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# A BILL FOR AN ACT

RELATING TO THE DEATH CARE INDUSTRY.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

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

4           "~~§441-~~    Cancellation; default and termination; refund.

5           (a) At any time before pre-need funeral services or pre-need  
6 interment services are received by the purchaser or the  
7 purchaser's contract beneficiary, the purchaser may cancel the  
8 contract containing any pre-need funeral services or pre-need  
9 interment services by notifying the cemetery or pre-need funeral  
10 authority, in writing, of the purchaser's desire to cancel the  
11 contract.

12           (b) If the cemetery or pre-need funeral authority  
13 determines that the purchaser is in default due to nonpayment of  
14 a contract containing any pre-need funeral services or pre-need  
15 interment services, the cemetery or pre-need funeral authority  
16 shall provide written notice of the default to the purchaser  
17 prior to terminating the contract. The notice of default shall  
18 include:



1       (1) The total amount owed under the contract at the time  
2       it was originally signed, dates and amounts of  
3       payments, adjustments, and credits received to date,  
4       and the amount of the delinquency;

5       (2) An explanation of the purchaser's right to reinstate  
6       the contract and a statement that failure to reinstate  
7       a contract shall result in termination of the  
8       contract; and

9       (3) A statement that advises the purchaser of all other  
10       requirements under this subsection.

11 The cemetery or pre-need funeral authority shall provide the  
12 purchaser with a minimum of ninety days from the purchaser's  
13 receipt of the notice of default to elect to reinstate the  
14 contract. The purchaser may elect to reinstate by providing  
15 written notice thereof to the cemetery or pre-need funeral  
16 authority. If, however, the purchaser notifies the cemetery or  
17 pre-need funeral authority in writing that the amount of the  
18 delinquency is disputed, the reinstatement period shall not  
19 start until the dispute is resolved. If the purchaser elects to  
20 reinstate the contract within the reinstatement period, the  
21 purchaser may resume payments on the contract in the amounts and  
22 as often as is required under the terms and conditions of the



1 contract in effect prior to the default. The purchaser may  
2 continue payment on the contract until the contract is paid in  
3 full. If the purchaser fails to elect to reinstate the contract  
4 within the reinstatement period, the cemetery or pre-need  
5 funeral authority may terminate the contract.

6 (c) If the contract is canceled or terminated pursuant to  
7 subsection (a) or (b) or for any other reason, the purchaser  
8 shall be entitled to a refund of the amounts paid by the  
9 purchaser, less amounts that may be retained by the cemetery or  
10 pre-need funeral authority for its costs pursuant to section  
11 441-38(b). The cemetery or pre-need funeral authority shall  
12 make the refund to the purchaser within thirty days of:

- 13 (1) Receipt of the purchaser's written notice of  
14 cancellation; or  
15 (2) Termination of the contract."

16 SECTION 2. Section 441-3, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 "**§441-3 Map or plat required[+]; unique identifier.** (a)  
19 The cemetery authority [~~from time to time~~], as any of the  
20 dedicated cemetery property [~~described in the certificate of~~  
21 ~~dedication~~], or any part or section thereof, is offered for



1 sale, transfer, or disposition in the form of plots, crypts, or  
2 niches, shall [~~also~~]:

3 (1) In the case of land, survey and subdivide [~~it~~] the  
4 dedicated cemetery property into sections, blocks,  
5 plots, avenues, walks, or other subdivisions; make a  
6 good and substantial map or plat showing the sections,  
7 blocks, plots, avenues, walks, or other subdivisions,  
8 with descriptive names, initials, or numbers[+] that  
9 uniquely identify each plot;

10 (2) In the case of a mausoleum or columbarium, make a good  
11 and substantial map or plat on which shall be  
12 delineated the sections, halls, rooms, corridors,  
13 elevation, and other divisions, with descriptive  
14 names, initials, or numbers[-] that uniquely identify  
15 each niche, mausoleum, or crypt; and

16 (3) File the maps or plats required by this section in the  
17 office of the bureau of conveyances or the office of  
18 the assistant registrar of the land court, and  
19 maintain a copy of all filed maps or plats as a  
20 permanent record of the cemetery authority.



1 ~~[The map or plat shall also be filed in the office of the~~  
2 ~~bureau of conveyances or the office of the assistant registrar~~  
3 ~~of the land court.]~~

4 (b) The cemetery authority shall also maintain a  
5 permanent, accurate record of the identity of each person whose  
6 remains are located in the cemetery, together with the  
7 corresponding unique identifier that indicates the location of  
8 the person's remains within the cemetery. The records required  
9 by this section shall be prepared and maintained in a manner  
10 that will enable the cemetery authority to timely respond to  
11 inquiries from the public or the department regarding the  
12 location of a person's remains within the cemetery.

13 (c) The cemetery authority shall specify the unique  
14 identifier of a plot, crypt, or niche in any document that  
15 provides for the sale, transfer, or disposition of the plot,  
16 crypt, or niche."

17 SECTION 3. Section 441-12, Hawaii Revised Statutes, is  
18 amended to read as follows:

19 **"§441-12 Mortgages and liens [~~subject to dedication.~~];**  
20 **consumer contracts; sales prohibited.** (a) Cemetery authorities  
21 may secure pecuniary obligations by mortgage or lien upon their  
22 property, whether or not the property has been set aside for



1 interment purposes, and may sell plots, crypts, [~~or~~] niches, or  
2 contracts containing pre-need interment services subject to such  
3 mortgage or lien within the limitations and conditions imposed  
4 by this chapter.

5 (b) All mortgages and other liens of any nature hereafter  
6 contracted[~~, placed, or incurred upon~~] for and recorded on the  
7 property which has been and was, at the time of the perfection  
8 of the lien, [~~with the recorded written consent of the owner of~~  
9 ~~any mortgage or lien,~~] dedicated to cemetery purposes pursuant  
10 to this chapter, shall not affect or [~~defeat~~] impair the  
11 dedication[~~,~~] of the property to cemetery use, or the title of  
12 any plot, crypt, or niche [~~owner,~~] contract, or the obligation  
13 of the cemetery authority to fully perform any contract  
14 containing pre-need interment services, but the mortgage or  
15 other lien shall be subject and subordinate to the dedication  
16 and title of any plot, crypt, or niche [~~owner,~~] contract and the  
17 obligation of the cemetery authority to fully perform any  
18 contract containing pre-need interment services, and any and all  
19 sales made upon foreclosure, insolvency, or federal bankruptcy  
20 proceeding, shall be subject and subordinate to the dedication  
21 and title of any plot, crypt, or niche [~~owner,~~] contract and



1 the obligation of the cemetery authority to fully perform any  
2 contract containing pre-need interment services.

3 (c) A statutory lien is created, without recordation of  
4 the lien, upon all real and personal property held by a pre-need  
5 funeral authority upon the filing with the department of audited  
6 financial statements, audited by an independent certified public  
7 accountant, that indicate that its pre-need funeral trusts are  
8 not fully funded as required by applicable law. The amount of  
9 the lien shall be equal to the amount that the pre-need funeral  
10 trusts are underfunded. This lien shall have priority over all  
11 subsequent real property mortgages, security interests, and  
12 liens created upon the real and personal property of the pre-  
13 need funeral authority and shall terminate at the time when the  
14 pre-need funeral trusts are properly funded, as evidenced by  
15 records and certification of the trustee and subsequent  
16 assurance from the independent certified public accountant that  
17 the underfunding was corrected.

18 (d) Notwithstanding any other language to the contrary,  
19 sales by a cemetery or pre-need funeral authority of accounts  
20 receivables from contracts containing pre-need interment, pre-  
21 need funeral, or perpetual care services are prohibited. Sales  
22 made in violation of this subsection are void.



1        (e) Any transfer of pre-need funeral trust funds and the  
2 obligations related thereto shall be to another person licensed  
3 pursuant to section 441-20 or 441-30.5. Any transfer of pre-  
4 need funeral trust funds and pre-need funeral contracts and  
5 obligations related thereto in accordance with this section  
6 shall include the transfer of pre-need funeral contracts made,  
7 entered into, or purchased by the pre-need funeral authority  
8 prior to the transfer."

9        SECTION 4. Section 441-13, Hawaii Revised Statutes, is  
10 amended to read as follows:

11        "**§441-13 Sale of plots after dedication; sale of**  
12 **[~~incumbered~~ encumbered plots prohibited unless [~~incumbrance~~**  
13 **encumbrance subordinate to dedication.** After property is  
14 dedicated pursuant to this chapter, a cemetery authority may  
15 sell, transfer, and convey plots, crypts, or niches thereof,  
16 which plots, crypts, or niches [~~may~~] shall be described by  
17 reference to the map or plat, or amended map or plat, filed in  
18 accordance with section 441-3 or 441-8. No plot, crypt, or  
19 niche shall be sold, transferred, conveyed, or otherwise  
20 disposed of, or offered for sale, transfer, conveyance, or other  
21 disposition, unless the property on or in which the plot, crypt,  
22 or niche is included has been dedicated pursuant to this



1 chapter, nor shall any plot, crypt, or niche be sold,  
2 transferred, conveyed, or otherwise disposed of, or offered for  
3 sale, transfer, conveyance, or other disposition, unless the  
4 property on or in which the plot, crypt, or niche is included  
5 shall either be free and clear of all [~~incumbrances~~]  
6 encumbrances or there has been recorded the written consent of  
7 every [~~incumbrancer~~] encumbrancer thereof that the  
8 [~~incumbrancer's incumbrance~~] encumbrancer's encumbrance shall be  
9 subject and subordinate to the dedication of the property to  
10 cemetery purposes and the title of any plot, crypt, or niche  
11 owner."

12 SECTION 5. Section 441-22.5, Hawaii Revised Statutes, is  
13 amended by amending subsection (b) to read as follows:

14 "(b) Every cemetery or pre-need funeral authority shall be  
15 required to provide to the purchaser of cemetery property, pre-  
16 need interment, or pre-need funeral services and related  
17 commodities a written contract which shall contain the following  
18 [~~disclosure requirements~~] disclosures:

19 (1) The names and addresses of the cemetery or pre-need  
20 funeral authority [~~and~~], purchaser[+], and contract  
21 beneficiary, if the beneficiary is someone other than  
22 the purchaser;



- 1 (2) A clear and concise itemized statement of the  
2 property, including, for cemetery property, the  
3 location of the plot, crypt, or niche by its unique  
4 identifier, and any services[-] and related  
5 commodities to be supplied or not supplied and by  
6 whom, particularly if the authority is not to be the  
7 provider under the terms of the contract;
- 8 (3) The purchase price of each item of property, services,  
9 and related commodities to be supplied, the total  
10 purchase price, and how the total purchase price is  
11 payable[+], including any credit terms, if applicable;  
12 provided that, pursuant to section 441-22.7,  
13 disclosure shall also be made that further additional  
14 charges or fees for perpetual care subsequent to the  
15 execution of the contract are prohibited for any  
16 purpose and on any occasion, except for reasonable  
17 fees related to the administrative costs of  
18 transferring ownership rights, including the cost of  
19 research, document and file preparation, photocopying,  
20 notary fees, records transfer and storage, and any  
21 other costs directly related to the transfer of  
22 ownership rights;



- 1 (4) Related costs covered under the contract;
- 2 (5) [~~The basis on which funds~~] Information regarding  
3 payments received from the purchaser for pre-need  
4 services and related commodities that are to be  
5 deposited in trust[+], including:
- 6 (A) The name and address of the trustee; provided  
7 that the disclosure shall not preclude the  
8 cemetery or pre-need funeral authority from  
9 changing the trustee named;
- 10 (B) The amount of money to be placed in trust; and
- 11 (C) The amount of money paid on the contract that the  
12 cemetery or pre-need funeral authority will  
13 retain and not deposit into the trust;
- 14 (6) [~~Refund~~] The refund, cancellation, and default  
15 provisions of the contract[+], printed in twelve point  
16 bold type, including an explanation of the  
17 requirements of section 441- ;
- 18 (7) The date and place of execution of the contract;
- 19 (8) The cemetery or pre-need funeral authority's or its  
20 duly authorized agent's signature on the contract and  
21 the identification of this person by name and title;  
22 [~~and~~]



1 (9) A statement that the written contract, when signed,  
2 shall constitute the entire agreement between the  
3 parties relative to its subject matter and that all  
4 obligations of both parties shall be fixed and  
5 enforceable by the other parties of the contract[-];  
6 and

7 (10) A statement that the contract may not waive any rights  
8 of the consumer or duties of the cemetery or pre-need  
9 funeral authority under the law."

10 SECTION 6. Section 441-24, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 **"§441-24 Inspection of cemetery or pre-need funeral**  
13 **authority books** [~~; annual exhibits~~]. The books, records, and  
14 papers of every cemetery authority whether or not a corporation,  
15 which operates or claims to operate a perpetual care cemetery,  
16 and of every pre-need funeral authority shall be subject to  
17 examination by the director [~~to the same extent and in the same~~  
18 ~~manner as may be from time to time provided for corporations in~~  
19 ~~section 414-472,~~] as provided by law, and every cemetery  
20 authority operating a perpetual care cemetery, and every pre-  
21 need funeral authority shall submit such information as may be  
22 required by the director [~~in order~~] to furnish information as to



1 whether or not the cemetery or pre-need funeral authority has  
2 complied with this chapter."

3 SECTION 7. Section 441-45, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "**§441-45 Penalty.** In addition to the penalties otherwise  
6 provided by law, any [~~licensee~~] cemetery or pre-need funeral  
7 authority who violates, or [~~omits~~] fails to comply with any of  
8 the provisions of this chapter or rules adopted pursuant thereto  
9 shall be fined not more than [~~\$1,000~~] \$5,000 for each  
10 violation."

11 SECTION 8. Statutory material to be repealed is bracketed  
12 and stricken. New statutory material is underscored.

13 SECTION 9. This Act shall take effect on January 1, 2020.



**Report Title:**

Consumer protection; funeral services

**Description:**

Provides additional protections for consumers of cemetery or funeral services. (HB1337 HD1)

