

ACT 242

H. B. NO. 1221

A Bill for an Act Relating to the Regulation of Pre-Need Sales of Funeral Services and Commodities, the Regulation of the Proceeds from Such Sale and the Licensing of Such Salesmen.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 44-1*, Hawaii Revised Statutes, is amended in the following respects:

(a) By amending the definition of “cemetery authority” to read as follows:

“ ‘Cemetery Authority’ means any person who undertakes to establish, maintain, manage, operate, improve, or conduct a cemetery, the interring of human remains, or the care, preservation, and embellishment of cemetery property, or to sell pre-need interment service, whether or not the person undertakes such activity for profit.”

(b) By amending the definition of “cemetery salesman” to read as follows:

“ ‘Cemetery salesman’ means any natural person who sells or offers to sell, buys or offers to buy, leases or offers to lease, lists, or solicits prospective purchasers or negotiates the purchase, sale, lease, or exchange of cemetery property, interment services, or pre-need interment services, of any interest therein.

(c) By adding four new paragraphs to read as follows:

“ ‘Pre-need funeral authority’ means any person engaged in the sollicita-

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ACT 242

tion of the public in the business of selling pre-need funeral services.

“‘Pre-need funeral salesman’ means any natural person who sells or offers to sell, solicits prospective purchasers, or negotiates the sale or exchange of pre-need funeral services.

“‘Pre-need interment services’ means the furnishing of opening and closing services and related commodities, including but not limited to vaults, markers and vases, which services are to be rendered more than ninety days after the sale or offer to sell, whichever occurs first.

“‘Pre-need funeral services’ means the furnishing of funeral services and related commodities, including but not limited to caskets and urns, which services are to be rendered more than ninety days after the sale or offer to sell, whichever occurs first.”

SECTION 2. Section 441-19, Hawaii Revised Statutes, is amended in the following respects:

(a) Item (1) is amended to read as follows:

“Grant licenses to cemetery and pre-need funeral authorities pursuant to this chapter;”

(b) Item (2) is amended to read as follows:

“Grant licenses to cemetery and pre-need funeral salesmen pursuant to this chapter;”

(c) Item (4) is amended to read as follows:

“Make, amend, or repeal such rules and regulations as it deems proper to fully effectuate this chapter and carry out the purpose thereof, which purpose is the protection of the general public in its acquisitions of cemetery property, pre-need interment services and pre-need funeral services. The rules and regulations may forbid acts or practices deemed by the board to be detrimental to the accomplishment of the purpose of this chapter, and the rules and regulations may require cemetery and pre-need funeral authorities and salesmen to make reports to the board containing such information as will better enable the board to enforce this chapter and the rules and regulations, or as will better enable the board from time to time to amend the rules and regulations to more fully effectuate the purpose of this chapter, and further, the rules and regulations may require cemetery and pre-need funeral authorities and salesmen to furnish reports to their clients containing such matters of information as the board deems necessary to promote the purpose of this chapter; provided, that this enumeration of specific matters which may properly be made the subject of rules and regulations shall not be construed to limit the board’s broad general power to make all rules and regulations necessary to fully effectuate the purpose of this chapter;”

SECTION 3. Section 441-20, Hawaii Revised Statutes, is amended to read as follows:

“License required to act as cemetery or pre-need funeral authority.

No person shall act as a cemetery or pre-need funeral authority without a license previously issued by the cemetery board in compliance with this chapter and the rules and regulations of the board; provided, that the board shall ex-

empt any cemetery authority upon its proof satisfactory to the board that it will not make any additional interments.”

SECTION 4. Section 441-21, Hawaii Revised Statutes, is amended in the following respects:

(a) By amending the first paragraph down to the colon to read as follows:

“**No cemetery or pre-need funeral authority license issued when.** No cemetery or pre-need funeral authority license shall be issued:”

(b) By amending item (3) to read as follows:

“To any person unless it is a religious institution, corporation, county, or any association which has a perpetual existence; provided, that the board may issue a cemetery authority license to any person who is in bona fide operation as a cemetery authority on June 4, 1967; provided further, that a pre-need funeral authority license may be issued to any person who is in bona fide operation as a pre-need funeral authority on the effective date of this Act;”

SECTION 5. Section 441-22, Hawaii Revised Statutes, is amended to read as follows:

“**Bond.** Each cemetery or pre-need funeral authority licensed hereunder, except as otherwise provided in section 441- (Section 171B-22.5, Revised Laws of Hawaii 1955, as amended), shall file and maintain with the cemetery board a bond in the penal sum of \$50,000, issued by a surety company authorized to do business in the State, and running to the State. The bond shall be conditioned that the cemetery or pre-need funeral authority will faithfully, promptly, and truly account and pay over to all persons to or for whom it may sell, lease, or otherwise deal in cemetery property, pre-need interment or pre-need funeral services all sums of money that may properly be due them. In addition to any other remedy, every person sustaining any damage resulting from a breach of the conditions of the bond may sue the surety for the recovery of any damages sustained by such person. The liability of the surety shall not exceed \$50,000 for each licensee. The bond shall be continuous in form and remain in full force and effect and shall run concurrently with the license period and for any renewals thereof, unless terminated or cancelled by the surety. Termination or cancellation shall not be effective, unless notice thereof is delivered by the surety to the board at least sixty days prior to the date of termination or cancellation. The board shall forthwith give notice thereof to the cemetery or pre-need funeral authority affected by the termination or cancellation, which notice shall be by registered or certified mail, with request for return receipt, and shall be addressed, to the licensees at the addresses shown on the records of the board. The license of any licensee shall be suspended upon termination or cancellation of the bond, unless prior thereto, a new bond has been filed with the board. The form of the bond shall be approved by the board.”

SECTION 6. Section 441-23, Hawaii Revised Statutes, is amended in the following respects:

(a) The first paragraph down to the colon is amended to read as follows:

ACT 242

“Revocation, suspension, and renewal of authority licenses. The cemetery board may revoke any authority license, or suspend the right of the licensee to use the license, or refuse to renew any such license for any of the following causes:”

(b) Item (2) is amended to read as follows:

“Any dishonest or fraudulent act as a cemetery or pre-need funeral authority which causes substantial damage to another;”

(c) Item (7) is amended to read as follows:

“Selling or offering to sell any cemetery property, pre-need interment or pre-need funeral services based on speculation or promises of profit from resale.”

SECTION 7. Section 441-24, Hawaii Revised Statutes, is amended to read as follows:

“Inspection of cemetery or pre-need funeral authority books; annual exhibits. The books, records, and papers of every cemetery authority whether or not a corporation, which operates or claims to operate a perpetual care cemetery, and of every pre-need funeral authority shall be subject to examination by the cemetery board to the same extent and in the same manner as may be from time to time provided for corporations in section 416-95, and every cemetery authority operating a perpetual care cemetery, and every pre-need funeral authority shall submit such annual exhibits as may be required by the board in order to furnish information as to whether or not the cemetery or pre-need funeral authority has complied with this chapter.”

SECTION 8. Section 441-25, Hawaii Revised Statutes, is amended in the following respects:

(a) The first paragraph down to the colon is amended to read as follows:

“License required to act as cemetery or pre-need funeral salesman.

No person shall sell, offer to sell, exchange, lease, advertise, or otherwise dispose of any interest in cemetery property, pre-need interment, or pre-need funeral services without an appropriate license previously issued by the cemetery board in compliance with this chapter and the rules and regulations of the board, provided that this requirement shall not apply to:”

(b) Item (2) is amended to read as follows:

“The regular officers of a cemetery or pre-need funeral authority acting with reference to the authority’s property;”

SECTION 9. Section 441-26, Hawaii Revised Statutes, is amended by amending the first paragraph down to the colon to read as follows:

“No cemetery or pre-need funeral salesman license issued when. No cemetery or pre-need funeral salesman license shall be issued:”

SECTION 10. Section 441-27, Hawaii Revised Statutes, is amended by amending the second sentence to read as follows:

“The bond shall be conditioned that the salesman will faithfully, promptly, and truly account and pay over to all persons to or for whom he may sell, lease or otherwise deal in cemetery property, pre-need interment or pre-

need funeral services all sums of money that may properly be due them.”

SECTION 11. Section 441-28, Hawaii Revised Statutes, is amended in the following respects:

(a) By amending the first paragraph down to the colon to read as follows:

“**Revocation, suspension and renewal of salesman licenses.** The cemetery board may revoke any salesman license, or suspend the right to the licensee to use the license, or refuse to renew the license, for any of the following causes:”

(b) By amending Item (2) to read as follows:

“Making any misrepresentation concerning any cemetery property, pre-need interment or pre-need funeral services transaction;”

(c) By amending Item (3) to read as follows:

“Making any false promises concerning any cemetery property, pre-need interment or pre-need funeral services transaction of a character likely to mislead another;”

(d) By amending Item (5) to read as follows:

“When a salesman acts or attempts to act or represents, or attempts to represent an authority other than his employer;”

(e) By amending Item (8) to read as follows:

“When a salesman fails to file with the board a written statement setting forth the name of the authority by whom he is employed;”

(f) By amending Item (12) to read as follows:

“When a salesman sells or offers to sell any cemetery property, pre-need interment or pre-need funeral services based on speculation or promises of profit from resale.”

SECTION 12. Section 441-31, Hawaii Revised Statutes, as amended, is amended in the following respects:

(a) By amending subsection (a) to read as follows:

“(a) The fee for a cemetery or pre-need funeral authority license, annual renewal thereof, and reinstatement of a suspended license, except as otherwise provided in Section 441- (Section 171B-22.5, Revised Laws of Hawaii 1955, as amended) shall be \$200.

“The annual renewal fee shall be paid to the cemetery board on or before January 1 of each year. Failure, neglect, or refusal of any duly licensed cemetery or pre-need funeral authority to pay the annual renewal fee shall constitute a forfeiture of his license. Any such license may be restored upon written application therefor within one year of such date and the payment of a required fee plus an amount equal to ten per cent thereof.”

(b) By amending subsection (b) to read as follows:

“(b) The fee for a cemetery or pre-need funeral salesman license shall be \$25. The annual renewal fee shall be \$15, and the fee for reinstatement of a suspended license shall be \$15.

“The annual renewal fee shall be paid to the board on or before January 1 of each year. Failure, neglect, or refusal of any duly licensed salesman to pay the annual renewal fee shall constitute a forfeiture of his license. The license of

ACT 242

the salesman may be restored upon written application therefor and the payment to the board of \$25.”

(c) By amending subsection (c) to read as follows:

“A fee of \$5 shall be charged for the reissuance of any lost license or for the reissuance of license when there has been a change in the licensee’s name or when a salesman is employed by a different authority.”

SECTION 13. Section 441-32, Hawaii Revised Statutes, is amended to read as follows:

“Delivery of agreement. When a salesman secures the signature of any party or parties to any contract pertaining to cemetery property, pre-need interment or pre-need funeral services, he shall deliver a copy of such agreement or contract to the party or parties signing it, at the time the signature is obtained; provided that only one copy need be delivered to the parties signing as co-tenants. The agreement or contract shall reasonably describe in detail the property or services to be provided.”

SECTION 14. Section 441-33, Hawaii Revised Statutes, is amended to read as follows:

“Authority prohibited from employing unlicensed salesman. No cemetery or pre-need funeral authority shall employ as a salesman, either directly or indirectly, whether as employee, agent, representative, independent contractor, or otherwise, any person who does not hold an appropriate license.”

SECTION 15. Chapter 441, Hawaii Revised Statutes, is amended by adding a new section to be appropriately numbered and to read as follows:

“Section 441- . Pre-need trusts required. Every cemetery or pre-need funeral authority shall maintain one or more trusts. All payments received after the recovery of acquisition costs, which shall be the lesser of thirty per cent of the contract price or the difference between the contract price and the cost of the pre-need interment or pre-need funeral services contracted to be provided, shall be deposited in such trusts within thirty days of receipt.

“The administration of the trusts provided for in this section shall be as provided for perpetual care funds under sections 441-37, 441-40, 441-41, 441-42, 441-43 and 441-44.

“The principal amount deposited shall not be diminished or withdrawn except in payment of the pre-need interment or pre-need funeral services contracted for and provided to the deceased purchaser or his designee or for the contractual refund to the purchaser.”

SECTION 16. This Act shall take effect upon its approval.

(Approved July 14, 1969.)