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## A BILL FOR AN ACT

RELATING TO CEMETERY AND FUNERAL TRUSTS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that existing law  
2 regulating cemetery and funeral trusts does not permit the  
3 purchaser to cancel a pre-need contract. Individuals who may  
4 want to cancel their agreement due to relocation or change to  
5 another funeral home or cemetery may be held to the purchase  
6 contract.

7           Although all contract agreements are governed by the common  
8 law on contracts, including cancellation rights, the legislature  
9 finds that the respective rights of the purchaser and the  
10 cemetery with regards to cancellation of pre-need contracts  
11 should be set out in statute to provide for uniformity of  
12 practice and equity.

13           The purpose of this Act is to:

14           (1) Permit a purchaser of pre-need funeral services or  
15 pre-need internment services to cancel the contract by  
16 following specified procedures;



- 1           (2) Require an equitable refund to the purchaser upon
- 2                   cancellation; and
- 3           (3) Amend the percentage amount of transfer from the
- 4                   cemetery or pre-need funeral authority to the trustee.

5           SECTION 2. Chapter 441, Hawaii Revised Statutes, is  
6 amended by adding a new section to be appropriately designated  
7 and to read as follows:

8           "§441-       Cancellation and refund; default. (a) At any  
9 time before pre-need funeral services or pre-need interment  
10 services are received by the purchaser or the purchaser's  
11 contract beneficiary, the purchaser may cancel the pre-need  
12 contract by notifying the cemetery or pre-need funeral  
13 authority, in writing, of the purchaser's desire to cancel the  
14 contract.

15           (b) If the cemetery or pre-need funeral authority  
16 determines that the purchaser is in default of a pre-need  
17 contract due to nonpayment, the cemetery or pre-need funeral  
18 authority shall provide written notice of the default to the  
19 purchaser prior to canceling or terminating the contract. The  
20 notice of default shall include:

- 21           (1) A description of the nature of the default;
- 22           (2) The delinquent amounts owed on the contract;



- 1       (3) An explanation as to how the default can be cured; and
- 2       (4) A statement that advises the purchaser of all other
- 3               requirements under this subsection.

4       The cemetery or pre-need funeral authority shall provide  
5 the purchaser with a minimum of ninety days to cure the default,  
6 and the purchaser, upon request, shall be entitled to receive a  
7 statement of the payments made and amounts owed on the contract.  
8 If the purchaser cures the default, the contract shall continue  
9 under the terms and conditions in effect prior to the default.

10       (c) If the contract is canceled or terminated pursuant to  
11 subsection (a) or (b), the purchaser shall be entitled to a  
12 refund of the amounts paid by the purchaser, less amounts that  
13 may be retained by the cemetery or pre-need funeral authority  
14 for its costs pursuant to section 441-38(b). The cemetery or  
15 pre-need funeral authority shall make the refund to the  
16 purchaser within fifteen business days of:

- 17       (1) Receipt of the written notice of cancellation; or
- 18       (2) Cancellation or termination due to default."

19       SECTION 3. Section 441-22.5, Hawaii Revised Statutes, is  
20 amended by amending subsection (b) to read as follows:

21       "(b) Every cemetery or pre-need funeral authority shall be  
22 required to provide to the purchaser of cemetery property, pre-



1 need interment, or pre-need funeral services and related  
2 commodities a [~~written contract which shall~~] contract written in  
3 plain and clear language that shall contain the following  
4 [~~disclosure requirements+~~] disclosures:

- 5 (1) The names and addresses of the authority [~~and~~],  
6 purchaser[+], and contract beneficiary, if the  
7 beneficiary is someone other than the purchaser;
- 8 (2) A clear, itemized, and concise statement of the  
9 property, including, for cemetery property, the  
10 location of the plot, crypt, or niche by its unique  
11 identifier, any services, and any related commodities  
12 to be supplied or not supplied and by whom,  
13 particularly if the authority is not to be the  
14 provider under the terms of the contract;
- 15 (3) The purchase price of each item of property, services,  
16 and related commodities to be supplied, the total  
17 purchase price, and how the total purchase price is  
18 payable[+], including any credit terms, if applicable;  
19 provided that, pursuant to section 441-22.7,  
20 disclosure shall also be made that further additional  
21 charges or fees for perpetual care subsequent to the  
22 execution of the contract are prohibited for any



1 purpose and on any occasion, except for reasonable  
2 fees related to the administrative costs of  
3 transferring ownership rights, including the cost of  
4 research, document and file preparation, photocopying,  
5 notary fees, records transfer and storage, and any  
6 other costs directly related to the transfer of  
7 ownership rights;

8 (4) Related costs covered under the contract;

9 (5) ~~[The basis on which funds]~~ Information regarding  
10 payments received from the purchaser for pre-need  
11 services and related commodities that are to be  
12 deposited in trust[+], including the:

13 (A) Name and address of the trustee; provided that  
14 the disclosure shall not preclude the authority  
15 from changing the trustee named;

16 (B) Amount of money to be placed in trust; and

17 (C) Amount of money paid on the contract that the  
18 authority shall retain and not deposit into the  
19 trust;

20 (6) ~~[Refund]~~ The refund, cancellation, and default  
21 provisions of the contract[+], printed in twelve point



- 1           bold type, including an explanation of the  
2           requirements of section 441- ;
- 3           (7) The date and place of execution of the contract;
- 4           (8) The authority's or its duly authorized agent's  
5           signature on the contract and the identification of  
6           this person by name and title; [~~and~~]
- 7           (9) A statement that the written contract, when signed,  
8           shall constitute the entire agreement between the  
9           parties relative to its subject matter and that all  
10          obligations of both parties shall be fixed and  
11          enforceable by the other parties of the contract[~~-~~];
- 12          (10) A statement that the contract may not waive any rights  
13          and duties of the parties under the law; and
- 14          (11) An explanation of the disposition of the income earned  
15          attributable to the purchaser's payments and held in  
16          trust, and a statement of the purchaser's  
17          responsibility for taxes owed on the income."

18           SECTION 4. Section 441-38, Hawaii Revised Statutes, is  
19   amended by amending subsection (b) to read as follows:

20           " (b) A cemetery or pre-need funeral authority may take and  
21   receive, but shall transfer to the trustee as part of or  
22   incident to the pre-need trust, all payments received after the



1 recovery of acquisition costs, which shall be the lesser of  
2 [thirty] \_\_\_\_\_ per cent of the contract price or the  
3 difference between the contract price and the cost of the pre-  
4 need interment or pre-need funeral services contracted to be  
5 provided. The transfer shall be made not later than thirty days  
6 after receipt of payment from the purchaser [~~and shall be~~  
7 ~~immediately deposited in~~] for immediate deposit into the trust."

8 SECTION 5. Statutory material to be repealed is bracketed  
9 and stricken. New statutory material is underscored.

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

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INTRODUCED BY: Erzanno Chun Oakland  
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**Report Title:**

Prepaid Funeral Plan; Cancellation, Refund, and Default

**Description:**

Establishes requirements for cancellation, refund, and default of prepaid funeral plan contracts. Clarifies requirements for prepaid funeral plan contract terms.

