

JAN 22 2010

S.B. NO. 2576

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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 reporting methods  
2       for financial statements and actuarial reports of cemetery and  
3       pre-need funeral authorities lack conformity and  
4       standardization, leaving the State with the need to contract  
5       with private certified public accountants and actuaries to read  
6       and analyze the audited financial statements and actuarial  
7       reports.

8       The purpose of this Act is to materially advance and  
9       improve the level of consumer protection by:

10       (1) Creating a standardized form for reporting financial  
11       statements and actuarial reports;

12       (2) Ensuring sufficient funds are available to cover  
13       future claims; and

14       (3) Requiring the department of commerce and consumer  
15       affairs to submit annual reports to the legislature on  
16       the status of licensees required to submit audited  
17       financial statements and actuarial reports.



SECTION 2. Section 441-24.5, Hawaii Revised Statutes, is amended to read as follows:

**"§441-24.5 Pre-need trusts and perpetual care funds; audited financial statements.** (a) Every cemetery authority operating a perpetual care cemetery or ~~[which]~~ that engages in pre-need sales ~~[or]~~ and holds money in trust for pre-need interment services, and every pre-need funeral authority ~~[which]~~ that engages in pre-need sales ~~[or]~~ and holds money in trust for pre-need funeral services shall submit an audited financial statement and actuarial report of its pre-need trusts and perpetual care funds to the director within ninety days after the close of the authority's books on a fiscal or calendar year basis~~[-]~~ and shall use a method of accounting in accordance with generally accepted accounting practices. The director shall create a standardized audited financial statement and standardized actuarial report and require that every funeral authority submit these reports annually. The audited financial statement and actuarial report required by this section shall include:

(1) The total dollar amount required to fully perform all contracts in each trust;



1       (2) The total dollar amount due to each trust as of the  
2       date of execution of contracts not yet performed;

3       (3) The total dollar amount in each trust; and

4       (4) The total outstanding dollar amount due from consumers  
5       for each trust.

6       (b) A late fee of \$                      shall be assessed for each  
7       day that a cemetery authority or pre-need funeral authority  
8       fails to file an audited financial statement or actuarial report  
9       within the time requirement under subsection (a).

10       (c) If any required audited financial statement or  
11       actuarial report is not provided to the department within sixty  
12       days of its due date or within the time established by any  
13       extension granted by the director, the director shall issue  
14       immediate notice to the cemetery authority or pre-need funeral  
15       authority to suspend pre-need sales, and the director shall  
16       prohibit further withdrawal from the perpetual care funds and  
17       pre-need trusts. The director shall commence an immediate audit  
18       of trust funds held by the cemetery authority or pre-need  
19       funeral authority that engaged in the sale of pre-need funeral  
20       services or pre-need interment services and failed to submit on  
21       a timely basis the required audited financial statement or  
22       actuarial report, pursuant to this section. Pending completion



1 of the audit ordered by the director or submission of the  
2 audited financial statement and actuarial report by the pre-need  
3 funeral authority or cemetery authority, the director shall  
4 impose restrictions on sales and withdrawals for a period of  
5 time determined by the director to be adequate to ensure the  
6 integrity of the trust; provided that the period of time shall  
7 in no event be less than thirty days. All costs of the audit  
8 imposed by the director shall be borne by the pre-need funeral  
9 authority or cemetery authority.

10 (d) During any period that sales are suspended or  
11 withdrawals are prohibited under subsection (c), the cemetery  
12 authority or pre-need funeral authority shall honor all  
13 contracts entered into prior to the suspension of sales that  
14 become due. The director shall authorize withdrawals from the  
15 trust in order to fulfill these contracts."

16 SECTION 3. Section 441-24.6, Hawaii Revised Statutes, is  
17 amended by amending subsection (a) to read as follows:

18 "(a) Every cemetery authority operating a perpetual care  
19 cemetery and every cemetery or pre-need funeral authority  
20 offering pre-need services shall contract with an independent  
21 actuary to conduct an annual study of its level of funding. In  
22 the case of a perpetual care cemetery, the study shall ~~[be to]~~



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

9 SECTION 4. Section 441-24.7, Hawaii Revised Statutes, is  
10 amended to read as follows:

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



1 financial statements and actuarial reports of licensees. The  
2 report shall include, but not be limited to, the following:

3 (1) A list of all licensees required to submit a financial  
4 statement and actuarial report;

5 (2) Licensees granted extensions for filing the financial  
6 statement and actuarial report;

7 (3) Financial statements or actuarial reports that are  
8 past due and have not been filed;

9 (4) Penalties assessed for late financial statements and  
10 actuarial reports;

11 (5) The total aggregate dollar amount required to perform  
12 contracts in all trusts;

13 (6) The total aggregate dollar amount due to all trusts as  
14 of the date of execution of contracts not yet  
15 performed;

16 (7) The total aggregate dollar amount in all trusts; and

17 (8) Recommendations for improving the reporting system for  
18 financial statements and actuarial reports by  
19 licensees and oversight of the cemetery and pre-need  
20 funeral industry.

21 (b) Upon delivery of an itemized price list to a  
22 prospective purchaser and upon execution of a contract for



1 perpetual care and pre-need services, the cemetery or pre-need  
2 funeral authority shall notify the person of the availability  
3 for review of the actuarial study, audited financial statement,  
4 and trust agreement on file with the department as provided in  
5 this section."

6 SECTION 5. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

8 SECTION 6. This Act shall take effect upon its approval.  
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INTRODUCED BY:

*[Signature]*  
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**Report Title:**

Funeral Industry; Standardized Reporting

**Description:**

Creates a standardized form for cemetery and pre-need funeral authorities' financial statements and actuarial reports.  
Ensures sufficient funds are available to cover future claims.  
Requires the department of commerce and consumer affairs to report to the legislature on the status of licensees required to submit audited financial statements and actuarial reports.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

