

JAN 23 2009

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# A BILL FOR AN ACT

RELATING TO THE FUNERAL INDUSTRY.

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

1           SECTION 1. The legislature finds that the funeral industry  
2 in Hawaii currently lacks uniformity and regulation of sales  
3 contracts and financial reporting. This lack of regulation in  
4 the sale of contracts and financial reporting is detrimental to  
5 consumers purchasing pre-need funeral goods and services;  
6 however, no state agency or department has the resources or  
7 familiarity with the industry to provide sufficient oversight.  
8 Therefore, the legislature finds that it is in the best interest  
9 of the consumers of Hawaii's pre-need funeral services industry  
10 to create a regulatory oversight board.

11           The legislature finds that it is necessary to ensure that  
12 consumers who purchase pre-need cemetery or funeral services are  
13 able to make informed decisions, are protected against the loss  
14 of pre-paid funds, and are able to deal with ethical and  
15 licensed pre-need funeral service authorities.

16           The legislature finds that in order to protect Hawaii's  
17 consumers, a board of cemetery and funeral trusts must be



1 created within the department of commerce and consumer affairs.  
2 This board creates uniformity in licensing of cemetery or  
3 pre-need funeral authorities. It also provides for the uniform  
4 oversight of the industry by creating a method of receiving and  
5 investigating consumer complaints against members of the  
6 industry. Additionally, this board creates uniformity in  
7 financial reporting of the industry and has the authority to  
8 audit members of industry. The legislature also deems that it  
9 is necessary for such a board to create a fee-based pre-need  
10 cemetery and funeral governance fund that provides for the  
11 necessary funding of investigations and board operations.

12 The purpose of this Act is to adopt measures that provide  
13 for the uniform regulation and oversight of Hawaii's funeral  
14 industry in order to protect Hawaii's consumers. The adoption  
15 of these measures significantly enhances the level of consumer  
16 protection afforded to Hawaii's funeral service consumers.  
17 These measures allow for the uniform regulation of the funeral  
18 industry by creating an oversight board, creating a means of  
19 regulating licensing of pre-need funeral service providers,  
20 providing for a uniform process for handling complaints against  
21 pre-need funeral service providers, providing for a means of



1 investigation and audit of pre-need funeral service providers,  
2 and creating uniform reporting requirements.

3 SECTION 2. Chapter 441, Hawaii Revised Statutes, is  
4 amended by adding three sections to be appropriately designated  
5 and to read as follows:

6 "§441- Board; appointment. (a) There is established a  
7 board of cemetery and funeral trusts within the department of  
8 commerce and consumer affairs for administrative purposes, which  
9 shall consist of seven members appointed in accordance with  
10 section 26-34, unless otherwise provided in this section. The  
11 board shall consist of:

12 (1) Three members engaged in the industry of cemetery and  
13 funeral trusts, appointed by the governor from  
14 nominations submitted by:

15 (A) An organization representing the cemetery  
16 industry;

17 (B) An organization representing the pre-need  
18 industry; and

19 (C) An organization representing funeral directors;  
20 provided that one member shall be appointed from each  
21 organization's submitted nominations;



- 1       (2) One member of the public not connected with the  
2       industry, appointed by the governor; and
- 3       (3) Three members who are representatives of consumer  
4       organizations, appointed by the governor from  
5       nominations submitted by the three most active  
6       consumer organizations in Hawaii with priorities that  
7       include protecting consumer interest in the industry  
8       of cemetery and funeral trusts;  
9       provided that one member shall be appointed from each  
10       consumer organization's submitted nominations.
- 11       (b) The members shall serve without compensation, but  
12       shall be reimbursed their necessary and reasonable expenses  
13       incurred in the performance of their duties, including travel  
14       expenses.
- 15       (c) The term of the initial members shall be for two  
16       years. Thereafter, the governor shall reduce the terms of four  
17       of the members initially appointed to the board so that two of  
18       the members engaged in the industry of cemetery and funeral  
19       trusts and two of the members who are representatives of  
20       consumer organizations shall serve a term of one year, and the  
21       remaining three members shall serve a term of two years.



1        §441- Board; powers and duties. The board shall assist  
2 the director in carrying out the director's duties under section  
3 441-19. In addition, and pursuant to chapter 91, the board  
4 shall:

5        (1) Assist the director in establishing the qualifications  
6 for the licensing of a cemetery or pre-need funeral  
7 authority as necessary for the welfare of the public  
8 and of the cemetery and pre-need funeral authority  
9 industry;

10       (2) Receive complaints and assist and advise the director  
11 in investigating the actions of any person who acts in  
12 the capacity of a licensee under this chapter;

13       (3) Make recommendations for proper courses of action  
14 against any person, if there is reason to believe that  
15 the person may have violated this chapter or the rules  
16 adopted pursuant to this chapter; and

17       (4) Inquire into the practices and policies of the  
18 cemetery and pre-need funeral authority industry and  
19 recommend to the director practices and policies that  
20 the board deems necessary for the welfare of the  
21 public and of the cemetery and pre-need funeral  
22 authority industry.



1           §441-    Pre-need cemetery and funeral governance fund; use  
2 of fund; fees.   (a) The director shall establish and maintain a  
3 trust fund that shall be known as the pre-need cemetery and  
4 funeral governance fund, the proceeds of which may be used by  
5 the department to investigate any violation or complaint that  
6 alleges fraud, misrepresentation, or deceit against any pre-need  
7 funeral authority.

8           (b) The director shall collect a one time fee of not more  
9 than \$2 per contract from each pre-need funeral authority for  
10 deposit into the pre-need cemetery and funeral governance fund,  
11 as provided in rules adopted by the director pursuant to chapter  
12 91. The fee shall apply to every contract accepted by the  
13 pre-need funeral authority on or after July 1, 2009 and to every  
14 contract that was accepted by the pre-need funeral authority on  
15 or after January 1, 1992 that is still in effect as of July 1,  
16 2009. The fee may be reduced proportionately for each contract  
17 that terminates or is cancelled within the first six months of  
18 the life of the contract. Each pre-need funeral authority shall  
19 provide payment to the director on January 31 and June 15 of  
20 every year for all contracts accepted by the authority during  
21 the prior six month period.



1        (c) The director, as the trustee of the pre-need cemetery  
2 and funeral governance fund, shall be authorized to expend  
3 moneys in the fund to:

4        (1) Retain private legal counsel to represent the interest  
5 of the department in any action that involves, or that  
6 may result in the enforcement of any payment from a  
7 pre-need funeral authority;

8        (2) Retain a certified public account for accounting and  
9 auditing of pre-need trusts, perpetual care funds,  
10 providers of funeral service, and cemetery  
11 authorities;

12        (3) Employ necessary personnel, not subject to chapter 76,  
13 to assist the director and the department in  
14 exercising their respective powers and duties in  
15 accordance with this chapter; and

16        (4) Retain a consultant to recover and collect any  
17 payments to the pre-need cemetery and funeral  
18 governance fund, including interest, from cemetery  
19 authorities and pre-need funeral authorities.

20        (d) The sums received by the director for deposit into the  
21 pre-need cemetery and funeral governance fund shall be held by  
22 the department in trust for carrying out the purpose of the



1 fund. The director, as trustee of the fund, shall be authorized  
2 to expend the funds as set forth in this section, and shall hold  
3 the funds for investment and reinvestment in the same manner as  
4 funds of the state employees' retirement system under chapter  
5 88. The interest from these investments shall be deposited to  
6 the credit of the fund. The director, as trustee, may combine,  
7 for the purpose of investing, these sums with other funds held  
8 in the same manner; provided that the director shall have the  
9 duty to keep separate and distinct accounting records for the  
10 pre-need cemetery and funeral governance fund."

11 SECTION 3. Section 441-1, Hawaii Revised Statutes, is  
12 amended by adding three new definitions to be appropriately  
13 inserted and to read as follows:

14 "Board" means the board of cemetery and funeral trusts.

15 "Consumer" means any person who:

16 (1) Has purchased cemetery property, pre-need interment  
17 services, or pre-need funeral services and related  
18 commodities from a mortuary, cemetery, or pre-need  
19 funeral authority; or

20 (2) Is the purchaser's contract beneficiary.

21 "Consumer organization" means an organization that  
22 advocates for the interests of consumers under this chapter."



1 SECTION 4. Section 441-23, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§441-23 Fine, revocation, suspension, and renewal of  
4 authority licenses. (a) All cemetery authorities and pre-need  
5 funeral authorities, their employees, agents, or anyone  
6 soliciting on their behalf, are prohibited from:

7 (1) Making untrue statements or omitting any material fact  
8 when engaged in solicitation of pre-need interment  
9 services or pre-need funeral services;

10 (2) Using advertisements or offers of pre-need interment  
11 or pre-need funeral services that are false,  
12 misleading, deceptive, unfair, coercive, or  
13 intimidating;

14 (3) Soliciting consumers by telephone any time between the  
15 hours of 9:00 p.m. and 8:00 a.m.;

16 (4) Using the term "trust" or "trust-funded" in any way  
17 that is misleading in any advertisement or  
18 solicitation; and

19 (5) Directly soliciting persons in hospitals, rest homes,  
20 nursing homes, or similar health care facilities  
21 in-person or by telephone without having been



1 expressly requested to do so by that person or that  
2 person's legal representative.

3 (b) In addition to any other actions authorized by law,  
4 the director may fine an authority, revoke any authority  
5 license, or suspend the right of the licensee to use the  
6 license, or refuse to renew any license for any cause authorized  
7 by law, including but not limited to the following:

- 8 (1) Any dishonest or fraudulent act as a cemetery or pre-  
9 need funeral authority that causes substantial damage  
10 to another;
- 11 (2) Making repeated misrepresentations or false promises  
12 through advertising or otherwise;
- 13 (3) Violation of this chapter or the rules adopted  
14 pursuant thereto;
- 15 (4) Commingling the money or other property of others with  
16 that of the licensee;
- 17 (5) Having been adjudicated insane or incompetent;
- 18 (6) Selling or offering to sell any cemetery property,  
19 pre-need interment, funeral services, or pre-need  
20 funeral services based on speculation or promises of  
21 profit from resale;



- 1 (7) Failing to file the actuarial study or an audited
- 2 financial statement or to maintain in effect the bond
- 3 [as] required by section 441-22;
- 4 (8) Failing to maintain pre-need trusts or perpetual care
- 5 funds as required by this chapter; or
- 6 (9) Violating section 441-22.7."

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

9 **"§441-24 Inspection of cemetery or pre-need funeral**  
10 **authority books.** The books, records, and papers of every  
11 cemetery authority whether or not a corporation, which operates  
12 or claims to operate a perpetual care cemetery, and of every  
13 pre-need funeral authority shall be subject to examination by  
14 the director as provided by law, and every cemetery authority  
15 operating a perpetual care cemetery, and every pre-need funeral  
16 authority shall submit [~~such~~] the information as may be required  
17 by the director to furnish information as to whether or not the  
18 cemetery or pre-need funeral authority has complied with this  
19 chapter.

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



1 a 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, and  
 8 all other records altering or amending the contract, or  
 9 otherwise relating to each contract containing any pre-need  
 10 funeral services or pre-need interment services shall be  
 11 maintained by the authority at all times prior to delivering  
 12 goods or rendering services on the contract and for a period of  
 13 at least ~~[six months]~~ three years after all goods have been  
 14 delivered or all services have been rendered."

15 SECTION 6. Section 441-24.5, Hawaii Revised Statutes, is  
 16 amended to read as follows:

17 **"§441-24.5 Pre-need trusts and perpetual care funds;**  
 18 **audited financial statements.** (a) Every cemetery authority  
 19 operating a perpetual care cemetery or which engages in pre-need  
 20 sales ~~[or]~~ and holds money in trust for pre-need interment  
 21 services, and every pre-need funeral authority which engages in  
 22 pre-need sales or holds money in trust for pre-need funeral



1 services shall submit an audited financial statement of its  
2 pre-need trusts and perpetual care funds, using a method of  
3 accounting that employs generally accepted accounting practices,  
4 to the director within ninety days after the close of the  
5 authority's books on a fiscal or calendar year basis. The  
6 director may create a standardized audited financial statement  
7 form and require that every cemetery authority or pre-need  
8 funeral authority submit this form annually with reports  
9 mandated pursuant to this section.

10 (b) A late fee of \$ shall be assessed for each  
11 day that a cemetery authority or pre-need funeral authority  
12 fails to file an audited financial statement within the time  
13 requirements of subsection (a).

14 (c) In the event that any required audited financial  
15 statement is not provided to the department within sixty days  
16 after it is due, the director may issue immediate notice to the  
17 cemetery authority or pre-need funeral authority to suspend  
18 pre-need sales or prohibit further withdrawal from the perpetual  
19 care funds and pre-need trusts. Pending completion of the audit  
20 ordered by the director or submission of the audited financial  
21 statement by the pre-need funeral authority or cemetery  
22 authority, the director shall impose restrictions on sales and



1 withdrawals for a period of time determined by the director to  
2 be adequate to ensure the integrity of the trust; provided that  
3 the period of time shall in no event be less than thirty days.  
4 The director shall also commence an immediate audit of trust  
5 funds held by the cemetery authority or pre-need funeral  
6 authority that engaged in the sale of pre-need funeral services  
7 or pre-need interment services and failed to submit on a timely  
8 basis the required financial statement in accordance with this  
9 section. All costs of the audit imposed by the director shall  
10 be borne by the pre-need funeral authority or cemetery  
11 authority."

12 SECTION 7. Section 441-24.6, Hawaii Revised Statutes, is  
13 amended by amending its title and subsection (a) to read as  
14 follows:

15 " ~~[+]§441-24.6[+]~~ **Pre-need trusts and perpetual care funds;**  
16 **actuarial studies.** (a) Every cemetery authority operating a  
17 perpetual care cemetery and every cemetery or pre-need funeral  
18 authority offering pre-need services shall contract with an  
19 independent actuary to conduct an annual study of its level of  
20 funding. In the case of a perpetual care cemetery, the study  
21 shall ~~[be to]~~ determine whether the authority's perpetual care  
22 fund will provide sufficient income to cover the costs of the



1 perpetual care of the cemetery. In the case of a cemetery or  
2 pre-need funeral authority, the study shall [~~be to~~] determine  
3 whether the amount in the authority's pre-need trust as of the  
4 end of the fiscal year will be sufficient to cover the future  
5 claims of pre-need plan participants[-] as of the end of the  
6 fiscal year."

7 SECTION 8. Section 441-24.7, Hawaii Revised Statutes, is  
8 amended by amending its title and subsection (a) to read as  
9 follows:

10 " ~~[+]§441-24.7[+]~~ **Actuarial study, audited financial**  
11 **statement, trust agreement; complaints, consultants, reports,**  
12 **and contractor reports; available for review.** (a) The  
13 actuarial study, audited financial statement, and trust  
14 agreement filed by a cemetery or pre-need funeral authority, as  
15 required by this chapter, shall be available for review by any  
16 member of the general public upon request. The review of these  
17 documents shall be [~~done~~] conducted during the department's  
18 normal business hours. The director shall have the right to  
19 deny public review for these documents together with any other  
20 complaints, consultant reports, and contracted support and audit  
21 reviews, for reasons specified in rules adopted by the director  
22 pursuant to chapter 91."



1 SECTION 9. Section 441-38, Hawaii Revised Statutes, is  
2 amended by amending subsection (b) to read as follows:  
3 "(b) [A] Seventy per cent of the funds paid by the  
4 purchaser shall be transferred to the trustee to remain in  
5 trust; provided that a cemetery or pre-need funeral authority  
6 may take and receive, but shall transfer to the trustee as part  
7 of or incident to the pre-need trust, all payments received  
8 after the recovery of acquisition costs, which shall be the  
9 lesser of thirty per cent of the contract price or the  
10 difference between the contract price and the cost of the  
11 pre-need interment or pre-need funeral services contracted to be  
12 provided. The transfer shall be made not later than thirty days  
13 after receipt of payment from the purchaser and shall be  
14 immediately deposited in the trust. The trustee shall provide  
15 the director with a monthly confirmation notice and, upon  
16 request of the purchaser, shall provide notice to the purchaser  
17 that the payments have been deposited with the trustee within  
18 thirty days of the close of the prior month by the cemetery  
19 authority or pre-need funeral authority. The cemetery authority  
20 or pre-need funeral authority shall provide an annual statement  
21 to the purchaser within thirty days of the close of the prior  
22 month."



# S.B. NO. 661

1           SECTION 10. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3           SECTION 11. This Act shall take effect on July 1, 2009.

4

INTRODUCED BY: 

Therese Cron Oakland

Andy H. Paul



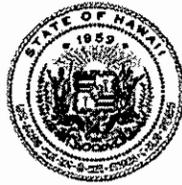
**Report Title:**

Funeral Industry; Commerce and Consumer Protection; Board of Cemetery and Funeral Trusts

**Description:**

Establishes a board of cemetery and funeral trusts. Establishes a pre-need cemetery and funeral governance fund. Prohibits additional practices. Authorizes the director of commerce and consumer affairs to prohibit a pre-need authority from engaging in sales and withdrawals for failure to submit required audits.





LINDA LINGLE  
GOVERNOR  
JAMES R. AIOVA, JR.  
LT. GOVERNOR

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LAWRENCE M. REIFURTH  
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DEPUTY DIRECTOR

PRESENTATION OF  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE SENATE COMMITTEE ON  
COMMERCE AND CONSUMER PROTECTION

TWENTY-FIFTH STATE LEGISLATURE  
REGULAR SESSION, 2009

WEDNESDAY, FEBRUARY 11, 2009  
8:30 A.M.

TESTIMONY ON SENATE BILL NOS. 661 AND 1099- RELATING TO THE FUNERAL  
INDUSTRY

TO THE HONORABLE ROSALYN H. BAKER, CHAIR,  
AND TO THE HONORABLE DAVID Y. IGE, VICE-CHAIR,  
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on Senate Bill Nos. 661 and 1099, Relating to the Funeral Industry. My name is Jo Ann Uchida, Complaints and Enforcement Officer for the Department's Regulated Industries Complaints Office ("RICO"). Because Senate Bill No. 661 includes a section relating to a pre-need cemetery and funeral governance fund that is nearly identical to Senate Bill No. 1099, RICO has consolidated its testimony and offers the following comments on the enforcement-related aspects of both bills.

Senate Bill No. 661 establishes a Board of Cemetery and Funeral Trusts, provides for the appointment, powers, and duties of Board members, creates a pre-need cemetery and funeral governance fund, specifies the source and use of the funds, and amends various enforcement provisions in Chapter 441, HRS. Senate Bill No. 1099 creates a pre-need cemetery and funeral governance fund and specifies the source and use of the funds.

S.B. 661, section 2 – Board; powers and duties. Among other things, this section creates an advisory board that would:

(2) Receive complaints and assist and advise the director in investigating the actions of any person who acts in the capacity of a licensee under this chapter;

This proposal is inconsistent with existing law that governs the creation of boards within the Department. Section 26-9(m), Hawaii Revised Statutes ("HRS") provides that all boards within the Department shall delegate their authority to receive, arbitrate, investigate, and prosecute complaints to the Department. The reason for this statute, in part, is to ensure that a board's adjudicatory function is clearly segregated from its investigatory and prosecutorial functions. This is to prevent the board from receiving or evaluating information that was not part of any contested case hearing conducted to determine whether violations of the licensing law occurred. Insulating the board also prevents the board from becoming predisposed to a particular outcome in a case. If a committee with complaint investigation authority is to be created, section 26-9(m) must be amended and RICO's role with regard to chapter 441 complaints needs also to be clarified.

Without the aforementioned amendment and clarification, the proposal and the existing law would irreconcilably conflict.

S.B. 661 Section 2 and S.B. 1099 – Pre-need cemetery and funeral governance fund. This fund is entitled "Pre-need cemetery and funeral governance fund", but it appears to be limited in application only to "investigate any violation or complaint that alleges fraud, misrepresentation, or deceit against any pre-need funeral authority." (emphasis added) It appears that the fund cannot be used to investigate pre-need interment or cemeteries. In addition, because fraud, misrepresentation and deceit are very specific legal terms, many other types of complaints cannot be investigated with these funds. Implementation of this fund under the conditions set forth in this bill would be challenging.

S.B. 661 Section 3- Definition of consumer. This section defines "consumer" to include any person who has purchased cemetery property, pre-need interment services, or pre-need funeral services, or who is the purchaser's beneficiary. By effectively excluding "prospective purchasers" from the definition, the prohibition proposed on page 9 line 14 of the bill would have a very narrow application. Moreover, the term "purchaser" is more prevalently used throughout the Chapter (see § 22.5, 22.6, and 22.8, HRS) and, therefore, a definition of that term, rather than "consumer", might be more useful.

S.B. 661 Section 4, fine, revocation, suspension and renewal of authority licenses.

The section establishes prohibited practices for a licensee's employees and agents. Yet neither the section nor the existing law establish jurisdiction (licensing authority) over those persons. As such, the language on page 9 lines 5 and 6 would not be enforceable.

In addition, proposed time-of-day solicitation restrictions are already addressed in federal and state telemarketing laws, the Telemarketing and Consumer Fraud and Abuse Prevention Act and Telemarketing Sales Rule and Chapter 481P, HRS, respectively, while the proposal to prohibit misrepresentations by a cemetery or funeral authority is also already covered under §441-23(1) and (2), HRS. As such, these provisions are presumably unnecessary.

In addition, the language in (a)(5) on page 9, line 19 to page 10, line 2, which prohibits telephone solicitations in certain facilities without an express request to solicit, should be clarified for enforcement purposes so that terms such as "directly", and "hospitals, rest homes, nursing homes, or similar health care facilities" are clearly defined. Clear definitions are required for effective enforcement. While we appreciate the intent behind this provision, there may be practical difficulties in enforcing this section against telemarketers unless there is a means for a telemarketer to distinguish between a telephone number that connects to a facility and a telephone number that does not.

Finally, any amendments pertaining to prohibited conduct should be reconciled with the prohibited practices that are already part of §441-23, HRS, to avoid confusion and uncertainty as to which section applies.

S.B. 661 Section 8 - §441-24.7 Complaints available for review: The bill provides that the Director shall have the right to deny public review of certain documents, including complaints, for reasons specified in rules adopted by the Director pursuant to Chapter 91, HRS. While RICO appreciates that the bill authorizes the Director to protect the confidentiality of certain documents, the disclosure of government records is governed by Chapter 92F, HRS. As such, the Committee may wish to solicit input from the Office of Information Practices, the agency responsible for enforcement of Chapter 92F, HRS.

Thank you for the opportunity to testify on Senate Bill Nos. 661 and 1099. I will be happy to answer any questions that the members of the Committee may have.

WRITTEN ONLY

TESTIMONY BY GEORGINA K. KAWAMURA  
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE  
STATE OF HAWAII  
TO THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION  
ON  
SENATE BILL NO. 661

February 11, 2009

RELATING TO THE FUNERAL INDUSTRY

Senate Bill No. 661 establishes a board of cemetery and funeral trusts to regulate cemetery and pre-need funeral authorities, their employees, agents or anyone soliciting on their behalf. The bill creates the pre-need cemetery and funeral governance fund to be administered by the Department of Commerce and Consumer Affairs to investigate any violation or complaint that alleges fraud, misrepresentation, or deceit against any pre-need funeral authority. This fund would receive deposits from a one-time fee collected from pre-need funeral authorities on each contract entered into.

As a matter of general policy, this department does not support the creation of any special fund which does not meet the requirements of Section 37-52.3 of the Hawaii Revised Statutes. Funds should: 1) reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries of the program; 2) provide an appropriate means of financing for the program or activity; and 3) demonstrate the capacity to be financially self-sustaining. It is difficult to determine whether the fund will be self-sustaining.



February 10, 2009

Senator Rosalyn H. Baker, Chairman  
Committee on Commerce and Consumer Protection  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, HI 96813

Re: SB 660, SB661, SB 1099 (Relating to preneed funeral trusts)

Dear Senator Baker:

I would like to offer this testimony against the passage of Senate Bills 660, 661, and 1099, all relating to preneed funeral trusts.

The Department of Commerce & Consumer Affairs (DCCA) has already been entrusted by the state to provide consumers with an agency one can refer to if problems arise with preneed funeral plans. The proposal made, especially by Senate Bill No. 661, seems to be redundant in asking for the creation of a separate "board" to handle the responsibilities of what DCCA currently does. Asking for an up to \$2.00 fee per contract since 1992 to fund the board would be met with opposition by all preneed providers affected.

Preneed service providers in the state have a long history of working with DCCA to resolve issues that arise from time to time. Adding another level of regulation, in the form of a preneed board, would only lengthen the amount of time it takes to assist a consumer if complaints arise due to a board meeting having to be called. In this respect, the staff of DCCA can react more quickly, efficiently, accurately, and cost effectively when responding to an issue needing attention.

The number of complaints concerning preneed funeral trusts has historically been quite limited. The number of new licensees to be considered are even less. The reality of the situation is that a proposed board would have a limited amount of work and regular meetings would not be considered productive.

Ultimately, the consumer makes the final decision about purchasing a preneed contract or not. Adding more regulation to an industry which already handles itself well does not appear beneficial. For these reasons I submit this testimony against Senate Bills 660, 661, and 1099 in entirety. I also support the testimony submitted by the Hawaii Funeral & Cemetery Association (formerly the Hawaii Allied Memorial Council) against these bills.

Sincerely,

Mitchell M. Dodo  
Vice-President / Operations Manager  
Exclusive servicing mortuary to the Dodo Mortuary Life Plan preneed contracts

199 Wainaku Street - Hilo, Hawaii 96720  
Phone: (808) 935-5751 - Fax: (808) 935-1074  
[www.dodomortuary.com](http://www.dodomortuary.com)



199 Wainaku Street - Hilo, Hawaii 96720  
Phone: (808) 935-5751 - Fax: (808) 935-1074  
[www.dodomortuary.com](http://www.dodomortuary.com)

**Testimony to the Senate Committee on Commerce and Consumer Protection**  
**Re: SB661 Testimony from Pedro E. Racelis III, Legislative Representative for**  
**Funeral Consumers Alliance of Hawaii**  
**February 11, 2009 8:30AM**

The Funeral Consumers Alliance of Hawaii is a non-profit educational organization, formerly known as the Memorial Society of Hawaii, and was incorporated in 1962. Our mission is to assist consumers in planning and educating our members with meaningful, dignified, and affordable services at the time of death in the State of Hawaii. Our services are free to the public and we have over 2,000 members throughout the State of Hawaii.

We sincerely appreciate the efforts of Senator Les Ihara Jr. and that of the Department of Commerce and Consumer Affairs (DCCA) regarding SB661, which relates to the establishment of an oversight Board for cemetery and funeral trusts, a governance fund and a means to further protect the rights of the consumer in the State of Hawaii. We

**Support SB 661** for the following reasons:

1. Senate Bill 661 represent the interests of all consumers in the State of Hawaii because it would ensure that a prepaid contract is performed in accordance with its terms, meaning the funeral goods and services selected by a purchaser are provided as specified in the contract and, furthers ensures the funds are available at a future date to pay for the contracted goods and services at the time of need.
2. Senate Bill 661 will assist the Department of Commerce and Consumer Affairs to oversee the financial activities of the participating company's financial stability and contractual behavior with its clients through the establishment of an oversight

board made up of diverse consumer advocacy members such as three members engaged in the cemetery and funeral industry, one public member not involved in the cemetery and funeral industry, and three members who represent consumer organizations in the State of Hawaii. We believe this diverse group of members would be valuable in assisting the Director in overseeing the State's trusting activities as it relates to pre-need and further provide a level of consumer protection not available before in the State of Hawaii.

3. Senate Bill 661 would have provided the State of Hawaii indications that the Diego Mortuary, Inc. was not financially healthy and would have prevented the State of Hawaii from being fined \$1,000,000 for lax of oversight. SB661 would have protected the consumers on the Big Island from further financial lost of their trust funds because the Department of Commerce and Consumer Affairs would have had the capability to investigate cemetery and funeral industry financial records.
4. Senate Bill 661 would have also provided the State of Hawaii with warning signals that Honolulu-based RightStar Hawaii Management Inc., which licensed cemeteries in Hawaii including the Valley of the Temples in Kaneohe, was not financially solvent to take care of their clients' trust funds at the time of need. Although this case is still pending, how would the consumers know if their trust funds were being managed properly and would be available at the time of need. Who was looking out for the consumer then? We believe SB661 would have red flagged RightStar Hawaii Management Inc. as potential risk to consumers.

5. Senate Bill 661 would provide the consumers of the State of Hawaii a means to bring legitimate complaints regarding suspected fraud, unfair business practices financial interest concerns by consumers and suspicious sales practices to the oversight board. This oversight board would have the authority to investigate consumer's interests and complaints.
6. Senate Bill 661 would also identify those cemetery and funeral businesses who are model business practices who manage their financial interests properly and provide the best consumer products in the State of Hawaii. The funeral industry in Hawaii was build by small business people during the agricultural and plantation growth in a very young State. These small businesses have been the cornerstone of the cemetery and funeral industry in Hawaii. We believe do not believe all cemetery and funeral industry businesses are operated by selfish and dishonest operators. However, we believe that the State of Hawaii should be able to protect the financial interests of its citizens and consumers by providing the oversight SB661 embraces.

In closing, we believe SB661 to be a very comprehensive bill and ask the committee to endorse SB661.

Sincerely,

A handwritten signature in blue ink that reads "Pedro E. Racelis III". The signature is written in a cursive style with a stylized "R" at the end.

Pedro E. Racelis III  
Legislative Representative  
Funeral Consumers Alliance of Hawaii

Senator Rosalyn H. Baker  
Chairman  
Commerce and Consumer Protection Committee Members

Honorable Rosalyn Baker,

Two years ago working with the funeral industry and the Department of Commerce & Consumer Affairs the legislature passed Act 188.

We are now complying with the act and have printed our forms to be in compliance with Chapter 441 as amended by Act 188. Although we have incurred additional cost we were happy to be part of the solution to consumer concerns. Now we are faced with three bills SB 660, SB 661 and SB 1099 to which the Hawaii Allied Memorial Council is opposed. These bills include establishing a board and establishing a governance fund of which there would be a charge of \$2.00 per pre-need contract sold since 1992. There was a prior board sunset about 15 years ago for the following reasons;

- A. Meetings were no productive because there were hardly any new licenses to consider.
- B. There were no complaints to discuss.
- C. It cost the state to pay for board members to attend meetings especially for board members from outer island.
- D. Most of the matters could be handled as minstrel matters by staff of DCCA.
- E. The staff of DCCA could respond to matters more quickly than waiting for a board meeting.
- F. The board was deemed not essential to administration of Chapter 441 and the DCCA could promulgate rules to effectively administrate the chapter.
- G. The director of DCCA could respond to concerns of the public more effectively than passing it on to a board to deliberate.

It has been a practice by our industry to provide adequate training to ensure that sales people identify themselves, who they represent and to give a sales presentation that truthfully represents their company with all the appropriate paper work information to the consumer. It is also good business sense not to make solicitation calls late in the evening and we don't need a law to tell us that. Since by our pre-need contracts are "trust-funded", the contract license indemnify the depositary officials. We don't encourage solicitation to persons in hospitals, nursing homes, or other long term facilities unless requested by family members. This bill also requires the trustee to send

confirmation notice that payments have been deposited within 30 days. This poses an additional astronomic cost to the company. Clients are given receipts of payments when payments are made and a certificate of completion is sent when the plan is fully paid. These onerous requirements will balloon our cost to the point that it makes it difficult to operate business.

Further regulation and cost burden on our industry is not something we want to incur in this economic climate of today, and is not necessary. It is not a good idea to charge a fee per contract to be maintained by DCCA as a trusted fund. The DCCA would be burdened with the management of the fund which must be audited for compliance. It will mean extra time spent to account for the fee, transmitting it to DCCA and making sure the DCCA monitors the timeliness of each submission.

The public has not been harmed by the lack of regulations. The funeral and cemetery industry has very little documented complaints. Instead of proposing more regulations we should leave the decision of the future of our business to the consumer. The consumer should have the right to choose whether they purchase our services or not. Our business is about helping people during a difficult time in their lives. We should be spending our time comforting our consumers rather than following up on unnecessary paperwork.

It is the position of our industry to operate under the current laws and legislation that were accepted and dually agreed upon by both DCCA and Funeral and Cemetery Industry. For the reasons stated above I would like to submit this testimony against SB 660, SB 661 and SB 1099.

Yours truly,



Jerome Andrade

President

Hawaii Allied Memorial Council

1330 Maunakea Street

Honolulu, Hawaii 96817

Ph: (808)522-5200 Fax: (808) 522-5206



*Ballard Family Mortuary*

Senator Rosalyn H. Baker  
Chairman  
Commerce and Consumer Protection Committee

Honorable Rosalyn Baker,

Two years ago the legislature passed Act 188, Working with the funeral industry, Department of Commerce & Consumer Affairs and legislature. Our forms have been revised, and we are now in compliance with Chapter 441 as amended by Act 188. Although we have incurred additional costs, we were happy to be a part of the solution to consumer concerns. We are now faced with three bills, SB 660, SB 661 and SB 1099, and the Hawaii Allied Memorial Council is opposed to establishing a board, and governance fund, which would add a charge of \$2.00 per pre-need contract sold since 1992. The board was sunset about 15 years ago for the following reasons:

- A. Meetings were no longer productive because there were hardly any new licenses to consider.
- B. There were no complaints to discuss.
- C. Costs were incurred by the state for board member attendees, from here and the outer islands.
- D. Most of the matters could be handled as minstrel matters by staff of DCCA.
- E. The DCCA staff could respond to matters more quickly than waiting for a board meeting.
- F. The board was deemed not essential to the administration of Chapter 441, and the DCCA could promulgate rules to effectively administrate the chapter.
- G. The director of DCCA could respond to public concerns more effectively than passing it on to the board to deliberate.

It is common knowledge that sales people introduce themselves, and the company they represent when discussing funeral planning. It is good business sense not to make solicitation call late in the evenings, and we don't need a law to tell us that. Since by law our pre-need contracts are "trust-funded", it would be difficult to not tell clients about the trust fund as a depository of funds. We don't solicit persons in hospitals, nursing homes, or other long term facilities unless requested by family members. I don't think we need to codify this practice into law. This bill also requires that the trustee send confirmation notices that payments have been deposited. This poses a problem because we give our client's monthly payment options. Clients are given receipts of payments when payments are made, and a certificate of completion is sent when the plan is paid in full. These onerous requirements will balloon our costs to the point that it makes it difficult operating a business.

In this bad economic times, charging a fee per contract, which will be maintained by DCCA as a trust fund, increase the cost of doing business, and is not a good idea. It would be a burden to





*Ballard Family Mortuary*

account for each fee and transmitting it to DCCA. How will DCCA monitor timely submissions?

The public has not been harmed by lack of regulations. Rather than proposing more regulations for the funeral and cemetery industry, which has very little documented complaints, it may be more prudent to leave the decision of the future of our business to the consumer with their right to purchase (or not) our product.

For the reason stated above, I would like to submit this testimony against SB 660, SB 661, and SB 1099.

Yours Truly,

Mark Ballard  
President  
Ballard Family Mortuary



## Hawaiian Memorial Life Plan

DBA; Hawaiian Memorial Park Cemetery, Green Haven Memorial Park,  
Borthwick Mortuary Honolulu/Kauai  
1330 Maunakea Street  
Honolulu, Hawaii 96817  
Office (808) 522-5233

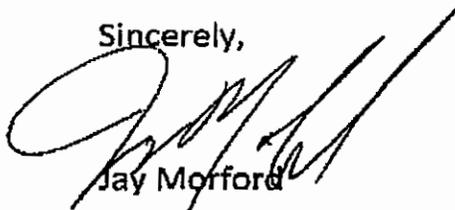
Senator Rosalyn H. Baker  
Chairman  
Commerce and Consumer Protection Committee

2/9/09

Honorable Rosalyn Baker,

Please accept this written testimony to express our strong opposition to SB 660, SB 661 and SB 1099. We support the position of both the Hawaii Allied Memorial Council and the Hawaii Funeral Directors Association in opposition of these Bills.

Sincerely,



Jay Morford

Vice President; Hawaiian Memorial Life Plan

James Arakaki  
Dodo Mortuary Life Plan Inc.  
459 Waiianuenue Avenue  
Hilo, Hawaii, 96720  
[Jimarakaki@hawaii.rr.com](mailto:Jimarakaki@hawaii.rr.com)

February 7, 2009

Chairperson Rosalyn Baker and members of the Senate Consumer Protection Committee

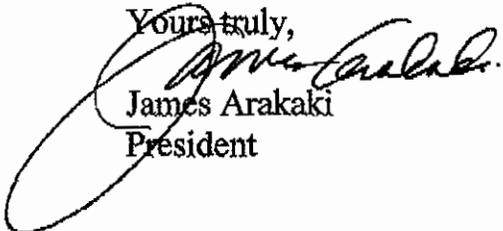
Honorable Senate Baker and committee members:

Our company is opposed to SB 660 and SB 661 for the following reasons: SB 660 "treating cemetery property and pre-need funds as abandoned property." This bill is not needed because cemetery property and pre-need funds become part of person's estate when not used.

SB 661 "proposes to establish a cemetery and funeral trust board." A cemetery, funeral and pre-need board was sun setted many years ago, as a board not needed. It was determined that Chapter HRS 441 could be effectively administered by the department and it's executive director. I served on this board before it was sun setted and attended numerous meetings with nothing substantial on the agenda. We are also not in favor with charging \$2.00 per contract to be forwarded to DCCA. There is no other industry that is required to send in \$2.00 per transaction sold ie. Insurance, real estate, auto sales, mortgage loans, banking, etc.

The director of DCCA has all the authority to examine all phases of our industry. We are the most regulated industry under DCCA as we are required to submit annual audited financials, actuarial study, and a bond. As a small business we also must provide health insurance, workman comp. TDI and all the expenses and taxes that a business must incur. We feel we provide a good service to the public by offering them a voluntary opportunity to pre-arrange a funeral. Moreover consumer advocacy groups can always approach DCCA with ideas to protect the consumer without going before a board.

Yours truly,



James Arakaki  
President