
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) Before a cemetery or pre-need funeral authority
13 terminates a contract containing pre-need funeral services or
14 pre-need interment services because of a delinquency in payment,
15 the following conditions shall be met:

16 (1) Four months in advance of the contemplated termination
17 date, the cemetery or pre-need funeral authority shall
18 provide written notice to the purchaser at the



1 purchaser's last known address and the notice shall
2 include at a minimum:

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

7 (B) An explanation as to how the purchaser may
8 validate continuance of the contract within four
9 months of the date of notice;

10 (C) A statement that failure to validate continuance
11 of the contract may result in termination of the
12 contract; and

13 (D) A statement that advises the purchaser of all
14 other requirements under this subsection;

15 (2) During the four month period, but not less than once a
16 month, and only so long as the purchaser fails to
17 effectuate continuance of the contract as provided
18 herein, the cemetery or pre-need funeral authority
19 shall provide the written notice required under
20 paragraph (1);

21 (3) If, however, there is a reasonable good faith bona
22 fide dispute between the parties as to the amount of



1 delinquency, the four month period shall not start
2 until the dispute is resolved; and

3 (4) If the purchaser fails to effectuate continuance of
4 the contract by the four month period, the cemetery or
5 pre-need funeral authority may terminate the contract
6 under the terms and conditions of the contract.

7 If the purchaser effectuates continuance of the pre-need funeral
8 services or pre-need interment services contract within the four
9 month period, the cemetery or pre-need funeral authority may
10 require that the purchaser make payment to effectuate the
11 continuance; provided that the amount required shall not be in
12 excess of one installment payment of the purchaser's contract.

13 The purchaser shall resume payment on the pre-need funeral
14 services or pre-need interment services contract in the amounts
15 and as often as required under the terms and conditions of the
16 contract and until all payments owed on the contract are paid in
17 full.

18 (c) A cemetery or pre-need funeral authority is under no
19 obligation to:

20 (1) Validate continuance of a contract where a purchaser
21 becomes delinquent again after the four-month period
22 provided in subsection (b) has passed, and may



1 thereafter terminate the contract under the terms and
2 conditions of the contract; provided that the cemetery
3 or pre-need funeral authority gives written notice of
4 the termination to the purchaser at the purchaser's
5 last known address at least ninety days prior to
6 termination; or

7 (2) Provide pre-need funeral services or pre-need
8 interment services unless the contract is paid in
9 full.

10 (d) If the contract is canceled or terminated pursuant to
11 subsection (a) or (b) or for any other reason, the purchaser
12 shall be entitled to a refund of the amounts paid by the
13 purchaser, less amounts that may be retained by the cemetery or
14 pre-need funeral authority for its costs pursuant to section
15 441-38(b). The cemetery or pre-need funeral authority shall
16 make the refund to the purchaser within thirty days of:

17 (1) Receipt of the purchaser's written notice of
18 cancellation; or

19 (2) Termination of the contract."

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



1 "§441-3 Map or plat required[-]; unique identifier. (a)

2 The cemetery authority [~~from time to time~~], as any of the
3 dedicated cemetery property [~~described in the certificate of~~
4 ~~dedication~~], or any part or section thereof, is offered for
5 sale, transfer, or disposition in the form of plots, crypts, or
6 niches, shall also:

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

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

20 (3) File the maps or plats required by this section in the
21 office of the bureau of conveyances or the office of
22 the assistant registrar of the land court, and



1 maintain a copy of all filed maps as a permanent
2 record of the cemetery authority.

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

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

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

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

21 **"§441-12 Mortgages and liens ~~[subject to dedication];~~**
22 **consumer contracts; sales prohibited.** (a) Cemetery authorities



1 may secure pecuniary obligations by mortgage or lien upon their
2 property, whether or not the property has been set aside for
3 interment purposes, and may sell plots, crypts, ~~[or]~~ niches, or
4 contracts containing pre-need interment services subject to such
5 mortgage or lien within the limitations and conditions imposed
6 by this chapter.

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



1 and title of any plot, crypt, or niche [~~owner~~] contract and
2 the obligation of the cemetery authority to fully perform any
3 contract containing pre-need interment services.

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

19 (d) Notwithstanding any other language to the contrary,
20 sales by a cemetery or pre-need funeral authority of accounts
21 receivables from contracts containing pre-need interment, pre-



1 need funeral, or perpetual care services are prohibited. Sales
2 made in violation of this subsection are void.

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

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

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



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

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

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

21 (1) The names and addresses of the cemetery or pre-need
22 funeral authority [~~and~~], purchaser[~~+~~], and contract



1 beneficiary, if the beneficiary is someone other than
2 the purchaser;

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



1 other costs directly related to the transfer of
2 ownership rights;

3 (4) Related costs covered under the contract;

4 (5) The basis on which funds are to be deposited in
5 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 percentage of the contract price for
11 trustable items to be placed in trust; provided
12 that the percentage shall be no less than seventy
13 per cent;

14 (C) The percentage of the contract price for
15 trustable items that the cemetery or pre-need
16 funeral authority will retain and not deposit
17 into the trust; provided that the percentage
18 shall not be no more than thirty per cent; and

19 (D) Where a portion of the contract price relates to
20 property, services, or related commodities that
21 are not trustable items, a clear description of
22 what those non-trustable items are;



1 (6) ~~[Refund]~~ The refund, cancellation, and default
 2 provisions of the contract~~[+]~~, including an
 3 explanation of the requirements of section 441- , and
 4 a statement in twelve point bold type in substantially
 5 the following form:

6 "YOU HAVE REFUND, CANCELLATION AND DEFAULT RIGHTS
 7 UNDER STATE LAW AND UNDER THE CONTRACT. PLEASE READ
 8 THE CONTRACT CAREFULLY FOR AN EXPLANATION OF THESE
 9 RIGHTS";

10 (7) The date and place of execution of the contract;

11 (8) The cemetery or pre-need funeral authority's or its
 12 duly authorized agent's signature on the contract and
 13 the identification of this person by name and title;
 14 ~~[and]~~

15 (9) A statement that the written contract, when signed,
 16 shall constitute the entire agreement between the
 17 parties relative to its subject matter and that all
 18 obligations of both parties shall be fixed and
 19 enforceable by the other parties of the contract~~[+]~~;
 20 and



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

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

6 **"§441-24 Inspection of cemetery or pre-need funeral**
7 **authority books [~~annual exhibits~~].** The books, records, and
8 papers of every cemetery authority whether or not a corporation,
9 which operates or claims to operate a perpetual care cemetery,
10 and of every pre-need funeral authority shall be subject to
11 examination by the director [~~to the same extent and in the same~~
12 ~~manner as may be from time to time provided for corporations in~~
13 ~~section 414-472,~~] as provided by law, and every cemetery
14 authority operating a perpetual care cemetery, and every pre-
15 need funeral authority shall submit such information as may be
16 required by the director in order to furnish information as to
17 whether or not the cemetery or pre-need funeral authority has
18 complied with this chapter.

19 The records of every cemetery authority shall include the
20 information required under section 441-3(b). The records of
21 every cemetery and pre-need funeral authority shall include a



1 record of any and all notifications from purchasers or
2 representatives of purchasers regarding:
3 (1) Any change in address; and
4 (2) Notice of cancellation;
5 and shall include copies of any and all written notices of
6 termination that were sent to purchasers. Change of address
7 notices, cancellation notices, and notices of termination
8 relating to each contract containing any pre-need funeral
9 services or pre-need interment services shall be maintained by
10 the authority at all times prior to delivering goods or
11 rendering services on the contract and for a period of at least
12 six months after all goods have been delivered or all services
13 have been rendered."

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

16 "**§441-45 Penalty.** In addition to the penalties otherwise
17 provided by law, any [~~licensee~~] cemetery or pre-need funeral
18 authority who violates, or [~~omits~~] fails to comply with any of
19 the provisions of this chapter or rules adopted pursuant thereto
20 shall be fined not more than [~~\$1,000~~] \$5,000 for each
21 violation."



1 SECTION 8. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 9. This Act shall take effect on July 1, 2007;
4 provided that sections 1 and 5 shall take effect on July 1,
5 2008.



Report Title:

Consumer Protection; Funeral Services

Description:

Provides additional protections for consumers of cemetery or funeral services. (SD1)

