



GOV. MSG. NO. 946

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

June 15, 2007

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on June 15, 2007, the following bill was signed into law:

HB1337 HD1 SD1 CD1

A BILL FOR AN ACT RELATING TO THE DEATH
CARE INDUSTRY.
(ACT 188)

Sincerely,

A handwritten signature in black ink, appearing to read "James R. Aiona, Jr.", written in a cursive style.

JAMES R. AIONA, JR.
Acting Governor

A BILL FOR AN ACT

RELATING TO THE DEATH CARE INDUSTRY.

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

1 SECTION 1. Chapter 441, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 **"§441- Cancellation; default and termination; refund.**

5 (a) At any time before pre-need funeral services or pre-need
6 interment services are received by the purchaser or the
7 purchaser's contract beneficiary, the purchaser may cancel the
8 contract containing any pre-need funeral services or pre-need
9 interment services by notifying the cemetery or pre-need funeral
10 authority, in writing, of the purchaser's desire to cancel the
11 contract.

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

16 (1) Four months in advance of the contemplated termination
17 date, the cemetery or pre-need funeral authority shall



1 provide written notice to the purchaser at the
2 purchaser's last known address and the notice shall
3 include at a minimum:

4 (A) The total amount owed under the contract at the
5 time it was originally signed, dates and amounts
6 of payments, adjustments, and credits received to
7 date, and the amount of the delinquency;

8 (B) An explanation as to how the purchaser may
9 effectuate continuance of the contract within
10 four months of the date of notice;

11 (C) A statement that failure to effectuate
12 continuance of the contract may result in
13 termination of the contract; and

14 (D) A statement that advises the purchaser of all
15 other requirements under this subsection;

16 (2) During the four-month period, but not less than once a
17 month, and only so long as the purchaser fails to
18 effectuate continuance of the contract as provided
19 herein, the cemetery or pre-need funeral authority
20 shall provide the written notice required under
21 paragraph (1);



1 (3) If, however, there is a reasonable good faith bona
2 fide dispute between the parties as to the amount of
3 delinquency, the four-month period shall not start
4 until the dispute is resolved; and

5 (4) If the purchaser fails to effectuate continuance of
6 the contract by the end of the four-month period, the
7 cemetery or pre-need funeral authority may terminate
8 the contract under the terms and conditions of the
9 contract.

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



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

3 (1) Allow a purchaser to effectuate continuance of a
4 contract where a purchaser becomes delinquent again
5 after the four-month period provided in subsection (b)
6 has passed, and may thereafter terminate the contract
7 under the terms and conditions of the contract;
8 provided that the cemetery or pre-need funeral
9 authority gives written notice of the termination to
10 the purchaser at the purchaser's last known address at
11 least ninety days prior to termination; or

12 (2) Provide pre-need funeral services or pre-need
13 interment services unless the contract is paid in
14 full.

15 (d) If the contract is canceled or terminated pursuant to
16 subsection (a) or (b) or for any other reason, the purchaser
17 shall be entitled to a refund of the amounts paid by the
18 purchaser, less amounts that may be retained by the cemetery or
19 pre-need funeral authority for its costs pursuant to section
20 441-38(b). The cemetery or pre-need funeral authority shall
21 make the refund to the purchaser within thirty days of:



1 (1) Receipt of the purchaser's written notice of
2 cancellation; or

3 (2) Termination of the contract."

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

6 "**§441-3 Map or plat required[+]; unique identifier.** (a)

7 The cemetery authority [~~from time to time~~], as any of the
8 dedicated cemetery property [~~described in the certificate of~~
9 ~~dedication~~], or any part or section thereof, is offered for
10 sale, transfer, or disposition in the form of plots, crypts, or
11 niches, shall also:

12 (1) In the case of land, survey and subdivide [~~it~~] the
13 dedicated cemetery property into sections, blocks,
14 plots, avenues, walks, or other subdivisions; make a
15 good and substantial map or plat showing the sections,
16 blocks, plots, avenues, walks, or other subdivisions,
17 with descriptive names, initials, or numbers[+] that
18 uniquely identify each plot;

19 (2) In the case of a mausoleum or columbarium, make a good
20 and substantial map or plat on which shall be
21 delineated the sections, halls, rooms, corridors,

1 elevation, and other divisions, with descriptive
2 names, initials, or numbers[-] that uniquely identify
3 each niche, mausoleum, or crypt; and

4 (3) File the maps or plats required by this section in the
5 office of the bureau of conveyances or the office of
6 the assistant registrar of the land court, and
7 maintain a copy of all filed maps as a permanent
8 record of the cemetery authority.

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

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



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

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

7 "**§441-12 Mortgages and liens** ~~[subject to dedication.];~~
8 **consumer contracts; sales prohibited.** (a) Cemetery authorities
9 may secure pecuniary obligations by mortgage or lien upon their
10 property, whether or not the property has been set aside for
11 interment purposes, and may sell plots, crypts, ~~[or] niches,~~ or
12 contracts containing pre-need interment services subject to such
13 mortgage or lien within the limitations and conditions imposed
14 by this chapter.

15 (b) All mortgages and other liens of any nature hereafter
16 contracted~~[, placed, or incurred upon]~~ for and recorded on the
17 property which has been and was, at the time of the perfection
18 of the lien, ~~[with the recorded written consent of the owner of~~
19 ~~any mortgage or lien,]~~ dedicated to cemetery purposes pursuant
20 to this chapter, shall not affect or ~~[defeat]~~ impair the
21 dedication~~[,]~~ of the property to cemetery use, or the title of

1 any plot, crypt, or niche [~~owner,~~] contract, or the obligation
2 of the cemetery authority to fully perform any contract
3 containing pre-need interment services, but the mortgage or
4 other lien shall be subject and subordinate to the dedication
5 and title of any plot, crypt, or niche [~~owner,~~] contract and the
6 obligation of the cemetery authority to fully perform any
7 contract containing pre-need interment services, and any and all
8 sales made upon foreclosure, insolvency, or federal bankruptcy
9 proceeding shall be subject and subordinate to the dedication
10 and title of any plot, crypt, or niche [~~owner,~~] contract and
11 the obligation of the cemetery authority to fully perform any
12 contract containing pre-need interment services.

13 (c) A statutory lien is created, without recordation of
14 the lien, upon all real and personal property held by a pre-need
15 funeral authority upon the filing with the department of audited
16 financial statements, audited by an independent certified public
17 accountant, that indicate that its pre-need funeral trusts are
18 not fully funded as required by applicable law. The amount of
19 the lien shall be equal to the amount that the pre-need funeral
20 trusts are underfunded. This lien shall have priority over all
21 subsequent real property mortgages, security interests, and



1 liens created upon the real and personal property of the pre-
2 need funeral authority and shall terminate at the time when the
3 pre-need funeral trusts are properly funded, as evidenced by
4 records and certification of the trustee and subsequent
5 assurance from the independent certified public accountant that
6 the underfunding was corrected.

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

12 (e) Any transfer of pre-need funeral trust funds and the
13 obligations related thereto shall be to another person subject
14 to section 441-20 or 441-30.5. Any transfer of pre-need funeral
15 trust funds and pre-need funeral contracts and obligations
16 related thereto in accordance with this section shall include
17 the transfer of pre-need funeral contracts made, entered into,
18 or purchased by the pre-need funeral authority prior to the
19 transfer."

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



1 "§441-13 Sale of plots after dedication; sale of
2 [~~incumbered~~] encumbered plots prohibited unless [~~incumbrance~~]
3 encumbrance subordinate to dedication. After property is
4 dedicated pursuant to this chapter, a cemetery authority may
5 sell, transfer, and convey plots, crypts, or niches thereof,
6 which plots, crypts, or niches [~~may~~] shall be described by
7 reference to the map or plat, or amended map or plat, filed in
8 accordance with section 441-3 or 441-8. No plot, crypt, or
9 niche shall be sold, transferred, conveyed, or otherwise
10 disposed of, or offered for sale, transfer, conveyance, or other
11 disposition, unless the property on or in which the plot, crypt,
12 or niche is included has been dedicated pursuant to this
13 chapter, nor shall any plot, crypt, or niche be sold,
14 transferred, conveyed, or otherwise disposed of, or offered for
15 sale, transfer, conveyance, or other disposition, unless the
16 property on or in which the plot, crypt, or niche is included
17 shall either be free and clear of all [~~incumbrances~~]
18 encumbrances or there has been recorded the written consent of
19 every [~~incumbrancer~~] encumbrancer thereof that the
20 [~~incumbrancer's incumbrance~~] encumbrancer's encumbrance shall be
21 subject and subordinate to the dedication of the property to



1 cemetery purposes and the title of any plot, crypt, or niche
2 owner."

3 SECTION 5. Section 441-22.5, Hawaii Revised Statutes, is
4 amended by amending subsection (b) to read as follows:

5 "(b) Every cemetery or pre-need funeral authority shall be
6 required to provide to the purchaser of cemetery property, pre-
7 need interment, or pre-need funeral services and related
8 commodities a written contract which shall contain the following
9 [~~disclosure requirements~~] disclosures:

10 (1) The names and addresses of the cemetery or pre-need
11 funeral authority [and], purchaser[+], and contract
12 beneficiary, if the beneficiary is someone other than
13 the purchaser;

14 (2) A clear and concise itemized statement of the
15 property, including, for cemetery property, the
16 location of the plot, crypt, or niche by its unique
17 identifier, and any services[+] and related
18 commodities to be supplied or not supplied and by
19 whom, particularly if the authority is not to be the
20 provider under the terms of the contract;



- 1 (3) The purchase price of each item of property, services,
2 and related commodities to be supplied, the total
3 purchase price, and how the total purchase price is
4 payable[+], including any credit terms, if applicable;
5 provided that, pursuant to section 441-22.7,
6 disclosure shall also be made that further additional
7 charges or fees for perpetual care subsequent to the
8 execution of the contract are prohibited for any
9 purpose and on any occasion, except for reasonable
10 fees related to the administrative costs of
11 transferring ownership rights, including the cost of
12 research, document and file preparation, photocopying,
13 notary fees, records transfer and storage, and any
14 other costs directly related to the transfer of
15 ownership rights;
- 16 (4) Related costs covered under the contract;
- 17 (5) The basis on which funds are to be deposited in
18 trust[+], including:
- 19 (A) The name and address of the trustee; provided
20 that the disclosure shall not preclude the



1 cemetery or pre-need funeral authority from
2 changing the trustee named;

3 (B) The percentage of the contract price for
4 trustable items to be placed in trust; provided
5 that the percentage shall be no less than seventy
6 per cent;

7 (C) The percentage of the contract price for
8 trustable items that the cemetery or pre-need
9 funeral authority will retain and not deposit
10 into the trust; provided that the percentage
11 shall not be more than thirty per cent; and

12 (D) Where a portion of the contract price relates to
13 property, services, or related commodities that
14 are not trustable items, a clear description of
15 what those non-trustable items are;

16 (6) [~~Refund~~] The refund, cancellation, and default
17 provisions of the contract[+], including an
18 explanation of the requirements of section 441- , and
19 a statement in twelve-point bold type in substantially
20 the following form:



1 "YOU HAVE REFUND, CANCELLATION AND DEFAULT RIGHTS
2 UNDER STATE LAW AND UNDER THE CONTRACT. PLEASE READ
3 THE CONTRACT CAREFULLY FOR AN EXPLANATION OF THESE
4 RIGHTS";

5 (7) The date and place of execution of the contract;

6 (8) The cemetery or pre-need funeral authority's or its
7 duly authorized agent's signature on the contract and
8 the identification of this person by name and title;
9 [and]

10 (9) A statement that the written contract, when signed,
11 shall constitute the entire agreement between the
12 parties relative to its subject matter and that all
13 obligations of both parties shall be fixed and
14 enforceable by the other parties of the contract[-];
15 and

16 (10) A statement that the contract may not waive any rights
17 of the consumer or duties of the cemetery or pre-need
18 funeral authority under the law."

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



1 "**§441-24 Inspection of cemetery or pre-need funeral**
2 **authority books** [~~annual exhibits~~]. The books, records, and
3 papers of every cemetery authority whether or not a corporation,
4 which operates or claims to operate a perpetual care cemetery,
5 and of every pre-need funeral authority shall be subject to
6 examination by the director [~~to the same extent and in the same~~
7 ~~manner as may be from time to time provided for corporations in~~
8 ~~section 414-472,~~] as provided by law, and every cemetery
9 authority operating a perpetual care cemetery, and every pre-
10 need funeral authority shall submit such information as may be
11 required by the director [~~in order~~] to furnish information as to
12 whether or not the cemetery or pre-need funeral authority has
13 complied with this chapter.

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

19 (1) Any change in address; and

20 (2) Notice of cancellation,



1 and shall include copies of any and all written notices of
2 termination that were sent to purchasers. Change of address
3 notices, cancellation notices, and notices of termination
4 relating to each contract containing any pre-need funeral
5 services or pre-need interment services shall be maintained by
6 the authority at all times prior to delivering goods or
7 rendering services on the contract and for a period of at least
8 six months after all goods have been delivered or all services
9 have been rendered."

10 SECTION 7. Section 441-45, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**S441-45 Penalty.** In addition to the penalties otherwise
13 provided by law, any [~~licensee who~~] cemetery or pre-need funeral
14 authority that violates, or [~~omits~~] fails to comply with any of
15 the provisions of this chapter or rules adopted pursuant thereto
16 shall be fined not more than [~~\$1,000~~] \$5,000 for each
17 violation."

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



1 SECTION 9. This Act shall take effect on July 1, 2007;
2 provided that sections 1 and 5 shall take effect on July 1,
3 2008.

APPROVED this 15 day of JUN , 2007

ACTING  JAMES R. AIONA JR.
GOVERNOR OF THE STATE OF HAWAII

