

JAN 17 2014

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. The legislature finds that the death care
2 industry in the State has been vulnerable to lawsuits due to a
3 lack of due care in dealing with funeral trust accounts and the
4 improper handling of bodies and remains. Other states,
5 including California, Georgia, and Tennessee, each have a
6 single, industry-wide funeral board, which provides oversight of
7 industry professionals and various aspects of the death care
8 industry. The State lacks an industry-wide funeral board and
9 does not require additional background checks for industry
10 professionals that other states require, in an effort to protect
11 consumers.

12 The purpose of this Act is to adopt measures to increase
13 oversight and regulation of Hawaii's death care industry to
14 protect consumers. This Acts requires the licensure of cemetery
15 salespersons; requires background checks for funeral directors
16 and embalmers to protect consumers; and establishes a task force
17 to examine the death care industry's existing regulatory



1 framework and make recommendations on the consolidation of
2 oversight under a newly created death care industry board.

3 SECTION 2. Chapter 469, Hawaii Revised Statutes, is
4 amended by adding two new sections to be appropriately
5 designated and to read as follows:

6 "§469- Definitions. As used in this chapter, unless the
7 context otherwise requires:

8 "Department" means the department of health.

9 "Embalmer" means a person who is licensed as an embalmer
10 under the laws of the State; qualified to disinfect or preserve
11 human remains by the injection or external application of
12 antiseptics, disinfectants, or preservative fluids; qualified to
13 prepare human bodies for transportation that are dead of
14 contagious or infectious diseases; and qualified to use derma
15 surgery or plastic art for restoring mutilated features.

16 "Funeral director" means a person in the practice of
17 directing or supervising funerals, the practice of preparing
18 dead human bodies for burial by any means, other than by
19 embalming, or the disposition of dead human bodies; the making
20 of arrangements to provide for funeral services, the selling of
21 funeral services or merchandise, the making of financial
22 arrangements for the rendering of the services or the sale of



1 funeral merchandise, or any combination of these practices; or
2 holding out to the public that one is a funeral director or
3 engaged in one of the practices described herein.

4 §469- Background check. (a) The department, upon the
5 written authorization of an applicant, shall conduct a
6 background check of any embalmer or funeral director applicant
7 or direct another responsible party to conduct the check.

8 (b) Before initiating or requesting a background check,
9 the department shall first certify that the signature on the
10 authorization form is authentic and that the person is an
11 applicant for such employment.

12 (c) The background check shall require the applicant to
13 disclose whether the applicant has been convicted in any
14 jurisdiction of a crime, which would indicate that the applicant
15 may be unsuited for employment as an embalmer or funeral
16 director, and the judgment of conviction has not been vacated.

17 (d) For purposes of this section, the department may
18 verify the applicant's criminal history disclosure from
19 information obtained through the Hawaii criminal justice data
20 center.

21 (e) The applicant shall provide the Hawaii criminal
22 justice data center with personal identifying information, which



1 shall include but not be limited to the applicant's name, date
2 of birth, gender, and social security number. This information
3 shall be used only for the purpose of conducting the criminal
4 history record check authorized by this section.

5 (f) Failure of the department to conduct or verify a
6 background check, or cause to have conducted or verified a
7 background check, shall not alone give rise to any private cause
8 of action against the department."

9 SECTION 3. Section 441-1, Hawaii Revised Statutes, is
10 amended by adding a new definition to be appropriately inserted
11 and to read as follows:

12 "Cemetery salesperson" means a person who sells or offers
13 to sell, buys or offers to buy, lists, leases or offers to
14 lease, or solicits or negotiates the purchase, sale, lease, or
15 exchange of cemetery property or interment services."

16 SECTION 4. Section 441-25, Hawaii Revised Statutes, is
17 amended to read as follows:

18 ~~"§441-25 [License not required to act as cemetery or pre-~~
19 ~~need funeral salesperson.] Cemetery salesperson; license~~
20 ~~required. [Chapter 467, relating to real estate brokers and~~
21 ~~salespersons, shall not be applicable to cemetery salespersons.]~~
22 Every cemetery salesperson shall:



- 1 (1) Be a licensed real estate salesperson in compliance
2 with chapter 467 and the rules of the real estate
3 commission;
- 4 (2) Pay a non-refundable application fee and, upon
5 approval, an initial registration fee, and
6 subsequently pay a reregistration fee, to practice as
7 a cemetery salesperson, as prescribed by rules adopted
8 by the director pursuant to chapter 91. A compliance
9 resolution fee shall also be paid pursuant to section
10 26-9(o) and the rules adopted pursuant thereto.

11 The real estate commission may deny a cemetery salesperson's
12 registration or re-registration application, or terminate a
13 registration at its discretion, for the failure to comply with
14 any rules."

15 SECTION 5. Section 441-45, Hawaii Revised Statutes, is
16 amended to read as follows:

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



1 SECTION 6. (a) There is established in the department of
2 commerce and consumer affairs, for administrative purposes only,
3 a temporary task force to be known as the death care industry
4 task force.

5 (b) The director of commerce and consumer affairs, or the
6 director's designee, shall serve as the chairperson of the task
7 force.

8 (c) In addition to the director of commerce and consumer
9 affairs, the task force shall consist of the following members
10 or their representatives:

- 11 (1) The director of health;
- 12 (2) The supervising executive officer of the real estate
13 branch of the department of commerce and consumer
14 affairs;
- 15 (3) The director of the University of Hawaii Center on
16 Aging;
- 17 (4) The county executive of the elderly affairs division,
18 city and county of Honolulu; and
- 19 (5) The director of the executive office on aging.

20 (d) The chairperson of the task force shall invite
21 representatives from the following groups to participate as
22 members:



- 1 (1) State death care providers;
- 2 (2) Geriatrics program at the University of Hawaii;
- 3 (3) Hawaii Community Caregivers Network;
- 4 (4) Hawaii Pacific Gerontological Society; and
- 5 (5) Other interested parties, as determined by the
- 6 chairperson.
- 7 (e) The task force shall perform the following tasks:
- 8 (1) Identify issues in the death care industry;
- 9 (2) Identify issues and inconsistencies in the existing
- 10 death care industry regulatory framework;
- 11 (3) Examine the feasibility of consolidating oversight of
- 12 the death care industry into an industry-wide funeral
- 13 services regulatory board; and
- 14 (4) Develop a strategic plan to streamline the oversight
- 15 of the death care industry.
- 16 (f) The task force shall submit a report of its findings
- 17 and recommendations, including any proposed legislation, to the
- 18 legislature as follows:
- 19 (1) An interim report no later than twenty days prior to
- 20 the convening of the regular session of 2016; and
- 21 (2) A final report no later than twenty days prior to the
- 22 convening of the regular session of 2017.



1 (g) The task force shall be dissolved on June 30, 2017.

2 SECTION 7. There is appropriated out of the general
3 revenues of the State of Hawaii the sum of \$ or so
4 much thereof as may be necessary for fiscal year 2014-2015 for
5 costs incurred by the death care industry task force pursuant to
6 this Act.

7 The sum appropriated shall be expended by the department of
8 health for the purposes of this Act.

9 SECTION 8. This Act does not affect rights and duties that
10 matured, penalties that were incurred, and proceedings that were
11 begun before its effective date.

12 SECTION 9. If any provision of this Act, or the
13 application thereof to any person or circumstance, is held
14 invalid, the invalidity does not affect other provisions or
15 applications of the Act that can be given effect without the
16 invalid provision or application, and to this end the provisions
17 of this Act are severable.

18 SECTION 10. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

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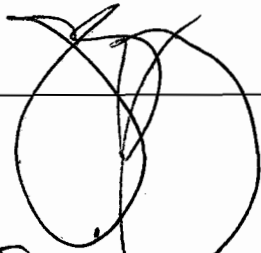


S.B. NO. 2622

1 SECTION 11. This Act shall take effect on January 1, 2015;
2 provided that section 7 shall take effect on July 1, 2014.

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INTRODUCED BY: _____


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S.B. NO. 2622

Report Title:

Department of Health; Death Care Industry; Licensing Requirements; Death Care Task Force; Appropriation

Description:

Requires cemetery salespersons to be licensed, establishes background check requirements for all individuals applying for employment as funeral directors or embalmers; and appropriates funds to the department of health to establish a temporary death care task force to examine existing regulatory framework and make recommendations on the consolidation of oversight of the death care industry.

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

