, Attorney General, or
James C. Paige or Bryan C. Yee, Deputy Attorneys General

Chair Belatti and Members of the Committee:

The Department of the Attorney General provides the following comments on this bill.

This bill establishes a new Death Care Industry Board within the Department of Commerce and Consumer Affairs (DCCA) for the licensing and regulation of funeral directors and cemetery salespersons.

This bill may lead to confusion regarding regulation and enforcement because it establishes the new regulatory board under DCCA within a chapter administered by the Department of Health (DOH). Chapter 469, Hawaii Revised Statutes (HRS), authorizes the DOH to license embalmers. This bill creates a new part in chapter 469 and amends section 26-9(c), HRS, to create a new board within the DCCA to license funeral directors and cemetery salesperson. Accordingly, the substantive regulatory provisions that govern the new licensing program would be in the DOH chapter while the board charged with enforcing those provisions would be within the DCCA.

For clarity of regulatory responsibility, the provisions of section 1 of the bill should be placed within chapter 441, HRS, rather than chapter 469, or, alternatively, the new regulatory board should be placed within DOH, depending on the Legislature's intent.

Thank you for the opportunity to offer comments.



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

Written Testimony in **Opposition of HB2149**
RELATING TO THE DEATH CARE INDUSTRY

February 5th 2024

Rep. Della Au Belatti Chair
Rep. Jenna Takenouchi, Vice Chair
Committee Members

HEARING DATE/TIME: Wednesday, February 7th 2024 / 9:45AM

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. The HFCA Board of Directors reviewed the bills and voted to oppose them in their current form based on the concerns provided in our previous testimony.

Rep. Della Au Belatti, Chair, Rep. Jenna Takenouchi, Vice Chair and Committee Members,

My name is Jay Morford, President for the Hawaii Funeral and Cemetery Association, Inc. ("HFCA"). The HFCA is in **Opposition of HB2149**

We believe the proposed legislation is unnecessary based on existing Federal and State laws and the evaluation report that was conducted by the State auditor titled "Sunset Evaluation Report, Cemeteries, Mortuaries Preneed Funeral Authorities, and salesman. Chapter 441. Revised Statutes (NO. 81-8).

In addition to the Sunset Evaluation Report the Funeral Rule and HRS441 provide adequate protection to the consumer.

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. The HFCA has worked with the DCCA staff throughout the years, amended the language to HRS441, and added additional language that protected 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, the current laws are adequate to protect the consumer.

We respectfully ask your consideration to hold this bill in committee.

Sincerely,

Hawaii Funeral & Cemetery Association Board of Directors

STATEMENT IN OPPOSITION OF HB2149 FROM
MILILANI GROUP, INC. d.b.a. MILILANI MEMORIAL PARK & MORTUARY

TO: Committee on Health and Homelessness
Rep. Della Au Belatti, Chair
Rep. Jenna Takenouchi, Vice Chair
Committee Members

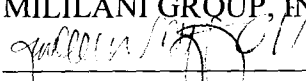
SUBJECT: HOUSE BILL 2149 "A Bill Relating to the Death Care Industry"

HEARING DATE: Wednesday, February 7, 2024; 9:45 A.M.

This statement is made on behalf of Mililani Group, Inc., a company doing business as Mililani Memorial Park and Mortuary (hereafter called "Mililani"). Mililani **OPPOSES** HB2149 "Relating to the Death Care Industry" which advocates for the implementation of death care industry board.

Mililani has been engaged in the business of funeral service and cemetery operations for more than 50 years and during this period, we have been able to deliver our services in a professional and highly competent manner. We contend that said legislation is unnecessary, in light of the Federal and State laws presently governing the industry.

FOR THE ABOVE REASONS, Mililani stands in strong opposition of the proposed HOUSE BILL 2149.

RESPECTFULLY SUBMITTED,
MILILANI GROUP, INC.


EADEAN BUFFINGTON,
Operations Manager

Death and Occupational Licensing in Hawaii

Conor Norris

Assistant Director, Knee Regulatory Research Center, West Virginia University

The Hawaii House Committee on Health and Homelessness

February 7, 2024

Chair Belatti, Vice Chair Takenouchi, and all distinguished members of the House Committee on Health and Homelessness:

Thank you for allowing me to testify on the regulation of funeral services and professionals in the state of Hawaii. I am the assistant director of the Knee Regulatory Research Center at West Virginia University. The main takeaways of my comments are the following:

1. Licensing is not always the appropriate form of regulation because of significant costs.
2. Licensing in Hawaii reduces economic mobility and increases income inequality.
3. Colorado removed licensing for funeral professions in 1983, which reduced prices for consumers and did not result in worse outcomes.

Occupational licensing is one of the most common forms of professional regulation and the most stringent. These laws prevent Hawaii residents from working in a profession until they meet certain entry requirements, which often include education, training, and passing exams. Licensing is designed to protect consumers and the general public from harm from low-skilled professionals, which is an important goal. However, licensing is not the only form of regulation that we can turn to, for consumer protection.

Licensing can be costly, and we have to weigh both the costs and the benefits of licensing. Licensing laws create barriers to entry that make it more difficult to enter a profession. Economic research estimates that licensing reduces the number of professionals by up to 27 percent.¹ Economists consistently find evidence that licensing laws act as a barrier to entry for the funeral profession.² There is also evidence that they tend to disproportionately exclude minorities.³

All of the education and training requirements must be met before an aspiring professional is legally allowed to practice in a licensed profession. Unfortunately, because of the time and money it takes for training and education, many are unable to enter these professions. Research found that licensing laws increase income inequality by almost 9 percent and decreased

¹ Peter Blair and Bobby Chung, "How Much of Barrier to Entry is Occupational Licensing?," *British Journal of Industrial Relations* 57, no. 4 (2019): 919–43

² Pizzola, Brandon, and Alexander Tabarok. "Occupational licensing causes a wage premium: Evidence from a natural experiment in Colorado's funeral services industry." *International Review of Law and Economics* 50 (2017): 50-59.

³ Mitchell, Matthew. "Policy Spotlight: Occupational Licensing and the Poor and Disadvantaged." Mercatus Center Policy Brief. (2017).

economic mobility by almost 4 percent—making achieving the American Dream that much more difficult.⁴

Despite the fact that licensing laws have such an impact on aspiring professionals, we find limited evidence of any improvements in the quality of services due to licensing.⁵ This is also true for funeral services in particular. In 1983, Colorado sunsetted its funeral services board, and economists later found no evidence of any decrease in quality.⁶ In fact, when considering a similar bill to HB 2149, the Colorado Department of Regulatory Agencies recommended against licensure, finding no evidence of threats to the public health, safety, and welfare by the new, unlicensed funeral professionals.⁷

That is not to say that delicensing had no effect. Removing licensing for all funeral professions in Colorado decreased the prices that consumers paid by 15 percent.⁸ Licensed funeral directors push customers to higher-priced services, which increases their spending.⁹ We would expect the opposite to occur after licensing funeral directors; that consumers would face higher prices.

Active professionals will be grandfathered in, benefiting from the restriction on competition from new entrants in the form of higher wages. Aspiring professionals are forced to overcome greater barriers to entry, while consumers are forced to pay higher prices for the same quality services.

Although licensing laws are designed to protect consumers from harm, they are not always appropriate or effective. Aspiring professionals suffer, facing roadblocks to meaningful work. Individuals should not be prevented from entering a profession unless there is evidence of a need for regulation. Hawaii should not make it more difficult for aspiring funeral directors.

⁴ Timmons, Edward, Brian Meehan, Andrew Meehan, and John Hazenstab. "Assessing growth in occupational licensing of low-income occupations: 1993-2012." *Journal of Entrepreneurship and Public Policy* 7, no. 2 (2018): 178-218.

⁵ "Occupational Licensing: A Framework for Policymakers," White House, July 2015,

https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf

⁶ Pizzola, Brandon, and Alexander Tabarrok. "Occupational licensing causes a wage premium: Evidence from a natural experiment in Colorado's funeral services industry." *International Review of Law and Economics* 50 (2017): 50-59.

⁷ Colorado Department of Regulatory Agencies Office of Policy Research and Regulatory Reform, 2007. Funeral Service Practitioners. https://ij.org/wp-content/uploads/2022/02/sunrise/Colorado_2007_FuneralServicePractitioners.pdf

⁸ Pizzola, Brandon, and Alexander Tabarrok. "Occupational licensing causes a wage premium: Evidence from a natural experiment in Colorado's funeral services industry." *International Review of Law and Economics* 50 (2017): 50-59.

⁹ Harrington, David E., and Kathy J. Krynski. "The effect of state funeral regulations on cremation rates: Testing for demand inducement in funeral markets." *The Journal of Law and Economics* 45, no. 1 (2002): 199-225.

**TESTIMONY BEFORE THE HOUSE
COMMITTEE ON HEALTH & HOMELESSNESS**

HB 2149

Relating to the Death Care Industry

February 7, 2024 at 9:45 AM
State Capitol, Conference Room 329

Submitted by MITCHELL DODO
DODO MORTUARY, INC. & CREMATORY
HILO, HAWAII

Dear Chair Au Bellati, Vice Chair Takenouchi, and Members of the Committee,

My name is Mitchell Dodo on behalf of Dodo Mortuary, Inc. & Crematory in Hilo, Hawaii and I am testifying in opposition of HB 2149, Relating to the Death Care Industry.

I believe the proposed legislation is unnecessary based on existing Federal and State laws and the evaluation report that was conducted by the State auditor titled "Sunset Evaluation Report, Cemeteries, Mortuaries Preneed Funeral Authorities, and salesman. Chapter 441. Revised Statutes (NO. 81-8).

In addition to the Sunset Evaluation Report, the Federal Trade Commission Funeral Rule and HRS441 provide adequate protection for the consumer.

Please vote against HB 2149 and thank you for the opportunity to share my opinion.