

ACT 21

S.B. NO. 165

A Bill for an Act Relating to Regulation of Mortuaries.

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

SECTION 1. Chapter 441, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“Sec. 441- Mortuary license.** The mortuary license provided in this chapter shall be in addition to the license and requirements of the department of health and any county regulations or requirements which shall not be affected by this chapter.”

SECTION 2. Section 441-1, Hawaii Revised Statutes, is amended as follows:

1. By adding two new definitions to be appropriately inserted and to read:

“Funeral services” means arranging for or providing for pick up of human remains, embalming, placing the same on display, or otherwise providing for final disposition of human remains.

“Mortuary authority” means any person who undertakes to furnish funeral services and related commodities.”

2. By amending the definition of “board” to read:

“Board” means the cemetery and mortuary board of the State as hereinafter constituted.”

SECTION 3. Section 441-18, Hawaii Revised Statutes, is amended to read as follows:

**“Sec. 441-18 Cemetery and mortuary board.** (a) There shall be a cemetery and mortuary board of seven members appointed by the governor in the manner prescribed in section 26-34. Provided that no two members of the board shall be employed by or associated with the same cemetery or mortuary authority or organization dealing in any manner with any mortuary or cemetery property.

(b) (1) Two members of the board shall be persons who have been actively engaged in the administration of perpetual care cemeteries for a period of not less than three years immediately preceding the date of their appointment.

(2) Two members of the board shall be persons who have been actively engaged in the administration of a mortuary for a period of not less than three years immediately preceding the date of their appointment.

(3) Three members of the board shall be noncemetery members and shall be public members of the board.

(4) Four members shall be residents of the city and county of Honolulu and the other three shall be residents of the counties of Hawaii, Maui, and Kauai, respectively.

(5) No member shall receive any compensation for his services but shall be reimbursed for his necessary travel expenses incurred in the performance of his duties in attending meetings on an island other than that of the board member’s residence.

(c) Organization, records, reports. Immediately upon the appointment and qualification of the original members, and annually thereafter, the board shall organize by the election of one member as chairman and one member as vice chairman. The board shall keep a complete record of all its proceedings and shall present annually to the governor a detailed statement of the receipts and disbursements of the board during the preceding year, with a statement of its acts and proceedings and such recommendations as the board deems proper. The board is placed within the department of regulatory agencies for administrative purposes.”

SECTION 4. Section 441-19, Hawaii Revised Statutes, is amended to read as follows:

**“Sec. 441-19 Powers and duties of board.** In addition to any other duties and powers granted by this chapter the cemetery and mortuary board shall, pursuant to chapter 91:

- (1) Grant licenses to mortuary, cemetery, and pre-need funeral authorities pursuant to this chapter;
- (2) Grant licenses to mortuary, cemetery, and pre-need funeral salesmen pursuant to this chapter;
- (3) Examine applicants for licenses;
- (4) 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, at-need funeral 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 mortuary, 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 mortuary, 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;
- (5) Enforce this chapter and rules and regulations adopted pursuant thereto;
- (6) Suspend or revoke any license for any cause prescribed by this chapter, or for any violation of the rules and regulations, and refuse to grant any license for any cause which would be ground for revocation or suspension of a license;
- (7) Report to the governor annually and at such other times and in such other manner as he may require concerning its activities;
- (8) Publish and distribute pamphlets and circulars containing such information as it deems proper to further the accomplishments of the purpose of this chapter.”

SECTION 5. Section 441-20, Hawaii Revised Statutes, is amended to read as follows:

**“Sec. 441-20 License required to act as mortuary, cemetery, or pre-need funeral authority.** No person shall act as a mortuary, cemetery, or pre-need

funeral authority without a license previously issued by the cemetery and mortuary board in compliance with this chapter and the rules and regulations of the board; provided that the board shall exempt any cemetery authority upon its proof satisfactory to the board that it will not make any additional interments.”

SECTION 6. Section 441-21, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 441-21 No mortuary, cemetery, or pre-need funeral authority license issued when.** No mortuary, cemetery, or pre-need funeral authority license shall be issued:

- (1) To any person unless he has filed an application therefor;
- (2) To any person who does not possess a good reputation for honesty, truthfulness, financial integrity, and fair dealing;
- (3) 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 July 14, 1969; and provided further that a mortuary authority license may be issued to any person who is in bona fide operation as a mortuary authority on July 1, 1975;
- (4) To any person unless he files with the board a bond as required by section 441-22.”

SECTION 7. Section 441-22, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 441-22 Bond.** Each mortuary, cemetery, or pre-need funeral authority licensed hereunder, except as otherwise provided in section 441-22.1, shall file and maintain with the cemetery and mortuary board a bond (1) in the penal sum of \$50,000 for each new license, and for the renewal of a license for a mortuary, cemetery, or pre-need funeral authority whose gross income as a mortuary, cemetery, or pre-need funeral authority for the taxable year preceding the year of renewal totalled \$50,000 or more, and (2) in the penal sum of \$5,000 for any other cemetery authority, all of such bonds to be issued by a surety company authorized to do business in the State, and running to the State. The bond shall be conditioned that the mortuary, 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, at-need funeral services, 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 or \$5,000 as the case may be, 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 canceled by

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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 mortuary, 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 8. Section 441-23, Hawaii Revised Statutes, is amended to read as follows:

**"Sec. 441-23 Revocation, suspension, and renewal of authority licenses.** The cemetery and mortuary 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:

- (1) Any dishonest or fraudulent act as a mortuary, cemetery, or pre-need funeral authority which causes substantial damage to another;
- (2) Making repeated misrepresentations or false promises through advertising or otherwise;
- (3) Wilful violation of this chapter or the rules and regulations promulgated pursuant thereto;
- (4) Commingling the money or other property of others with his own;
- (5) Adjudicated insane or incompetent;
- (6) Selling or offering to sell any cemetery property, pre-need interment, funeral services, or pre-need funeral services based on speculation or promises of profit from resale.

No license shall be suspended for longer than two years and no person whose license has been revoked shall be eligible to apply for a new license until the expiration of two years."

SECTION 9. Section 441-24, Hawaii Revised Statutes, is amended to read as follows:

**"Sec. 441-24 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 and mortuary 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 10. Section 441-25, Hawaii Revised Statutes, is amended to read as follows:

**“Sec. 441-25 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 and mortuary board in compliance with this chapter and the rules and regulations of the board, provided that this requirement shall not apply to:

- (1) A person acting with reference to an occasional sale of his own property or the property of another when acting under a duly executed power of attorney;
- (2) Any person acting as a receiver, trustee in bankruptcy, administrator or executor, trustee acting under a trust agreement, deed of trust or will, or otherwise acting under any order of authorization of any court.

Chapter 467, relating to real estate brokers and salesmen, shall not be applicable to cemetery salesmen.”

SECTION 11. Section 441-27, Hawaii Revised Statutes, is amended to read as follows:

**“Sec. 441-27 Bond.** Each salesman licensed hereunder shall file and maintain with the cemetery and mortuary board a bond in the penal sum of \$5,000 issued by a surety company authorized to do business in the State, and running to the State. The bond shall be conditioned that the 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. 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 the person. The liability of the surety shall not exceed \$5,000 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 salesman 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 12. Section 441-28, Hawaii Revised Statutes, is amended to read as follows:

**“Sec. 441-28 Revocation, suspension and renewal of salesman licenses.** The cemetery and mortuary board may revoke any salesman license, or suspend the right of the licensee to use the license, or refuse to renew the license, for any of the following causes:

- (1) Making any misrepresentation concerning any cemetery property, pre-need interment or pre-need funeral services transaction;
- (2) Making any false promises concerning any cemetery property, pre-need interment or pre-need funeral services transaction of a character likely to mislead another;
- (3) Making repeated misrepresentations or false promises through advertising or otherwise;
- (4) When a salesman acts or attempts to act or represents, or attempts to represent an authority other than his employer;
- (5) Failing, within reasonable time to account for any moneys belonging to others which may be in the possession or under the control of the licensee;
- (6) Any other conduct constituting fraudulent or dishonest dealings;
- (7) When a salesman fails to file with the board a written statement setting forth the name of the authority by whom he is employed;
- (8) Violation of this chapter or the rules and regulations promulgated pursuant thereto;
- (9) Commingling the money or other property of others with his own;
- (10) Adjudicated insane or incompetent;
- (11) 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.

No license shall be suspended for longer than two years and no person whose license has been revoked shall be eligible to apply for a new license until the expiration of two years.”

SECTION 13. Section 441-29, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 441-29 Application fees.** Every applicant for any license under this chapter shall file an application with the cemetery and mortuary board in such form and setting forth such information as may be prescribed or required by the board and shall furnish such additional information bearing upon the issuance of the license as it requires. Every application shall be sworn to before an officer authorized to administer oaths.

Every application shall be accompanied by an application fee of \$10.”

SECTION 14. Section 441-30, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 441-30 Form of licenses.** The form of every license shall be prescribed by the cemetery and mortuary board, and shall be issued in the name of the board, and signed by the chairman thereof.”

SECTION 15. Section 441-31, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The fee for a mortuary, cemetery, or pre-need funeral authority license, annual renewal thereof, and reinstatement of a suspended license, except as otherwise provided in section 441-22.1 shall be \$200.

The annual renewal fee shall be paid to the cemetery and mortuary

board on or before January 1 of each year. Failure, neglect, or refusal of any duly licensed mortuary, 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.”

SECTION 16. Section 441-43, Hawaii Revised Statutes, is amended to read as follows:

**“Sec. 441-43 Inspection, regulation, and supervision of administrator.** Any administrator of a perpetual care fund, other than a trust company, shall be subject to inspection, supervision, and regulation by the cemetery and mortuary board to the same extent and in the same manner as may be from time to time provided by law for the inspection, supervision, and regulation of trust companies doing business in the State.”

SECTION 17. Section 441-44, Hawaii Revised Statutes, is amended to read as follows:

**“Sec. 441-44 Administrator’s account; enforcement by attorney general.** The administrator shall annually file with the cemetery and mortuary board an account which shall be made in such form as shall be prescribed by the board. The board shall notify the attorney general of any failure on the part of the administrator to comply with sections 441-39 to 441-44, or of the instrument creating the fund, and the attorney general may take such action as he deems appropriate.”

SECTION 18. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.\*

SECTION 19. This Act shall take effect on July 1, 1975.

(Approved May 1, 1975.)

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\*Edited accordingly.