

ACT 188

H.B. NO. 1337

A Bill for an Act Relating to the Death Care Industry.

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- Cancellation; default and termination; refund. (a) At any time before pre-need funeral services or pre-need interment services are received by the purchaser or the purchaser’s contract beneficiary, the purchaser may cancel the contract containing any pre-need funeral services or pre-need interment services by notifying the cemetery or pre-need funeral authority, in writing, of the purchaser’s desire to cancel the contract.

(b) Before a cemetery or pre-need funeral authority terminates a contract containing pre-need funeral services or pre-need interment services because of a delinquency in payment, the following conditions shall be met:

- (1) Four months in advance of the contemplated termination date, the cemetery or pre-need funeral authority shall provide written notice to the purchaser at the purchaser’s last known address and the notice shall include at a minimum:
 - (A) The total amount owed under the contract at the time it was originally signed, dates and amounts of payments, adjustments, and credits received to date, and the amount of the delinquency;
 - (B) An explanation as to how the purchaser may effectuate continuance of the contract within four months of the date of notice;
 - (C) A statement that failure to effectuate continuance of the contract may result in termination of the contract; and
 - (D) A statement that advises the purchaser of all other requirements under this subsection;
- (2) During the four-month period, but not less than once a month, and only so long as the purchaser fails to effectuate continuance of the contract as provided herein, the cemetery or pre-need funeral authority shall provide the written notice required under paragraph (1);

- (3) If, however, there is a reasonable good faith bona fide dispute between the parties as to the amount of delinquency, the four-month period shall not start until the dispute is resolved; and
- (4) If the purchaser fails to effectuate continuance of the contract by the end of the four-month period, the cemetery or pre-need funeral authority may terminate the contract under the terms and conditions of the contract.

If the purchaser elects to effectuate continuance of the pre-need funeral services or pre-need interment services contract within the four-month period, the cemetery or pre-need funeral authority may require that the purchaser make payment to effectuate the continuance; provided that the amount required shall not be in excess of one installment payment of the purchaser's contract. The purchaser shall resume payment on the pre-need funeral services or pre-need interment services contract in the amounts and as often as required under the terms and conditions of the contract and until all payments owed on the contract are paid in full.

(c) A cemetery or pre-need funeral authority shall not be obligated to:

- (1) Allow a purchaser to effectuate continuance of a contract where a purchaser becomes delinquent again after the four-month period provided in subsection (b) has passed, and may thereafter terminate the contract under the terms and conditions of the contract; provided that the cemetery or pre-need funeral authority gives written notice of the termination to the purchaser at the purchaser's last known address at least ninety days prior to termination; or
- (2) Provide pre-need funeral services or pre-need interment services unless the contract is paid in full.

(d) If the contract is canceled or terminated pursuant to subsection (a) or (b) or for any other reason, the purchaser shall be entitled to a refund of the amounts paid by the purchaser, less amounts that may be retained by the cemetery or pre-need funeral authority for its costs pursuant to section 441-38(b). The cemetery or pre-need funeral authority shall make the refund to the purchaser within thirty days of:

- (1) Receipt of the purchaser's written notice of cancellation; or
- (2) Termination of the contract."

SECTION 2. Section 441-3, Hawaii Revised Statutes, is amended to read as follows:

"§441-3 Map or plat required[-]; unique identifier. (a) The cemetery authority [~~from time to time~~], as any of the dedicated cemetery property [~~described in the certificate of dedication~~], or any part or section thereof, is offered for sale, transfer, or disposition in the form of plots, crypts, or niches, shall also:

- (1) In the case of land, survey and subdivide [it] the dedicated cemetery property into sections, blocks, plots, avenues, walks, or other subdivisions; make a good and substantial map or plat showing the sections, blocks, plots, avenues, walks, or other subdivisions, with descriptive names, initials, or numbers[;] that uniquely identify each plot;
- (2) In the case of a mausoleum or columbarium, make a good and substantial map or plat on which shall be delineated the sections, halls, rooms, corridors, elevation, and other divisions, with descriptive names, initials, or numbers[-] that uniquely identify each niche, mausoleum, or crypt; and
- (3) File the maps or plats required by this section in the office of the bureau of conveyances or the office of the assistant registrar of the land court, and maintain a copy of all filed maps as a permanent record of the cemetery authority.

[The map or plat shall also be filed in the office of the bureau of conveyances or the office of the assistant registrar of the land court.]

(b) The cemetery authority shall also maintain a permanent, accurate record of the identity of each person whose remains are located in the cemetery, together with the corresponding unique identifier that indicates the location of the person's remains within the cemetery. The records required by this section shall be prepared and maintained in a manner that will enable the cemetery authority to timely respond to inquiries from the public or the department regarding the location of a person's remains within the cemetery.

(c) The cemetery authority shall specify the unique identifier of a plot, crypt, or niche in any document that provides for the sale, transfer, or disposition of the plot, crypt, or niche."

SECTION 3. Section 441-12, Hawaii Revised Statutes, is amended to read as follows:

"§441-12 Mortgages and liens [subject to dedication-]; consumer contracts; sales prohibited. (a) Cemetery authorities may secure pecuniary obligations by mortgage or lien upon their property, whether or not the property has been set aside for interment purposes, and may sell plots, crypts, [ø] niches, or contracts containing pre-need interment services subject to such mortgage or lien within the limitations and conditions imposed by this chapter.

(b) All mortgages and other liens of any nature hereafter contracted[, placed, or incurred upon] for and recorded on the property which has been and was, at the time of the perfection of the lien, [with the recorded written consent of the owner of any mortgage or lien,] dedicated to cemetery purposes pursuant to this chapter, shall not affect or [defeat] impair the dedication[, of the property to cemetery use, or the title of any plot, crypt, or niche [owner,] contract, or the obligation of the cemetery authority to fully perform any contract containing pre-need interment services, but the mortgage or other lien shall be subject and subordinate to the dedication and title of any plot, crypt, or niche [owner,] contract and the obligation of the cemetery authority to fully perform any contract containing pre-need interment services, and any and all sales made upon foreclosure, insolvency, or federal bankruptcy proceeding shall be subject and subordinate to the dedication and title of any plot, crypt, or niche [owner,] contract and the obligation of the cemetery authority to fully perform any contract containing pre-need interment services.

(c) A statutory lien is created, without recordation of the lien, upon all real and personal property held by a pre-need funeral authority upon the filing with the department of audited financial statements, audited by an independent certified public accountant, that indicate that its pre-need funeral trusts are not fully funded as required by applicable law. The amount of the lien shall be equal to the amount that the pre-need funeral trusts are underfunded. This lien shall have priority over all subsequent real property mortgages, security interests, and liens created upon the real and personal property of the pre-need funeral authority and shall terminate at the time when the pre-need funeral trusts are properly funded, as evidenced by records and certification of the trustee and subsequent assurance from the independent certified public accountant that the underfunding was corrected.

(d) Notwithstanding any other language to the contrary, sales by a cemetery or pre-need funeral authority of accounts receivables from contracts containing pre-need interment, pre-need funeral, or perpetual care services shall be prohibited. Sales made in violation of this subsection shall be void.

(e) Any transfer of pre-need funeral trust funds and the obligations related thereto shall be to another person subject to section 441-20 or 441-30.5. Any transfer of pre-need funeral trust funds and pre-need funeral contracts and obligations related

thereto in accordance with this section shall include the transfer of pre-need funeral contracts made, entered into, or purchased by the pre-need funeral authority prior to the transfer.”

SECTION 4. Section 441-13, Hawaii Revised Statutes, is amended to read as follows:

“§441-13 Sale of plots after dedication; sale of ~~[incumbered]~~ encumbered plots prohibited unless ~~[incumbrance]~~ encumbrance subordinate to dedication. After property is dedicated pursuant to this chapter, a cemetery authority may sell, transfer, and convey plots, crypts, or niches thereof, which plots, crypts, or niches ~~[may]~~ shall be described by reference to the map or plat, or amended map or plat, filed in accordance with section 441-3 or 441-8. No plot, crypt, or niche shall be sold, transferred, conveyed, or otherwise disposed of, or offered for sale, transfer, conveyance, or other disposition, unless the property on or in which the plot, crypt, or niche is included has been dedicated pursuant to this chapter, nor shall any plot, crypt, or niche be sold, transferred, conveyed, or otherwise disposed of, or offered for sale, transfer, conveyance, or other disposition, unless the property on or in which the plot, crypt, or niche is included shall either be free and clear of all ~~[incumbrances]~~ encumbrances or there has been recorded the written consent of every ~~[incumbrancee]~~ encumbrancer thereof that the ~~[incumbrancee’s incumbrance]~~ encumbrancer’s encumbrance shall be subject and subordinate to the dedication of the property to cemetery purposes and the title of any plot, crypt, or niche owner.”

SECTION 5. 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:]~~ disclosures:

- (1) The names and addresses of the cemetery or pre-need funeral authority [and], purchaser[;], and contract beneficiary, if the beneficiary is someone other than the purchaser;
- (2) A clear and concise itemized statement of the property, including, for cemetery property, the location of the plot, crypt, or niche by its unique identifier, and any 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, the total purchase price, and how the total purchase price is payable[;], including any credit terms, if applicable; provided that, pursuant to section 441-22.7, 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[;], including:

- (A) The name and address of the trustee; provided that the disclosure shall not preclude the cemetery or pre-need funeral authority from changing the trustee named;
- (B) The percentage of the contract price for trustable items to be placed in trust; provided that the percentage shall be no less than seventy per cent;
- (C) The percentage of the contract price for trustable items that the cemetery or pre-need funeral authority will retain and not deposit into the trust; provided that the percentage shall not be more than thirty per cent; and
- (D) Where a portion of the contract price relates to property, services, or related commodities that are not trustable items, a clear description of what those non-trustable items are;
- (6) [Refund] The refund, cancellation, and default provisions of the contract[;], including an explanation of the requirements of section 441- , and a statement in twelve-point bold type in substantially the following form:
“YOU HAVE REFUND, CANCELLATION AND DEFAULT RIGHTS UNDER STATE LAW AND UNDER THE CONTRACT. PLEASE READ THE CONTRACT CAREFULLY FOR AN EXPLANATION OF THESE RIGHTS”;
- (7) The date and place of execution of the contract;
- (8) The cemetery or pre-need funeral 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[-]; and
- (10) A statement that the contract may not waive any rights of the consumer or duties of the cemetery or pre-need funeral authority under the law.”

SECTION 6. Section 441-24, Hawaii Revised Statutes, is amended to read as follows:

“§441-24 Inspection of cemetery or pre-need funeral authority books[; annual-exhibits]. The books, records, and papers of every cemetery authority whether or not a corporation, which operates or claims to operate a perpetual care cemetery, and of every pre-need funeral authority shall be subject to examination by the director [to the same extent and in the same manner as may be from time to time provided for corporations in section 414-472,] as provided by law, and every cemetery authority operating a perpetual care cemetery, and every pre-need funeral authority shall submit such information as may be required by the director [in order] to furnish information as to whether or not the cemetery or pre-need funeral authority has complied with this chapter.

The records of every cemetery authority shall include the information required under section 441-3(b). The records of every cemetery and pre-need funeral authority shall also include a record of any and all notifications from purchasers or representatives of purchasers regarding:

- (1) Any change in address; and
- (2) Notice of cancellation,

and shall include copies of any and all written notices of termination that were sent to purchasers. Change of address notices, cancellation notices, and notices of

termination relating to each contract containing any pre-need funeral services or pre-need interment services shall be maintained by the authority at all times prior to delivering goods or rendering services on the contract and for a period of at least six months after all goods have been delivered or all services have been rendered.”

SECTION 7. 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]~~ cemetery or pre-need funeral authority that violates, or ~~[omits]~~ fails to comply with any of the provisions of this chapter or rules adopted pursuant thereto shall be fined not more than ~~[\$1,000]~~ \$5,000 for each violation.”

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 9. This Act shall take effect on July 1, 2007; provided that sections 1 and 5 shall take effect on July 1, 2008.

(Approved June 15, 2007.)

Note

1. Edited pursuant to HRS §23G-16.5.