
A BILL FOR AN ACT

RELATING TO CEMETERY AND FUNERAL TRUSTS.

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

1 SECTION 1. The legislature finds that existing law
2 regulating cemetery and funeral trusts does not permit the
3 purchaser to cancel a pre-need contract. Individuals who may
4 want to cancel their agreement due to relocation or change to
5 another funeral home or cemetery may be held to the purchase
6 contract.

7 Although all contract agreements are governed by the common
8 law on contracts, including cancellation rights, the legislature
9 finds that the respective rights of the purchaser and the
10 cemetery with regards to cancellation of pre-need contracts
11 should be set out in statute to provide for uniformity of
12 practice and equity.

13 The purpose of this Act is to:

14 (1) Permit a purchaser of pre-need funeral services or
15 pre-need internment services to cancel the contract by
16 following specified procedures;



- 1 (2) Require an equitable refund to the purchaser upon
- 2 cancellation; and
- 3 (3) Amend the percentage amount of transfer from the
- 4 cemetery or pre-need funeral authority to the trustee.

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

8 "§441- Cancellation and refund; default. (a) At any
9 time before pre-need funeral services or pre-need interment
10 services are received by the purchaser or the purchaser's
11 contract beneficiary, the purchaser may cancel the pre-need
12 contract by notifying the cemetery or pre-need funeral
13 authority, in writing, of the purchaser's desire to cancel the
14 contract.

15 (b) If the cemetery or pre-need funeral authority
16 determines that the purchaser is in default of a pre-need
17 contract due to nonpayment, the cemetery or pre-need funeral
18 authority shall provide written notice of the default to the
19 purchaser prior to canceling or terminating the contract. The
20 notice of default shall include:

- 21 (1) A description of the nature of the default;
- 22 (2) The delinquent amounts owed on the contract;



- 1 (3) An explanation as to how the default can be cured; and
- 2 (4) A statement that advises the purchaser of all other
- 3 requirements under this subsection.

4 The cemetery or pre-need funeral authority shall provide
5 the purchaser with a minimum of ninety days to cure the default,
6 and the purchaser, upon request, shall be entitled to receive a
7 statement of the payments made and amounts owed on the contract.
8 If the purchaser cures the default, the contract shall continue
9 under the terms and conditions in effect prior to the default.

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

- 17 (1) Receipt of the written notice of cancellation; or
- 18 (2) Cancellation or termination due to default."

19 SECTION 3. Section 441-22.5, Hawaii Revised Statutes, is
20 amended by amending subsection (b) to read as follows:

21 "(b) Every cemetery or pre-need funeral authority shall be
22 required to provide to the purchaser of cemetery property, pre-



1 need interment, or pre-need funeral services and related
2 commodities a [~~written contract which shall~~] contract written in
3 plain and clear language that shall contain the following
4 [~~disclosure requirements~~] disclosures:

- 5 (1) The names and addresses of the authority [~~and~~],
6 purchaser[+], and contract beneficiary, if the
7 beneficiary is someone other than the purchaser;
- 8 (2) A clear, itemized, and concise statement of the
9 property, including, for cemetery property, the
10 location of the plot, crypt, or niche by its unique
11 identifier, any services, and any related commodities
12 to be supplied or not supplied and by whom,
13 particularly if the authority is not to be the
14 provider under the terms of the contract;
- 15 (3) The purchase price of each item of property, services,
16 and related commodities to be supplied, the total
17 purchase price, and how the total purchase price is
18 payable[+], including any credit terms, if applicable;
19 provided that, pursuant to section 441-22.7,
20 disclosure shall also be made that further additional
21 charges or fees for perpetual care subsequent to the
22 execution of the contract are prohibited for any



1 purpose and on any occasion, except for reasonable
2 fees related to the administrative costs of
3 transferring ownership rights, including the cost of
4 research, document and file preparation, photocopying,
5 notary fees, records transfer and storage, and any
6 other costs directly related to the transfer of
7 ownership rights;

8 (4) Related costs covered under the contract;

9 (5) ~~[The basis on which funds]~~ Information regarding
10 payments received from the purchaser for pre-need
11 services and related commodities that are to be
12 deposited in trust[+], including the:

13 (A) Name and address of the trustee; provided that
14 the disclosure shall not preclude the authority
15 from changing the trustee named;

16 (B) Amount of money to be placed in trust; and

17 (C) Amount of money paid on the contract that the
18 authority shall retain and not deposit into the
19 trust;

20 (6) ~~[Refund]~~ The refund, cancellation, and default
21 provisions of the contract[+], printed in twelve point



- 1 bold type, including an explanation of the
2 requirements of section 441- ;
3 (7) The date and place of execution of the contract;
4 (8) The authority's or its duly authorized agent's
5 signature on the contract and the identification of
6 this person by name and title; [~~and~~]
7 (9) A statement that the written contract, when signed,
8 shall constitute the entire agreement between the
9 parties relative to its subject matter and that all
10 obligations of both parties shall be fixed and
11 enforceable by the other parties of the contract[~~-~~];
12 (10) A statement that the contract may not waive any rights
13 and duties of the parties under the law; and
14 (11) An explanation of the disposition of the income earned
15 attributable to the purchaser's payments and held in
16 trust, and a statement of the purchaser's
17 responsibility for taxes owed on the income."

18 SECTION 4. Section 441-38, Hawaii Revised Statutes, is
19 amended by amending subsection (b) to read as follows:

20 "(b) A cemetery or pre-need funeral authority may take and
21 receive, but shall transfer to the trustee as part of or
22 incident to the pre-need trust, all payments received after the



1 recovery of acquisition costs, which shall be the lesser of
 2 [~~thirty~~] _____ per cent of the contract price or the
 3 difference between the contract price and the cost of the pre-
 4 need interment or pre-need funeral services contracted to be
 5 provided. The transfer shall be made not later than thirty days
 6 after receipt of payment from the purchaser [~~and shall be~~
 7 ~~immediately deposited in~~] for immediate deposit into the trust."

8 SECTION 5. Statutory material to be repealed is bracketed
 9 and stricken. New statutory material is underscored.

10 SECTION 6. This Act shall take effect upon its approval.

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INTRODUCED BY:

Amungan
~~Amungan~~
Rep. Stankovic
Mike Carroel
Ken Wood

John M. Nigro
Gonthe Thiel
Karen Awana
Karl Khadr
Colin Meyer
Abu n. Sun
Chieff

jt JAN 19 2007



Report Title:

Prepaid Funeral Plan; Cancellation, Refund, and Default

Description:

Establishes requirements for cancellation, refund, and default of prepaid funeral plan contracts. Clarifies requirements for prepaid funeral plan contract terms.

