

S.B. NO. 1423

JAN 22 2007

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 to the cemetery or pre-need funeral authority.
16 If, however, the purchaser notifies the cemetery or pre-need
17 funeral authority in writing that the amount of the delinquency
18 is disputed, the reinstatement period does not start until the
19 dispute is resolved. If the purchaser elects to reinstate the
20 contract within the reinstatement period, the purchaser is
21 entitled to resume payments on the contract in the amounts and

1 as often as is required under the terms and conditions of the
2 contract in effect prior to the default. The purchaser is
3 entitled to continue payment on the contract until the contract
4 is paid in full. If the purchaser fails to elect to reinstate
5 the contract within the reinstatement period, the cemetery or
6 pre-need funeral authority may terminate the contract.

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

14 (1) Receipt of the purchaser's written notice of
15 cancellation; or

16 (2) Termination of the contract."

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

19 "§441-3 Map or plat required[-]; unique identifier. (a)

20 The cemetery authority [~~from time to time~~], as any of the
21 dedicated cemetery property [~~described in the certificate of~~

1 ~~dedication~~], or any part or section thereof, is offered for
2 sale, transfer, or disposition in the form of plots, crypts, or
3 niches, shall also:

- 4 (1) In the case of land, survey and subdivide [~~it~~] the
5 dedicated cemetery property into sections, blocks,
6 plots, avenues, walks, or other subdivisions; make a
7 good and substantial map or plat showing the sections,
8 blocks, plots, avenues, walks, or other subdivisions,
9 with descriptive names, initials, or numbers[+] that
10 uniquely identify each plot;
- 11 (2) In the case of a mausoleum or columbarium, make a good
12 and substantial map or plat on which shall be
13 delineated the sections, halls, rooms, corridors,
14 elevation, and other divisions, with descriptive
15 names, initials, or numbers[-] that uniquely identify
16 each niche or crypt; and
- 17 (3) File the maps or plats required by this section in the
18 office of the bureau of conveyances or the office of
19 the assistant registrar of the land court, and
20 maintain a copy of all filed maps as a permanent
21 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

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

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

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

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

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

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

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

- 1 transferring ownership rights, including the cost of
2 research, document and file preparation, photocopying,
3 notary fees, records transfer and storage, and any
4 other costs directly related to the transfer of
5 ownership rights;
- 6 (4) Related costs covered under the contract;
- 7 (5) ~~[The basis on which funds]~~ Information regarding
8 payments received from the purchaser for pre-need
9 services and related commodities that are to be
10 deposited in trust [?], including:
- 11 (A) The name and address of the trustee; provided
12 that the disclosure shall not preclude the
13 cemetery or pre-need funeral authority from
14 changing the trustee named;
- 15 (B) The amount of money to be placed in trust; and
- 16 (C) The amount of money paid on the contract that the
17 cemetery or pre-need funeral authority will
18 retain and not deposit into the trust;
- 19 (6) ~~[Refund]~~ The refund, cancellation, and default
20 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 cemetery or pre-need funeral authority's or its
5 duly authorized agent's signature on the contract and
6 the identification of this person by name and title;
7 [and]
- 8 (9) A statement that the written contract, when signed,
9 shall constitute the entire agreement between the
10 parties relative to its subject matter and that all
11 obligations of both parties shall be fixed and
12 enforceable by the other parties of the contract[-];
13 and
- 14 (10) A statement that the contract may not waive any rights
15 of the consumer or duties of the cemetery or pre-need
16 funeral authority under the law."

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

19 "§441-24 Inspection of cemetery or pre-need funeral
20 authority books [~~,- annual exhibits~~]. The books, records, and
21 papers of every cemetery authority whether or not a corporation,

1 which operates or claims to operate a perpetual care cemetery,
2 and of every pre-need funeral authority shall be subject to
3 examination by the director [~~to the same extent and in the same~~
4 ~~manner as may be from time to time provided for corporations in~~
5 ~~section 414-472,~~] as provided by law, and every cemetery
6 authority operating a perpetual care cemetery, and every pre-
7 need funeral authority shall submit such information as may be
8 required by the director in order to furnish information as to
9 whether or not the cemetery or pre-need funeral authority has
10 complied with this chapter."

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

13 "~~§441-45~~ **Penalty.** In addition to the penalties otherwise
14 provided by law, any [~~licensee~~] cemetery or pre-need funeral
15 authority who violates, or [~~omits~~] fails to comply with any of
16 the provisions of this chapter or rules adopted pursuant thereto
17 shall be fined not more than [~~\$1,000~~] \$5,000 for each
18 violation."

19 SECTION 8. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

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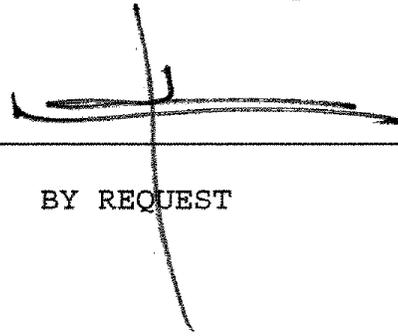
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1 SECTION 9. This Act shall take effect on January 1, 2008.

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INTRODUCED BY: _____



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BY REQUEST

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO THE DEATH CARE INDUSTRY.

PURPOSE: To provide for additional protections for consumers of cemetery or funeral services.

MEANS: Add a new section to chapter 441, Hawaii Revised Statutes, and amend sections 441-3, 441-12, 441-13, 441-22.5(b), 441-24, and 441-45, Hawaii Revised Statutes.

JUSTIFICATION: This bill adds a new section to chapter 441, Hawaii Revised Statutes, to establish procedures for the cancellation, termination, and refund of pre-need funeral and pre-need interment services contracts. Specifically, the proposal (1) clarifies pre-need contract cancellation rights; (2) requires written notice by the cemetery or pre-need funeral authority prior to terminating a contract due to default; (3) allows a purchaser to elect to reinstate the contract; and (4) provides for a refund to a purchaser upon cancellation or termination of the contract.

Amendments to section 441-3, Hawaii Revised Statutes, require that a cemetery authority (1) file and maintain a map or plat that uniquely identifies each plot, crypt, or niche; (2) maintain a permanent and accurate record of the identity of each person located in the cemetery, along with the corresponding unique identifier that

provides the location of the remains within the cemetery; and (3) specify the unique identifier in any document selling, transferring, or disposing of any plot, crypt, or niche.

The bill amends section 441-12, Hawaii Revised Statutes, to (1) provide that mortgages or other liens shall be subject and subordinate to any contract containing pre-need interment services; (2) create a lien upon real or personal property held by a pre-need funeral authority, that will have priority over subsequent real property mortgages, security interests, and liens, when its pre-need funeral trusts are not fully funded; (3) prohibit sales of accounts receivables; and (4) provide that the transfer of pre-need funeral trust funds and pre-need funeral contracts and obligations includes the transfer of pre-need funeral contracts in existence prior to the transfer. The priority given to any contract containing pre-need interment services is already accorded to plots, niches, and crypts under current law. The amendments clarify that pre-need contracts run part and parcel with the cemetery and pre-need funeral operations and are to be honored and assumed when an existing cemetery or pre-need funeral entity is acquired by a new licensee.

The amendment to section 441-13, Hawaii Revised Statutes, requires a cemetery authority to describe, by reference to the map or plat, any plot, crypt, or niche it sells, transfers, or conveys.

The bill amends section 441-22.5, Hawaii Revised Statutes, to require that a cemetery or pre-need funeral authority disclose specific information to a purchaser of cemetery property or pre-need services in a written contract in clear and plain language.

The amendment to section 441-24, Hawaii Revised Statutes, clarifies the Director's authority to examine the books, records, and papers of a cemetery authority or pre-need funeral authority.

Lastly, the bill amends section 441-45, Hawaii Revised Statutes, by increasing the fine amount from \$1,000 to \$5,000 for violations of the chapter by cemetery or pre-need funeral authorities.

The amendments as provided in this proposal would materially advance and improve the level of consumer protection afforded to Hawaii's cemetery and funeral services consumers.

Impact on the public: The bill would enhance protections for consumers of cemetery and funeral services.

Impact on the department and other agencies:
None.

GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	None.
OTHER AFFECTED AGENCIES:	None.
EFFECTIVE DATE:	January 1, 2008.