

ACT 66

S.B. NO. 594

A Bill for an Act Relating to Cemeteries and Mortuaries.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 441, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§441- Pre-need trusts and perpetual care funds; audits. Every cemetery authority operating a perpetual care cemetery, pre-need funeral authority, and mortuary authority which engages in pre-need sales or holds moneys in trust for future funeral services shall annually submit an audited financial statement of its pre-need trusts and perpetual care funds to the bank examiner.”

SECTION 2. Section 441-20, Hawaii Revised Statutes, is amended to read as follows:

“§441-20 License required to act as [mortuary,] cemetery[,], or pre-need funeral authority. No person shall act as a [mortuary,] cemetery[,], or pre-need funeral authority without a license previously issued by the director in compliance with this chapter and the rules [and regulations] of the director; provided[,], that the director shall exempt any cemetery authority upon its proof satisfactory to the

director that it will not make any additional interments.”

SECTION 3. Section 441-21, Hawaii Revised Statutes, is amended to read as follows:

“§441-21 No [mortuary,] cemetery[,] or pre-need funeral authority license issued when. No [mortuary,] cemetery[,] or pre-need funeral authority license shall be issued:

- (1) To any person unless he has filed an application therefor;
- (2) To any person who does not possess financial integrity;
- (3) To any person unless it is a religious institution, corporation, county, or any association which has a perpetual existence;
- (4) To any person unless he files with the director a bond as required by section 441-22;
- (5) To any person failing to establish pre-need trusts and perpetual care funds as required by this chapter.”

SECTION 4. Section 441-22, Hawaii Revised Statutes, is amended to read as follows:

“§441-22 Bond. [Each mortuary, cemetery, or pre-need funeral authority licensed hereunder, except as otherwise provided in section 441-22.1, shall file and maintain with the director a bond (1) in the penal sum of \$50,000 for each new license, and for the renewal of a license for a mortuary, cemetery, or pre-need funeral authority whose gross income as a mortuary, cemetery, or pre-need funeral authority for the taxable year preceding the year of renewal totalled \$50,000 or more, and (2) in the penal sum of \$5,000 for any other cemetery authority, all of such bonds to be issued by a surety company authorized to do business in the State, and running to the State. The bond shall be conditioned that the mortuary, cemetery, or pre-need funeral authority will faithfully, promptly, and truly account and pay over to all persons to or for whom it may sell, lease, or otherwise deal in cemetery property pre-need interment, at-need funeral services, or pre-need funeral services all sums of money that may properly be due them. In addition to any other remedy, every person sustaining any damage resulting from a breach of the conditions of the bond may sue the surety for the recovery of any damages sustained by such person. The liability of the surety shall not exceed \$50,000 or \$5,000 as the case may be, for each licensee. The bond shall be continuous in form and remain in full force and effect and shall run concurrently with the license period and for any renewals thereof, unless terminated or canceled by the surety. Termination or cancellation shall not be effective, unless notice thereof is delivered by the surety to the director at least sixty days prior to the date of termination or cancellation. The director shall forthwith give notice thereof to the mortuary, cemetery, or pre-need funeral authority affected by the termination or cancellation, which notice shall be by registered or certified mail, with request for return receipt, and shall be addressed to the licensees at the addresses shown on the records of the department. The license of any licensee shall be suspended upon termination or cancellation of the bond, unless prior thereto, a new bond has been filed with the director. The form of the bond shall be approved by the director.] (a) Except as provided in section 441-22.1, mortuary, cemetery, and pre-need funeral authorities shall file

and maintain with the director a bond in the following amount:

- (1) Each mortuary holding more than \$5,000 in pre-need funeral funds shall post a bond in the penal sum of \$50,000; and
- (2) Each pre-need funeral authority or cemetery authority which engages in pre-need sales shall post a bond in the penal sum of \$50,000 for each new license and for the renewal of a license; provided that a cemetery authority whose gross income for the taxable year preceding the year of renewal totaled less than \$50,000 shall only be required to post a bond in the penal sum of \$5,000.

(b) All bonds required by this section shall be issued by a surety company authorized to do business in the State, and shall run to the State. The bond shall be conditioned that the mortuary, cemetery, or funeral authority will faithfully, promptly, and truly account and pay over to all persons to or for whom it may sell, lease, or otherwise deal in cemetery property, pre-need interment, at-need funeral services, or pre-need funeral services all sums of money that may properly be due them.

(c) In addition to any other remedy, any person sustaining any damage resulting from any breach of the conditions of the bond may sue the surety for the recovery of any damages sustained by the person. The liability of the surety shall not exceed the amount of the bond issued to the establishment for which the bond was issued. The bond shall be continuous in full force and effect, and shall run concurrently:

- (1) With the license period and for any renewals thereof; or
- (2) With the period established by the director pursuant to rules;

as the case may be, unless terminated or canceled by the surety.

(d) Termination or cancellation shall not be effective, unless notice thereof is delivered by the surety to the director at least sixty days prior to the date of termination or cancellation. The director shall forthwith give notice thereof to the mortuary, cemetery, or pre-need funeral authority affected by the termination or cancellation. The notice shall be by registered or certified mail, with request for return receipt, and shall be addressed to the establishment at the addresses shown on the records of the department. The license of any licensee shall be suspended upon termination or cancellation of the bond, unless prior thereto, a new bond has been filed with the director. The form of the bond shall be approved by the director."

SECTION 5. Section 441-22.2, Hawaii Revised Statutes, is amended to read as follows:

"[§441-22.2] Pre-need trusts required. (a) Every cemetery or pre-need funeral authority shall maintain one or more trusts. All payments received after the recovery of acquisition costs, which shall be the lesser of thirty per cent of the contract price or the difference between the contract price and the cost of the pre-need interment or pre-need funeral services contracted to be provided, shall be deposited in such trusts within thirty days of receipt.

The administration of the trusts provided for in this section shall be as provided for perpetual care funds under sections 441-37, 441-40, 441-41, 441-42, 441-43, and 441-44.

The principal amount deposited shall not be diminished or withdrawn except in payment of the pre-need interment or pre-need funeral services contracted for and provided to the deceased purchaser or his designee or for the contractual refund to the purchaser.

(b) Based on the findings of the annual audit and the annual actuarial study, the trust administrator shall determine whether the income from the trusts should be added to the corpus.

(c) In addition to the audited financial statements required by section 441-, every cemetery authority operating a perpetual care cemetery and any pre-need funeral authority or mortuary authority which engages in pre-need sales or holds moneys in trust for future funeral services shall conduct an annual independent actuarial study of the pre-need trust funds. The findings of the study conducted during each calendar year shall be submitted to the director during the month of December. The findings of the study shall include a statement by the actuary conducting the study as to whether or not, in the actuary's professional opinion, the pre-need funding requirements imposed by this section are adequate for the protection of the consuming public. The director may take such appropriate action as may be indicated by the actuarial reports submitted."

SECTION 6. Section 441-23, Hawaii Revised Statutes, is amended to read as follows:

"§441-23 Revocation, suspension, and renewal of authority licenses. The director may revoke any authority license, or suspend the right of the licensee to use the license, or refuse to renew any such license for any of the following causes:

- (1) Any dishonest or fraudulent act as a [mortuary,] cemetery[,] or pre-need funeral authority which causes substantial damage to another;
- (2) Making repeated misrepresentations or false promises through advertising or otherwise;
- (3) Wilful violation of this chapter or the rules [and regulations promulgated] adopted pursuant thereto;
- (4) Commingling the money or other property of others with his own;
- (5) Adjudicated insane or incompetent;
- (6) Selling or offering to sell any cemetery property, pre-need interment, funeral services, or pre-need funeral services based on speculation or promises of profit from resale.

No license shall be suspended for longer than two years and no person whose license has been revoked shall be eligible to apply for a new license until the expiration of two years."

SECTION 7. Section 441-31, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The fee for a [mortuary,] cemetery[,] or pre-need funeral authority original license and reinstatement of a suspended license shall be \$200 and biennial renewal fee shall be \$400 except as otherwise provided in section 441-22.1.

The biennial renewal fee shall be paid to the department on or before December 31 of each odd-numbered year. Failure, neglect, or refusal of any duly licensed [mortuary,] cemetery[,] or pre-need funeral authority to pay the biennial renewal fee shall constitute a forfeiture of his license. Any such license may be

restored upon written application therefor within one year of such date and the payment of the delinquent fees plus an amount equal to ten per cent thereof.”

SECTION 8. Section 441-41, Hawaii Revised Statutes, is amended to read as follows:

“§441-41 Investment of perpetual care funds. The investment of perpetual care funds shall be governed by the standards prescribed in section 406-22 for trust companies acting as fiduciaries. [The instrument creating the fund may reserve to the cemetery authority the right to approve investments.] The administrator may, from time to time, reserve from investment and keep in the form of cash balances (which cash may be held on deposit with any institutional depository, without interest) such portion of the fund, whether principal or income, as the administrator deems advisable.”

SECTION 9. Section 441-19.5, Hawaii Revised Statutes, is repealed.

SECTION 10. This Act does not affect rights and duties which matured, penalties which were incurred, or proceedings which were begun prior to its effective date.

SECTION 11. Statutory material to be repealed is bracketed. New material is underscored.¹

SECTION 12. This Act shall take effect upon its approval.

(Approved May 13, 1982.)

Notes

1. The text has been edited pursuant to HRS §23G-16.5.