

ACT 232

S.B. NO. 2581

A Bill for an Act Relating to Cemetery 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- Further additional charges or fees for perpetual care prohibited; unfair or deceptive act or practice; penalty. (a) Subsequent to the execution of a valid written contract for the sale of cemetery property, interment services, funeral services, and related commodities by a mortuary, cemetery, or pre-need funeral authority to a purchaser in accordance with this chapter, further additional charges or fees for perpetual care shall be prohibited beyond those originally agreed upon in the contract and no such charges or fees shall be charged or collected by the seller for any purpose and upon any occasion; provided that a reasonable fee may be charged for administrative costs related to the transfer of ownership rights, including the cost of research, document and file preparation, photocopying, notary fees, records transfer and storage, and any other costs directly related to the transfer of ownership rights.

(b) A mortuary, cemetery, or pre-need funeral authority who violates subsection (a) is guilty of engaging in an unfair or deceptive act or practice under section 480-2, and shall be fined not less than \$500 nor more than \$10,000 for each violation. The penalties provided in this subsection are cumulative to the remedies or penalties available under all other laws of this State.”

SECTION 2. Section 441-22.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Every cemetery or pre-need funeral authority shall be required to provide to the purchaser of cemetery property, pre-need interment, or pre-need funeral services and related commodities a written contract which shall contain the following disclosure requirements:

- (1) The names and addresses of the authority and purchaser;
- (2) A clear and concise statement of the property, services, and related commodities to be supplied or not supplied and by whom, particularly if the authority is not to be the provider under the terms of the contract;
- (3) The purchase price of each item of property, services, and related commodities to be supplied and how the purchase price is payable; provided that, pursuant to section 441- , disclosure shall also be made that further additional charges or fees for perpetual care subsequent to the execution of the contract are prohibited for any purpose and on any occasion, except for reasonable fees related to the administrative costs of transferring ownership rights, including the cost of research, document and file preparation, photocopying, notary fees,

records transfer and storage, and any other costs directly related to the transfer of ownership rights;

- (4) Related costs covered under the contract;
- (5) The basis on which funds are to be deposited in trust;
- (6) Refund provisions of the contract;
- (7) The date and place of execution of the contract;
- (8) The authority's or its duly authorized agent's signature on the contract and the identification of this person by name and title; and
- (9) A statement that the written contract, when signed, shall constitute the entire agreement between the parties relative to its subject matter and that all obligations of both parties shall be fixed and enforceable by the other parties of the contract."

SECTION 3. Section 441-22.6, Hawaii Revised Statutes, is amended to read as follows:

"§441-22.6 Mortuary, cemetery, or pre-need funeral authority: price list to be furnished. (a) Each mortuary, cemetery, or pre-need funeral authority shall provide to every prospective purchaser, for written approval, a current price list, which shall contain separately stated prices for each type of property, service, or item which is a part of the cemetery property, interment, or funeral services and related commodities which the mortuary, cemetery, or pre-need funeral authority offers[.], including the price for services directly related to the transfer of ownership rights. Pursuant to section 441-____, no further additional charges or fees shall be added to the price list for perpetual care subsequent to the execution of the contract for any purpose and on any occasion.

(b) The mortuary, cemetery, or pre-need funeral authority may use the format for a price list as established by the rules adopted by the director."

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

"§441-23 Fine, revocation, suspension, and renewal of authority licenses. In addition to any other actions authorized by law, the director may fine an authority, revoke any authority license, or suspend the right of the licensee to use the license, or refuse to renew any license for any cause authorized by law, including but not limited to the following:

- (1) Any dishonest or fraudulent act as a cemetery or pre-need funeral authority that causes substantial damage to another;
- (2) Making repeated misrepresentations or false promises through advertising or otherwise;
- (3) Violation of this chapter or the rules adopted pursuant thereto;
- (4) Commingling the money or other property of others with that of the licensee;
- (5) [Adjudicated] Having been 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;
- (7) Failing to file the actuarial study or an audited financial statement or to maintain in effect the bond as required by section 441-22; [or]
- (8) Failing to maintain pre-need trusts or perpetual care funds as required by this chapter[.]; or
- (9) Violating section 441-____."

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

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

(Approved July 20, 1998.)

Note

1. Edited pursuant to HRS §23G-16.5.