

ACT 193

H.B. NO. 1626

A Bill for an Act Relating to Cemeteries.

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

SECTION 1. The legislature finds that Sunset Memorial Park in Pearl City, Oahu, has been neglected for years and has been the focal point of numerous complaints by people who have family members buried there. The cemetery has been described as having a damaged mausoleum, sinking graves, and broken, missing, or obscured grave markers that are hidden by overgrown vegetation.

Since the death of its previous owner, Sunset Memorial Park has had no registered owner on record. Volunteers have tried to maintain the cemetery, but have reluctantly stopped because of state liability issues.

The dilapidated, unsightly state of Sunset Memorial Park is of great concern for the families whose loved ones are buried there and for the surrounding community. The park has fallen into such disrepair that public safety and health are at issue. A viable solution to this problem is long overdue.

Attempts to have the State add Sunset Memorial Park to its list of four currently state-owned cemeteries in Aiea, Kapalama, Alewa Heights, and Maki-ki are ongoing. The last time the State took over a cemetery was in 1946.

It has been reported that the department of commerce and consumer affairs is actively looking for a long-term solution for Sunset Memorial Park and is considering all options.

The purpose of this Act is to:

- (1) Limit liability for volunteers and nonprofit organizations, nonprofit corporations, or other entities that provide volunteers, who maintain or repair cemetery grounds; and
- (2) Require the director of commerce and consumer affairs, in consultation with the comptroller, to develop strategies for the upkeep, repair, and maintenance of Sunset Memorial Park.

SECTION 2. Chapter 662D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§662D- Limited liability for maintaining or repairing cemetery grounds. (a) An individual volunteer who maintains or repairs cemetery grounds located in the State without compensation, including cemeteries operated for profit pursuant to chapter 441, shall not be liable to any person for injury or damage sustained as a result of the actions of the volunteer to maintain or repair the cemetery grounds, except for injury or damages resulting from gross negligence or intentional misconduct.

(b) A nonprofit organization, nonprofit corporation, or other entity that provides volunteers to maintain or repair cemetery grounds located in the State, including cemeteries operated for profit pursuant to chapter 441, shall not be liable to any person for injury or damages sustained as a result of the actions of a volunteer provided by the organization, corporation, or entity to maintain or repair the cemetery grounds, except for injury or damages resulting from gross negligence or intentional misconduct.

(c) This section does not relieve any cemetery property owner or cemetery authority from compliance with chapter 441, or from the duty to maintain their premises in a reasonably safe condition.

(d) A volunteer providing services under this section for a nonprofit organization, nonprofit corporation, or other entity may only receive reimbursement for actual expenses incurred that have been authorized for payment by the nonprofit organization, nonprofit corporation, or other entity.

(e) Nothing in this section shall be construed to authorize or permit the use of perpetual care funds for the purposes of reimbursing costs incurred pursuant to this section.

(f) Notwithstanding any other law to the contrary, actions of a volunteer in conformance with this section shall not require licensure under chapter 441; provided that maintenance and repair activities covered under this section shall be limited to general maintenance, care, and preservation of cemeteries, including keeping sod or grass in repair and caring for trees and shrubs, but shall not include activities related to burials.

(g) For purposes of this section, a volunteer may provide maintenance and repair services as an individual and not as a member or affiliate of a cemetery authority, nonprofit corporation, nonprofit organization, or other entity, if the volunteer:

- (1) First obtains written approval from the cemetery owner or cemetery authority, if one can be identified; and
- (2) Does not receive compensation or reimbursement for any expenses other than actual expenses incurred for maintenance and repair of the cemetery grounds.”

SECTION 3. (a) The director of commerce and consumer affairs, in consultation with the comptroller, shall develop short-term and long-term strategies for the upkeep, repair, and maintenance of Sunset Memorial Park in Pearl City, Oahu.

(b) The director of commerce and consumer affairs shall report findings and recommendations related to activities conducted pursuant to this section, including any proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2019.

SECTION 4. New statutory material is underscored.¹

SECTION 5. This Act shall take effect on July 1, 2018.

(Approved July 10, 2018.)

Note

1. Edited pursuant to HRS §23G-16.5.