

ACT 73

S.B. NO. 2788

A Bill for an Act Relating to Cemeteries and Funeral Trusts.

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- Transfer of license. (a) No license issued under this chapter shall be transferred, assigned, or loaned to another person. Any transaction involving the transfer of a licensee’s business to another person shall require the prior approval of the director.

(b) The director may disapprove the proposed transfer of a license:

(1) For failure of the current licensee to meet and satisfy the requirements of section 441-46;

- (2) For failure of the person intending to assume the current licensee's business to meet and satisfy the requirements of section 441-21; or
- (3) In the interest of the contract holders of the current licensee.
- (c) Within sixty days after receipt of the notification of disapproval of the transfer of the licensee's business, the licensee may request an administrative hearing to review the disapproval pursuant to chapter 91."

SECTION 2. Section 441-22, Hawaii Revised Statutes, is amended to read as follows:

"§441-22 Bond. (a) [Each] A cemetery [or] authority selling perpetual care, a cemetery authority selling pre-need interment services, or a pre-need funeral authority shall file and maintain with the director a bond in the penal sum of \$50,000 for each new license and for the renewal of a license. The bond shall continue in full force and effect, and shall run concurrently:

- (1) With the period of the license and for any renewal thereof; or
- (2) With the period established by the director pursuant to the rules as the case may be, unless terminated or canceled by the surety.

The form of the bond shall be approved by the director.

(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 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, or pre-need funeral services all sums of money that may properly be due them.

(c) In addition to any other remedy, the director or any person claiming to have sustained damage by reason of any breach of the conditions of the bond may bring action on the bond for the recovery of any damages sustained therefrom. The liability of the surety shall not exceed the amount of the bond issued to the establishment for which the bond was issued.

(d) Termination, [or] cancellation, or expiration 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[,], or expiration. The director shall [forthwith] give notice [thereof] to the [cemetery or pre-need funeral authority] affected [by the] licensee that notice of termination, [or] cancellation, or expiration, has been received and that the license of the licensee shall be [suspended] placed on a limited and conditional status upon termination, [or] cancellation, or expiration of the bond, unless prior thereto, a new bond has been filed with the director. The limitations and conditions of the license shall be set forth in the notice and shall include, but not be limited to, the following:

- (1) The licensee shall not sell any pre-need services or merchandise to consumers;
- (2) The licensee may sell perpetual care to satisfy the requirements of section 441-36; provided that perpetual care payments received by the licensee shall be transferred to the trustee no later than fifteen days after receipt for deposit into the perpetual care fund;
- (3) All monies collected or received by the licensee as payments on previously executed contracts for pre-need and perpetual care shall be transferred to the trustee no later than fifteen days after receipt for deposit into trust;
- (4) Withdrawal of principal from the pre-need trust shall only be in accordance with this chapter and rules adopted by the director pursuant to chapter 91;

- (5) No interest or income from the pre-need trust shall be withdrawn from the trust fund by the licensee or trustee;
- (6) Withdrawal of interest or income from the perpetual care fund shall be allowed only to cover administrative expenses limited to payroll and fixed monthly operating expenses related to maintaining perpetual care of the cemetery;
- (7) The licensee shall continue to seek a surety who will provide bonding in accordance with this section;
- (8) Failure of the licensee to submit satisfactory proof of bond coverage within one year may result in the suspension of its license; and
- (9) The director shall have the right to alter, amend, modify, or supplement any of the limitations and conditions in the interest of the contract holders of the licensee.

(e) Failure, refusal, or neglect of a licensed cemetery [and] or pre-need funeral authority to maintain in full force and effect a bond as required by this section shall cause the license to be placed on automatic [suspension of the license of the cemetery or pre-need funeral authority] limited and conditional status effective as of the date of termination, cancellation, or expiration [or cancellation] of its bond. [The director shall not reinstate the affected license until satisfactory proof of bond coverage is submitted to the director as required by this section. Failure to effect a reinstatement of a suspended license within sixty days of the expiration of the requirements of licensing shall cause it to be terminated, thereby forfeiting all license and biennial renewal fees. A licensee may, within fifteen days after receipt of the notification of the license termination, request an administrative hearing to review the termination pursuant to chapter 91.] The licensee shall abide by the limitations and conditions set forth in subsection (d) until satisfactory proof of bond coverage is submitted to the director as required by this section. Failure to abide by any of the limitations and conditions set forth in subsection (d) shall result in an automatic fine against the licensee of \$1,000 per violation of any limitation or condition. Each day's continuance of a violation may be treated as a separate violation. Within sixty days after receipt of the notification of the imposition of the automatic fine, the licensee may request an administrative hearing to review the automatic fine pursuant to chapter 91.

(f) A licensee on limited and conditional status who fails, refuses, or neglects to submit satisfactory proof of bond coverage as required by this section within a period of one year, unless otherwise modified by the director, shall cause the automatic and immediate suspension of its license. The director shall not reinstate the license until satisfactory proof of bond coverage is submitted to the director. During the period of suspension the licensee is prohibited from acting or assuming to act as a cemetery or pre-need funeral authority except to the extent that it provides perpetual care services or honors the obligations of its pre-need contracts with customers. The licensee shall notify the trustee of the trust of the suspension of its license. The licensee may seek to surrender its license pursuant to section 441-46 or transfer its license pursuant to section 441- .

(g) Failure to effect a reinstatement of a suspended license within sixty days shall cause it to be terminated, thereby forfeiting all license and renewal fees and the rights of the licensee to use the license, and to act as a cemetery or pre-need funeral authority under this chapter. Within sixty days after receipt of the notification of the license termination, the licensee may request an administrative hearing to review the termination pursuant to chapter 91. The licensee shall notify the trustee of the trust of the termination of its license.

(h) A licensee who is able to show that a bond cannot be reasonably secured may, with the approval of the director, file an alternative form of security as provided by rule in lieu of the bond required by this section. The filing of this alternative

form of security shall allow the director to reinstate a license which has been placed on a limited and conditional status, suspended, or terminated.”

SECTION 3. Section 441-45, Hawaii Revised Statutes, is amended to read as follows:

“**§441-45 Penalty.** In addition to the penalties otherwise provided by law, any licensee who violates, or omits to comply with any of the provisions of this chapter or rules adopted pursuant thereto shall be fined not more than \$1,000 for each violation.”

SECTION 4. Section 441-46, Hawaii Revised Statutes, is amended to read as follows:

“**[[§441-46]] Surrender of license.** (a) A pre-need authority licensee covered under this chapter may seek to terminate all further responsibilities for compliance with the requirements of this chapter by voluntarily offering to [surrendering] surrender its license to the director with a sworn statement to that effect. [Such] The statement [must] shall be accompanied by an affidavit that [said] the licensee has lawfully expended or refunded all pre-need trust funds accepted by the person or made provisions to transfer [said funds] the pre-need trust funds subject to the [obligation] obligations related thereto to another [licensee] person subject to approval of the director, and that the pre-need authority surrendering the license will accept no additional pre-need payments. [The director shall immediately cancel or revoke such license.]

(b) A cemetery authority licensee covered under this chapter may seek to terminate all further responsibilities for compliance with the requirements of this chapter by voluntarily offering to surrender its license to the director with a sworn statement to that effect. The statement shall be accompanied by an affidavit that the licensee has made provisions to have the trustee of the perpetual care fund provide for the perpetuity of the cemetery or to transfer the perpetual care fund subject to the obligations related thereto to another person subject to the approval of the director, and that the authority seeking to surrender the license will make no additional interments.

(c) The person proposed to receive the pre-need trust or perpetual care fund subject to the obligations related thereto shall meet and satisfy the requirements of section 441-21 prior to the director accepting the voluntary surrender of the pre-need or cemetery authority license and canceling or revoking the license.”

SECTION 5. Statutory material to be repealed is bracketed. New material is underscored.¹

SECTION 6. This Act shall take effect upon its approval.

(Approved May 14, 1988.)

Note

1. Edited pursuant to HRS §23G-16.5.