

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 1
95TH GENERAL ASSEMBLY

Reported from the Committee on Financial and Governmental Organizations and Elections, February 5, 2009, with recommendation that the Senate Committee Substitute do pass.

0404S.04C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 436.005, 436.007, 436.011, 436.015, 436.021, 436.027, 436.031, 436.035, 436.038, 436.041, 436.045, 436.048, 436.051, 436.053, 436.055, 436.061, 436.063, 436.065, 436.067, 436.069, and 436.071, RSMo, and to enact in lieu thereof thirty-four new sections relating to preneed funeral contracts, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 436.005, 436.007, 436.011, 436.015, 436.021, 436.027, 2 436.031, 436.035, 436.038, 436.041, 436.045, 436.048, 436.051, 436.053, 436.055, 3 436.061, 436.063, 436.065, 436.067, 436.069, and 436.071, RSMo, are repealed and 4 thirty-four new sections enacted in lieu thereof, to be known as sections 333.300, 5 333.310, 333.315, 333.320, 333.325, 333.330, 333.335, 333.340, 436.400, 436.405, 6 436.410, 436.412, 436.415, 436.420, 436.425, 436.430, 436.435, 436.440, 436.445, 7 436.450, 436.455, 436.456, 436.457, 436.458, 436.460, 436.465, 436.470, 436.480, 8 436.485, 436.490, 436.500, 436.505, 436.510, and 436.520, to read as follows:

333.300. As used in sections 333.300 to 333.340, unless the context 2 otherwise requires, the following terms shall mean:

3 **(1) "Board", the Missouri state board of embalmers and funeral**
4 **directors;**

5 **(2) "Funeral merchandise", caskets, grave vaults, receptacles, and**
6 **other personal property incidental to the final disposition of a dead**
7 **human body including grave lots, grave spaces, grave markers,**
8 **monuments, tombstones, crypts, niches, mausoleums, and urns;**

9 **(3) "Person", any individual, partnership, corporation,**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

10 cooperative, association, or other entity;

11 (4) "Preneed agent", any person authorized to sell a preneed
12 contract for or on behalf of a seller;

13 (5) "Preneed contract", any contract or other arrangement which
14 provides for the final disposition of a dead human body, funeral or
15 burial services or facilities, or funeral merchandise, where such
16 disposition, services, facilities, or merchandise are not immediately
17 required. Such contracts include, but are not limited to, agreements
18 providing for a membership fee or any other fee for the purpose of
19 furnishing final disposition, funeral or burial services or facilities, or
20 funeral merchandise at a discount or at a future date;

21 (6) "Preneed trust", a trust established by a seller to receive
22 deposits of, administer, and disburse payments received under preneed
23 contracts by such seller, together with income thereon;

24 (7) "Provider", the person designated to provide the final
25 disposition, funeral or burial services or facilities, or funeral
26 merchandise described in a preneed contract;

27 (8) "Purchaser", the person who is obligated to pay under a
28 preneed contract;

29 (9) "Seller", the person who executes a preneed contract with a
30 purchaser and who is obligated under such preneed contract to remit
31 payment to the provider;

32 (10) "Trustee", the trustee of a preneed trust, including successor
33 trustees.

33.310. The provisions of sections 333.300 to 333.340 shall not
2 apply to a cemetery operator who sells contracts or arrangements for
3 services for which payments received by, or on behalf of, the purchaser
4 are required to be placed in an endowed care fund or for which a
5 deposit into a segregated account is required under chapter 214, RSMo,
6 provided that a cemetery operator shall comply with sections 333.300
7 to 333.340 if the contract or arrangement sold by the operator includes
8 services that may only be provided by a licensed funeral director or
9 embalmer.

33.315. 1. No person shall be designated as a provider, or agree
2 to perform the obligations of a provider under a preneed contract
3 unless, at the time of such agreement or designation, such person is
4 licensed as a preneed provider by the board. Nothing in this section

5 shall exempt any person from meeting the licensure requirements for
6 a funeral establishment as provided in this chapter.

7 2. An applicant for a preneed provider license shall:

8 (1) File an application on a form established by the board and
9 pay a licensing fee in an amount established by the board by rule;

10 (2) Be authorized and registered with the Missouri secretary of
11 state to conduct business in Missouri;

12 (3) Identify the name and address of a custodian of records
13 responsible for maintaining the books and records of the provider
14 relating to preneed contracts;

15 (4) Identify the name and address of each seller authorized by
16 the provider to sell preneed contracts in which the provider is
17 designated or obligated as the provider;

18 (5) File with the state board, a written consent authorizing the
19 state board to inspect or order an investigation, examination, or audit
20 of the provider's books and records which contain information
21 concerning preneed contracts sold for or on behalf of a seller or in
22 which the applicant is named as a provider; and

23 (6) Be of good moral character. If the applicant is a corporation,
24 each officer, director, manager, or controlling shareholder, shall be of
25 good moral character.

26 3. Each preneed provider shall apply to renew his or her license
27 on or before October thirty-first of each year or a date established by
28 the board by rule. A license which has not been renewed prior to the
29 renewal date shall expire. Applicants for renewal shall:

30 (1) File an application for renewal on a form established by the
31 board by rule;

32 (2) Pay a renewal fee in an amount established by the board by
33 rule;

34 (3) Be authorized and registered with the Missouri secretary of
35 state to conduct business in Missouri;

36 (4) File an annual report with the state board which shall
37 contain:

38 (a) The name and address of a custodian of records responsible
39 for maintaining the books and records of the provider relating to
40 preneed contracts;

41 (b) The business name or names of the provider and all

42 addresses from which it engages in the practice of its business;

43 (c) The name and address of each seller with whom it has
44 entered into a written agreement since last filing an annual report with
45 the board authorizing the seller to designate or obligate the licensee as
46 the provider in a preneed contract; and

47 (d) Any information required by the board by rule.

48 4. A license which has not been renewed as provided by this
49 section shall expire. A licensee who fails to apply for renewal may
50 apply for reinstatement by satisfying the requirements of subsection 3
51 of this section and paying a delinquent fee as established by the board
52 by rule.

333.320. 1. No person shall sell, perform, or agree to perform the
2 seller's obligations under, or be designated as the seller of, any preneed
3 contract unless, at the time of the sale, performance, agreement, or
4 designation, such person is licensed by the board as a seller and
5 authorized and registered with the Missouri secretary of state to
6 conduct business in Missouri.

7 2. An applicant for a preneed seller license shall:

8 (1) File an application on a form established by the board and
9 pay a licensing fee in an amount established by the board by rule;

10 (2) Be an individual resident of Missouri of eighteen years of age
11 or a business entity registered with the Missouri secretary of state to
12 transact business in Missouri;

13 (3) Be of good moral character. If the applicant is a corporation,
14 each officer, director, manager, or controlling shareholder, shall be of
15 good moral character;

16 (4) Meet all requirements for licensure;

17 (5) Identify the name and address of a custodian of records
18 responsible for maintaining the books and records of the seller relating
19 to preneed contracts;

20 (6) Identify the name and address of each licensed provider that
21 has authorized the seller to designate such person as a provider under
22 a preneed contract;

23 (7) Have established, as grantor, a preneed trust or an agreement
24 to utilize a preneed trust with terms consistent with sections 436.400 to
25 436.520, RSMo. A trust shall not be required if the applicant certifies
26 to the board that the seller will only sell insurance funded or joint

27 account funded preneed contracts;

28 (8) Identify the name and address of a trustee or, if applicable,
29 the financial institution where any preneed trust or joint accounts will
30 be maintained; and

31 (9) File with the board, a written consent authorizing the state
32 board to inspect or order an investigation, examination, or audit of the
33 seller's books and records which contain information concerning
34 preneed contracts sold by or on behalf of the seller.

35 3. Each seller shall apply to renew his or her license on or before
36 October thirty-first of each year or a date established by the board by
37 rule. A license which has not been renewed prior to the renewal date
38 shall expire. Applicants for renewal shall:

39 (1) File an application for renewal on a form established by the
40 board by rule;

41 (2) Pay a renewal fee in an amount established by the board by
42 rule; and

43 (3) File annually with the board, a signed and notarized annual
44 report as required by section 436.400, RSMo.

45 4. Any license which has not been renewed as provided by this
46 section shall expire. A licensee who fails to apply for renewal may
47 apply for reinstatement by satisfying the requirements of subsection 3
48 of this section and paying a delinquent fee as established by the board
49 by rule.

333.325. 1. No person shall sell, negotiate, or solicit the sale of
2 preneed contracts for, or on behalf of, a seller unless registered with
3 the board as a preneed agent except for individuals who are licensed
4 as funeral directors under this chapter. The board shall maintain a
5 registry of all preneed agents registered with the board. The registry
6 shall be deemed an open record and made available on the board's web
7 site.

8 2. An applicant for a preneed agent registration shall:

9 (1) File an application on a form established by the board and
10 pay a registration fee in an amount established by the board by rule
11 which shall not exceed fifty percent of the application fee established
12 by the board under this chapter for a funeral director license;

13 (2) Be eighteen years of age;

14 (3) Be of good moral character. If the applicant is a corporation,

15 each officer, director, manager, or controlling shareholder, shall be of
16 good moral character;

17 (4) Have successfully passed the Missouri law examination as
18 designated by the board;

19 (5) Provide the name and address of each seller for whom the
20 applicant is authorized to sell, negotiate, or solicit the sale of preneed
21 contracts for, or on behalf of.

22 3. Each preneed agent shall apply to renew his or her
23 registration on or before October thirty-first of each year or a date
24 established by the board by rule. A registration which has not been
25 renewed prior to the renewal date shall expire. Applicants for renewal
26 shall:

27 (1) File an application for renewal on a form established by the
28 board by rule;

29 (2) Pay a renewal fee in an amount established by the board by
30 rule which shall not exceed fifty percent of the application fee
31 established by the board under this chapter for a funeral director
32 license renewal; and

33 (3) Provide the name and address of each seller for whom the
34 preneed agent is authorized to sell, negotiate, or solicit the sale of
35 preneed contracts for or on behalf of.

36 4. Any registration which has not been renewed as provided by
37 this section shall expire and the registrant shall be immediately
38 removed from the preneed agent registry by the board. A registrant
39 who fails to apply for renewal may apply for reinstatement by
40 satisfying the requirements of subsection 3 of this section and paying
41 a delinquent fee as established by the board.

333.330. 1. The board may refuse to issue any certificate of
2 registration or authority, permit, or license required under sections
3 333.300 to 333.340 for one or any combination of causes stated in
4 subsection 2 of this section. The board shall notify the applicant in
5 writing of the reasons for the refusal and shall advise the applicant of
6 his or her right to file a complaint with the administrative hearing
7 commission as provided by chapter 621, RSMo.

8 2. The board may cause a complaint to be filed with the
9 administrative hearing commission as provided by chapter 621, RSMo,
10 against any holder of any certificate of registration or authority,

11 permit, or license required by sections 333.300 to 333.340 or any person
12 who has failed to renew or has surrendered his or her certificate of
13 registration or authority, permit, or license for any one or any
14 combination of the following causes:

15 (1) Use of any controlled substance, as defined in chapter 195,
16 RSMo, or alcoholic beverage to an extent that such use impairs a
17 person's ability to perform the work of any profession licensed or
18 regulated under sections 333.300 to 333.340;

19 (2) The person has been finally adjudicated and found guilty, or
20 entered a plea of guilty or nolo contendere, in a criminal prosecution
21 under the laws of any state or of the United States, for any offense
22 reasonably related to the qualifications, functions, or duties of any
23 profession licensed or regulated under this chapter, for any offense
24 involving a controlled substance, or for any offense an essential
25 element of which is fraud, dishonesty, or an act of violence, or for any
26 offense involving moral turpitude, whether or not sentence is imposed;

27 (3) Use of fraud, deception, misrepresentation, or bribery in
28 securing any certificate of registration or authority, permit, or license
29 issued under this chapter or in obtaining permission to take any
30 examination given or required under this chapter;

31 (4) Obtaining or attempting to obtain any fee, charge, tuition, or
32 other compensation by fraud, deception, or misrepresentation;

33 (5) Incompetency, misconduct, gross negligence, fraud,
34 misrepresentation, or dishonesty in the performance of the functions
35 or duties of any profession licensed or regulated under sections 333.300
36 to 333.340;

37 (6) Violation of, or assisting or enabling any person to violate,
38 any provision of sections 436.400 to 436.520, RSMo, regulating preneed,
39 or of any lawful rule or regulation adopted pursuant thereto;

40 (7) Impersonation of any person holding a certificate of
41 registration or authority, permit, or license or allowing any person to
42 use his or her certificate of registration or authority, permit, license,
43 or diploma from any school;

44 (8) Disciplinary action against the holder of a license or other
45 right to practice any profession regulated under sections 333.300 to
46 333.340 granted by another state, territory, federal agency, or country
47 upon grounds for which revocation or suspension is authorized in this

48 state;

49 (9) A person is finally adjudged insane or incompetent by a court
50 of competent jurisdiction;

51 (10) Misappropriation or theft of preneed funds;

52 (11) Assisting or enabling any person to practice or offer to
53 practice any profession licensed or regulated by the provisions of
54 sections 333.300 to 333.340 regulating preneed who is not licensed or
55 registered and currently eligible to practice thereunder;

56 (12) Issuance of a certificate of registration or authority, permit,
57 or license based upon a material mistake of fact;

58 (13) Failure to display a valid certificate or license if so required
59 by sections 436.400 to 436.520, RSMo, regulating preneed or any rule
60 established thereunder;

61 (14) Violation of any professional trust or confidence;

62 (15) Making or filing any report required by sections 436.400 to
63 436.520, RSMo, regulating preneed which the licensee knows to be false
64 or knowingly failing to make or file a report required by such sections;

65 (16) Use of any advertisement or solicitation which is false,
66 misleading, or deceptive to the general public or persons to whom the
67 advertisement or solicitation is primarily directed; or

68 (17) Willfully and through undue influence selling a preneed
69 contract.

70 3. After the filing of such complaint, the proceedings shall be
71 conducted in accordance with the provisions of chapter 621,
72 RSMo. Upon a finding by the administrative hearing commission that
73 the grounds, provided in subsection 2 of this section, for disciplinary
74 action are met, the board may, singly or in combination, censure or
75 place the person named in the complaint on probation on such terms
76 and conditions as the board deems appropriate for a period not to
77 exceed five years, or may suspend, for a period not to exceed three
78 years, or revoke the license or registration.

79 4. Notwithstanding any other provision of this section to the
80 contrary, the board may immediately suspend a preneed seller license
81 if the board finds, after an inspection, examination, investigation, or
82 audit, a shortage in any preneed trust or joint account which exceeds
83 twenty percent of the total amount required to be held or deposited in
84 the trust or account pursuant to the provisions of sections 436.400 to

85 436.520, RSMo.

86 5. Any person whose license is suspended under subsection 4 of
87 this section may appeal such suspension to the administrative hearing
88 commission. Notice of such appeal shall be received by the
89 administrative hearing commission within ninety days of mailing, by
90 certified mail, the notice of suspension. Failure of a person whose
91 license was suspended to notify the administrative hearing commission
92 of his or her intent to appeal waives all rights to appeal the
93 suspension. Upon notice of such person's intent to appeal, a hearing
94 shall be held before the administrative hearing commission pursuant
95 to chapter 621, RSMo. The burden shall be on the board to prove
96 adequate grounds for suspension.

97 6. Use of the procedures set out in this section shall not preclude
98 the application of the provisions of subsection 2 of section 333.061.

333.335. 1. Upon application by the board, and the necessary
2 burden having been met, a court of general jurisdiction may grant an
3 injunction, restraining order, or other order as may be appropriate to
4 enjoin a person from:

5 (1) Offering to engage or engaging in the performance of any acts
6 or practices for which a registration or authority, permit, or license is
7 required by sections 333.300 to 333.340, upon a showing that such acts
8 or practices were performed or offered to be performed without the
9 required registration or authority, permit, or license; or

10 (2) Engaging in any practice or business authorized by a
11 registration or authority, permit, or license issued pursuant to sections
12 333.300 to 333.340, that is in violation of sections 333.300 to 333.340, or
13 upon a showing that the holder presents a substantial probability of
14 serious danger to the health, safety, or welfare of any resident of this
15 state or client or customer of the licensee or registrant; or

16 (3) Engaging in any practice or business that presents a
17 substantial probability of serious danger to the solvency of any seller.

18 2. Any such action shall be commenced either in the county in
19 which such conduct occurred or in the county in which the defendant
20 resides or, in the case of a firm or corporation, where the firm or
21 corporation maintains its principal office or in Cole county.

22 3. Any action brought under this section shall be in addition to
23 and not in lieu of any penalty provided by sections 333.300 to 333.340,

24 and may be brought concurrently with other actions to enforce sections
25 333.300 to 333.340.

333.340. 1. The board shall establish the amount of the fees
2 authorized under sections 333.300 to 333.340 and required by rules
3 established thereunder. Such fees shall be set at a level to produce
4 revenue which does not substantially exceed the cost and expense of
5 administering sections 333.300 to 333.340 and sections 436.400 to
6 436.520, RSMo.

7 2. The board shall promulgate and enforce rules for the
8 transaction of its business and for standards of service and practice to
9 be followed for the licensing and registration of providers, sellers, and
10 preneed agents deemed necessary for the public good and consistent
11 with the laws of this state.

12 3. Any rule or portion of a rule, as that term is defined in section
13 536.010, RSMo, that is created under the authority delegated in this
14 section shall become effective only if it complies with and is subject to
15 all of the provisions of chapter 536, RSMo, and, if applicable, section
16 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable
17 and if any of the powers vested with the general assembly pursuant to
18 chapter 536, RSMo, to review, to delay the effective date, or to
19 disapprove and annul a rule are subsequently held unconstitutional,
20 then the grant of rulemaking authority and any rule proposed or
21 adopted after August 28, 2009, shall be invalid and void.

436.400. The provisions of sections 436.400 to 436.520 shall be
2 referenced as the "Missouri Preneed Funeral Contract Act" and shall
3 apply only to preneed contracts entered into, and accounts created on
4 or after, August 28, 2009, unless otherwise specified.

436.405. As used in sections 436.400 to 436.520, unless the context
2 otherwise requires, the following terms shall mean:

3 (1) "Beneficiary", the individual who is to be the subject of the
4 disposition or who will receive funeral services, facilities, or
5 merchandise described in a preneed contract;

6 (2) "Board", the Missouri state board of embalmers and funeral
7 directors;

8 (3) "Division", the division of professional registration of the
9 department of insurance, financial institutions and professional
10 registration;

11 (4) "Funeral merchandise", caskets, grave vaults, or receptacles,
12 and other personal property incidental to the final disposition of a
13 dead human body and such term shall also include grave lots, grave
14 spaces, grave markers, monuments, tombstones, crypts, niches,
15 mausoleums, and urns;

16 (5) "Guaranteed contract", a preneed contract in which the seller
17 promises, assures, or guarantees to the purchaser that all or any
18 portion of the costs for the disposition, services, facilities, or
19 merchandise identified in a preneed contract will be no greater than
20 the price designated in the contract upon the preneed beneficiary's
21 death or that such costs will be otherwise limited or restricted;

22 (6) "Insurance funded preneed contract", a preneed contract
23 which is designated to be funded by payments or proceeds from an
24 insurance policy or annuity contract;

25 (7) "Joint account funded preneed contract", a preneed contract
26 which designates that payments for the preneed contract made by or
27 on behalf of the purchaser will be deposited and maintained in a joint
28 account in the names of the purchaser and provider;

29 (8) "Market value", a fair market value:

30 (a) As to cash, the amount thereof;

31 (b) As to a security as of any date, the price for the security as
32 of that date obtained from a generally recognized source, or to the
33 extent no generally recognized source exists, the price to sell the
34 security in an orderly transaction between unrelated market
35 participants at the measurement date; and

36 (c) As to any other asset, the price to sell the asset in an orderly
37 transaction between unrelated market participants at the measurement
38 date consistent with statements of financial accounting standards;

39 (9) "Non-guaranteed contract", a preneed contract in which the
40 seller does not promise, assure, or guarantee that all or any portion of
41 the costs for the disposition, facilities, service, or merchandise
42 identified in a preneed contract will be limited to the price designated
43 in the contract upon the preneed beneficiary's death or that such costs
44 will be otherwise limited or restricted;

45 (10) "Person", any individual, partnership, corporation,
46 cooperative, association, or other entity;

47 (11) "Preneed agent", any person authorized to sell a preneed

48 contract for, or on behalf of, a seller;

49 (12) "Preneed contract", any contract or other arrangement
50 which provides for the final disposition of a dead human body, funeral
51 or burial services or facilities, or funeral merchandise, where such
52 disposition, services, facilities, or merchandise are not immediately
53 required. Such contracts include, but are not limited to, agreements
54 providing for a membership fee or any other fee for the purpose of
55 furnishing final disposition, funeral or burial services or facilities, or
56 funeral merchandise at a discount or at a future date;

57 (13) "Preneed trust", a trust established by a seller to receive
58 deposits of, administer, and disburse payments received under preneed
59 contracts by such seller, together with income thereon;

60 (14) "Provider", the person designated to provide the disposition,
61 funeral or burial services or facilities, or merchandise described in a
62 preneed contract;

63 (15) "Purchaser", the person who is obligated to pay under a
64 preneed contract;

65 (16) "Seller", the person who executes a preneed contract with a
66 purchaser and who is obligated under such preneed contract to remit
67 payment to the provider;

68 (17) "Trustee", the trustee of a preneed trust, including successor
69 trustees;

70 (18) "Trust funded preneed contract", a preneed contract which
71 provides that payments for the preneed contract shall be deposited and
72 maintained in trust;

436.410. The provisions of sections 436.400 to 436.520 shall not
2 apply to any contract or other arrangement sold by a cemetery
3 operator for which payments received by or on behalf of the purchaser
4 are required to be placed in an endowed care fund or for which a
5 deposit into a segregated account is required under chapter 214, RSMo,
6 provided that a cemetery operator shall comply with sections 436.400
7 to 436.520 if the contract or arrangement sold by the operator includes
8 services that may only be provided by a licensed funeral director or
9 embalmer.

436.412. Each preneed contract made before August 28, 2009, and
2 all payments and disbursements under such contract shall continue to
3 be governed by this chapter as the chapter existed at the time the

4 contract was made. A licensee may be disciplined by the board for any
5 violations of this chapter as it existed at the time the conduct occurred.

436.415. 1. Except as otherwise provided in sections 436.400 to
2 436.520, the provider designated in a preneed contract shall be
3 obligated to provide final disposition, funeral or burial services and
4 facilities, and funeral merchandise as described in the preneed
5 contract.

6 2. The seller designated in a preneed contract shall be obligated
7 to administer all payments made by, or on behalf of, a purchaser of a
8 preneed contract and ensure the preneed contract is managed and
9 fulfilled, and payments remitted, in compliance with sections 436.400
10 to 436.520 and as provided by the contract.

436.420. 1. No person shall be designated as a provider in a
2 preneed contract unless the provider has a written contractual
3 agreement with the seller. Any seller who designates a person as a
4 provider in a preneed contract without a contractual relationship with
5 such person is in violation of the provisions of sections 436.400 to
6 436.520.

7 2. The written agreement required by this section shall include:

8 (1) Written consent from the provider authorizing the seller to
9 designate or obligate the provider under a preneed contract;

10 (2) Procedures for tracking preneed contract funds or payments
11 received by the provider and for remitting such funds or payments to
12 the seller, including, the time period authorized by the seller for the
13 remittance of funds and payments; and

14 (3) The signatures of the seller and the provider or their
15 authorized representatives and the date such signature was obtained.

16 3. A provider shall notify the board within fifteen days of
17 authorizing or otherwise agreeing to allow a seller to designate himself
18 or herself as the provider under any preneed contract.

19 4. Any person who knowingly permits a seller to sell a preneed
20 contract designating him or her as the provider shall be obligated to
21 provide the final disposition, funeral and burial services and facilities,
22 and funeral merchandise as described in the preneed contract for the
23 beneficiary. A provider who has knowledge that a seller has designated
24 himself or herself as a provider under a preneed contract without
25 authorization, shall notify the board in writing within thirty days of

26 obtaining such knowledge.

27 5. Failure to comply with the provisions of this section shall be
28 cause for discipline of a person licensed or registered by the board
29 under sections 333.300 to 333.340, RSMo.

30 6. Upon request of the board, a licensed seller or provider shall
31 provide a copy of any preneed contract or any contract or agreement
32 with a seller or provider to the board.

436.425. 1. All preneed contracts shall be in writing and shall
2 clearly and conspicuously:

3 (1) Include the name, address and phone number of the
4 purchaser, beneficiary, provider and seller;

5 (2) Identify the name, address, phone and license number of the
6 provider and the seller;

7 (3) Set out in detail the disposition, funeral and burial services
8 and facilities, and merchandise requested;

9 (4) Identify whether the contract is trust funded, insurance
10 funded, or joint account funded;

11 (5) Include notice that the cancellation of the contract shall not
12 cancel any life insurance funding the contract, and that insurance
13 cancellation is required to be made in writing to the insurer;

14 (6) Include notice that the purchaser will only receive the cash
15 surrender value of any insurance policy funding the contract if
16 cancelled after a designated time, which may be less than the amount
17 paid into the policy;

18 (7) Include notice that the purchaser has the right to transfer the
19 provider designation to another provider;

20 (8) Prominently identify whether the contract is revocable or
21 irrevocable;

22 (9) Set forth the terms for cancellation by the purchaser or by
23 the seller;

24 (10) Identify any preneed trust or joint account into which
25 contract payments shall be deposited, including the name and address
26 of the corresponding trustee or financial institution;

27 (11) Include the name, address and phone number of any
28 insurance company issuing an insurance policy used to fund the
29 preneed contract;

30 (12) Include the name and signature of the purchaser, the

31 **preneed agent responsible for the sale of the contract, and the seller or**
32 **its authorized representative;**

33 **(13) Prominently identify whether the contract is a guaranteed**
34 **or non-guaranteed contract in a recognizable font;**

35 **(14) Include any applicable consumer disclosures required by the**
36 **board by rule and;**

37 **(15) Comply with the provisions of sections 436.400 to 436.520 or**
38 **any rule promulgated thereunder.**

39 **2. A preneed contract shall be voidable and unenforceable at the**
40 **option of the purchaser, or the purchaser's legal representative, if the**
41 **contract is not in compliance with this section or not issued by a seller**
42 **licensed under sections 333.300 to 333.340, RSMo. Upon exercising the**
43 **option, all payments made under such contract shall be recoverable by**
44 **the purchaser, or the purchaser's legal representative, from the**
45 **contract seller or other payee thereof.**

46 **3. A preneed contract shall only be designated as irrevocable if**
47 **the purchaser is using the contract to qualify for Mo HealthNet services**
48 **under chapter 208, RSMo. All purchasers shall have the right to cancel**
49 **or rescind a revocable preneed contract and transfer any preneed**
50 **contract with or without cause.**

51 **4. A preneed contract, including contracts entered into before**
52 **August 28, 2009, shall not be changed from a trust funded, insurance**
53 **funded, or joint account funded preneed contract without the consent**
54 **of the purchaser.**

436.430. 1. A trust funded preneed contract shall comply with
2 **sections 436.400 to 436.520 and the specific requirements of this section.**

3 **2. In a trust funded preneed contract, a seller shall be allowed**
4 **to retain a non-refundable origination fee of up to five percent of the**
5 **total amount of the preneed contract which shall not be commingled**
6 **with any funds in any preneed trust. A seller shall deposit one hundred**
7 **percent of the payments received on a trust funded preneed contract**
8 **into a trust designated by this section within sixty days of receipt of**
9 **such funds by the seller or its designee. A seller may also withdraw up**
10 **to ten percent of the total payments received on the trust funded**
11 **contract from the trust.**

12 **3. The trustee of a preneed trust shall be a state or federally**
13 **chartered financial institution authorized to exercise trust powers in**

14 Missouri. The trustee shall accept all deposits made to it for a preneed
15 contract and shall hold, administer, and distribute such deposits, in
16 trust, as trust principal, pursuant to sections 436.400 to 436.520.

17 4. The financial institution referenced herein may neither
18 control, nor be controlled by, or under common control with the
19 seller. The terms "control", "controlled by" and "under common control
20 with" means, the direct or indirect possession of the power to direct or
21 cause the direction of the management and policies of a person, whether
22 through the ownership of voting securities, or by contact unless the
23 power is the result of an official position with the corporate office held
24 by the person. Control shall be presumed to exist if any person,
25 directly or indirectly, owns, controls, holds with the power to vote, or
26 holds proxies representing ten percent or more of the voting securities
27 of any other person. This presumption may be rebutted by a showing
28 to the board that control does not in fact exist.

29 5. Payments regarding two or more preneed contracts may be
30 deposited into and commingled in the same preneed trust, so long as
31 the trust's grantor is the seller of all such preneed contracts and the
32 trustee maintains adequate records that individually and separately
33 identify the payments, earnings, and distributions for each preneed
34 contract.

35 6. Within a reasonable time after accepting a trusteeship or
36 receiving trust assets, a trustee shall review the trust assets and make
37 and implement decisions concerning the retention and disposition of
38 assets in order to bring the trust portfolio into compliance with the
39 purposes, terms, distribution requirements, other circumstances of the
40 trust, and all other requirements of sections 436.400 to 436.520.

41 7. All expenses of establishing and administering a preneed trust,
42 including trustee's fees, legal and accounting fees, investment expenses,
43 and taxes may be paid from the trust.

44 8. The seller and provider of a trust funded preneed contract
45 shall be entitled to all income, including, but not limited to, interest,
46 dividends, capital gains, and losses generated by the investment of
47 preneed trust property regarding such contract as stipulated in the
48 contract. The trustee of the trust may distribute all income, net of
49 losses, to the seller upon the final disposition of the beneficiary and
50 provision of the funeral and burial services and facilities, and

51 merchandise to, or for, the benefit of the beneficiary.

52 9. The trustee of a preneed trust, including trusts established
53 before August 28, 2009, shall maintain adequate books and records of
54 all transactions administered over the life of the trust and pertaining
55 to the trust generally. The trustee shall assist the seller who
56 established the trust or its successor in interest in the preparation of
57 the annual report described in section 436.460, RSMo. The seller shall
58 furnish to each contract purchaser, within fifteen days after receipt of
59 the purchaser's written request, a written statement of all deposits
60 made to such trust regarding such purchaser's contract including the
61 principal and interest paid to date, and the principal and interest to be
62 paid over the life of the trust.

63 10. Income of the trust, excluding expenses allowed under
64 subsection 7 of this section, shall accrue through the life of the trust
65 and shall only be distributed when the trust is terminated. This
66 subsection shall apply to trusts established on or after August 28, 2009.

67 11. A preneed trust, including trusts established before August
68 28, 2009, shall terminate when the trust principal no longer includes
69 any payments made under any preneed contract, and upon such
70 termination the trustee shall distribute all trust property, including
71 principal and undistributed income, to the seller which established the
72 trust.

 436.435. 1. The provisions of this section shall apply to all
2 preneed trusts, including trusts established before August 28, 2009.

3 2. All property held in a preneed trust, including principal and
4 undistributed income, shall be invested and reinvested by the trustee
5 thereof and shall only be invested and reinvested in investments which
6 have reasonable potential for growth or producing income. Funds in,
7 or belonging to, a preneed trust shall not be invested in any term life
8 insurance product.

9 3. A trustee shall invest and manage trust assets as a prudent
10 investor would, by considering the purposes, terms, distribution
11 requirements, and other circumstances of the trust. In satisfying this
12 standard, the trustee shall exercise reasonable care, skill, and caution.
13 A trustee who has special skills or expertise, or is named trustee in
14 reliance upon the trustee's representation that the trustee has special
15 skills or expertise, has a duty to use those special skills or expertise

16 when investing and managing trust assets.

17 4. A trustee shall diversify the investments of the trust unless the
18 trustee reasonably determines that, because of special circumstances,
19 the purpose of the trust is better served without diversification.

20 5. In investing and managing trust assets, a trustee shall
21 consider the following as are relevant to the trust:

22 (1) General economic conditions;

23 (2) The possible effect of inflation or deflation;

24 (3) The expected tax consequences of investment decisions or
25 strategies;

26 (4) The role that each investment or course of action plays
27 within the overall trust portfolio;

28 (5) The expected total return from income and the appreciation
29 of capital;

30 (6) Other resources of the beneficiaries known to the trustee;

31 (7) Needs for liquidity, regularity of income, and preservation or
32 appreciation of capital;

33 (8) An asset's special relationship or special value, if any, to the
34 purposes of the trust or to one or more of the beneficiaries; and

35 (9) The size of the portfolio, nature and estimated duration of the
36 fiduciary relationship, and distribution requirements under the
37 governing instrument.

38 6. It is unlawful for any trustee, seller, provider, or preneed
39 agent to procure or accept a loan against any investment or asset of or
40 belonging to a preneed trust.

436.440. 1. The provisions of this section shall apply to all
2 preneed trusts, including trusts established before August 28, 2009.

3 2. A preneed trustee may delegate to an agent, duties and powers
4 that a prudent trustee of comparable skills would reasonably delegate
5 under the circumstances. The trustee shall exercise reasonable care,
6 skill, and caution in:

7 (1) Selecting an agent;

8 (2) Establishing the scope and terms of the agency, consistent
9 with the purposes and terms of the trust; and

10 (3) Periodically reviewing the agent's actions in order to monitor
11 the agent's performance and compliance with the terms of the agency.

12 3. In performing a delegated function, an agent owes a duty to

13 the trust to exercise reasonable care to comply with the terms of the
14 agency.

15 4. By accepting a delegation of powers or duties from the trustee
16 of a preneed trust, an agent submits to the jurisdiction of the courts of
17 this state.

18 5. Delegation of duties and powers to an agent shall not relieve
19 the trustee of any duty or responsibility imposed on the trustee by
20 sections 436.400 to 436.520 or the trust agreement.

436.445. A trustee of any preneed trust, including trusts
2 established before August 28, 2009 shall not sell, invest, or authorize
3 any transaction involving the investment or management of trust
4 property with:

- 5 (1) The spouse of the trustee;
- 6 (2) The descendants, siblings, parents, or spouses of a seller or
7 an officer, manager, director or employee of a seller, provider, or
8 preneed agent;
- 9 (3) Agents or attorneys of a trustee, seller, or provider; or
- 10 (4) A corporation or other person or enterprise in which the
11 trustee, seller, or provider owns a significant interest or has an interest
12 that might affect the trustee's judgment.

436.450. 1. An insurance funded preneed contract shall comply
2 with sections 436.400 to 436.520 and the specific requirements of this
3 section.

4 2. A seller, provider, or any preneed agent, shall not receive or
5 collect from the purchaser of an insurance funded preneed contract,
6 any amount in excess of what is required to pay the premiums on the
7 insurance policy as assessed or required by the insurer as premium
8 payments for the insurance policy. A seller shall not receive or collect
9 any administrative or other fee from the purchaser for or in connection
10 with an insurance funded preneed contract, other than those fees or
11 amounts assessed by the insurer.

12 3. Payments collected by or on behalf of a seller for an insurance
13 funded preneed contract shall be promptly remitted to the insurer or
14 the insurer's designee as required by the insurer, provided that
15 payments shall not be retained or held by the seller or preneed agent
16 for more than thirty days from the date of receipt.

17 4. A term life insurance policy shall not be used to fund a

18 **preneed contract.**

19 **5. It is unlawful for a seller, provider, or preneed agent to**
20 **procure or accept a loan against any insurance contract used to fund**
21 **a preneed contract.**

22 **6. Laws regulating insurance shall not apply to preneed**
23 **contracts, but shall apply to any insurance sold with a preneed**
24 **contract.**

25 **7. This section shall apply to contracts entered into before**
26 **August 28, 2009.**

436.455. 1. A joint account funded preneed contract shall comply
2 **with sections 436.400 to 436.520 and the specific requirements of this**
3 **section.**

4 **2. In lieu of a trust funded or insurance funded preneed contract,**
5 **the seller and the purchaser may agree in writing that all funds paid**
6 **by the purchaser for the preneed contract shall be deposited with a**
7 **financial institution chartered and regulated by the federal or state**
8 **government authorized to do business in Missouri in an account in the**
9 **joint names and under the joint control of the seller and**
10 **purchaser. There shall be a separate joint account established for each**
11 **preneed contract sold or arranged under this section. The first name**
12 **on the account shall be the seller's and shall be signed by the seller and**
13 **purchaser or contain a signed pay on death agreement.**

14 **3. All consideration paid by the purchaser under a joint account**
15 **funded contract shall be deposited into a joint account as authorized**
16 **by this section within ten days of receipt of payment by the seller.**

17 **4. The financial institution shall hold, invest, and reinvest funds**
18 **deposited under this section in other accounts offered to depositors by**
19 **the financial institutions as provided in the written agreement of the**
20 **purchaser and the seller, provided the financial institution shall not**
21 **invest or reinvest any funds deposited under this section in term life**
22 **insurance or any investment that does not reasonably have the**
23 **potential to gain income or increase in value.**

24 **5. Income generated by preneed funds deposited under this**
25 **section shall be used to pay the reasonable expenses of administering**
26 **the account, and the balance of the income shall be distributed or**
27 **reinvested as provided in the written agreement of the purchaser and**
28 **seller.**

29 **6. Within fifteen days after a provider and a witness certifies to**
30 **the financial institution in writing, that the provider has furnished the**
31 **final disposition, funeral and burial services and facilities, and**
32 **merchandise as required by the preneed contract, or has provided**
33 **alternative funeral benefits for the beneficiary under special**
34 **arrangements made with the purchaser, the financial institution shall**
35 **distribute the deposited funds, if the certification has been approved**
36 **by the purchaser.**

436.456. At any time before final disposition, or before the
2 **funeral or burial services, facilities, or merchandise described in a**
3 **preneed contract are furnished, the purchaser may cancel the contract,**
4 **if designated as revocable, without cause. In order to cancel the**
5 **contract the purchaser shall:**

6 **(1) In the case of a joint account funded preneed contract,**
7 **deliver written notice of the cancellation to the seller and the financial**
8 **institution. Within fifteen days of receipt of notice of the cancellation,**
9 **the financial institution shall distribute all deposited funds to the**
10 **purchaser. Interest shall be distributed as provided in the agreement**
11 **with the seller and purchaser;**

12 **(2) In the case of an insurance funded preneed contract, deliver**
13 **written notice of the cancellation to the seller. Within fifteen days of**
14 **receipt of notice of the cancellation, the seller shall notify the**
15 **purchaser that the cancellation of the contract shall not cancel any life**
16 **insurance funding the contract and that insurance cancellation is**
17 **required to be made in writing to the insurer;**

18 **(3) In the case of a trust funded preneed contract, deliver**
19 **written notice of the cancellation to the seller and trustee. Within**
20 **fifteen days of receipt of notice of the cancellation, the trustee shall**
21 **distribute one hundred percent of the trust property, including any**
22 **percentage of the total payments received on the trust funded contract**
23 **that have been withdrawn from the account under section 436.430 but**
24 **excluding interest, to the purchaser of the contract.**

436.457. 1. A seller shall have the right to cancel the contract if
2 **the purchaser is in default of payment for sixty days.**

3 **2. Prior to canceling the contract, the seller shall notify the**
4 **purchaser in writing that the contract shall be cancelled if payment is**
5 **not received within thirty days of the postmarked date of the**

6 notice. The notice shall include the amount of payments due, the date
7 the payment is due, and the date of cancellation.

8 3. The purchaser shall have the opportunity to remit the default
9 payment in arrears if the seller chooses not to cancel the contract prior
10 to the death of the beneficiary and subsequent need for disposition,
11 services, facilities, or merchandise under the contract. If the arrearage
12 is not remitted, the seller shall credit the purchaser's preneed
13 payments toward the immediate costs for disposition, services,
14 facilities, and merchandise. If credit is applied, the seller may
15 determine such costs based on the seller's prices on the date of the
16 provision of the disposition, services, facilities, and merchandise.

17 4. Upon cancellation by the seller under this section, eighty
18 percent of the contract payments shall be refunded to the purchaser.

436.458. 1. A purchaser may select an alternative provider as the
2 designated provider under the original contract if the purchaser
3 notifies the seller in writing of the purchaser's intent, stating the name
4 of the alternative provider and the alternative provider consents to the
5 new designation. Purchasers shall not be penalized or assessed any
6 additional fee or cost for such a transfer of the provider designation.

7 2. The original designated provider shall pay the newly
8 designated provider all payments owed to the original provider under
9 the contract. The newly designated provider shall assume all rights,
10 duties, obligations, and liabilities as the original provider under the
11 contract. Interest shall continue to be allocated to the seller as
12 provided for under the contract.

13 3. In the case of a trust funded contract and upon written notice
14 to the seller of the purchaser's intent to select an alternative provider
15 under subsection 1 of this section, the seller shall either continue the
16 trust with the new provider in place of, and to receive all payments
17 owed to, the original provider under the original agreement, or pay to
18 the new provider all of the trust property, including principal and
19 income.

436.460. 1. Each seller shall file an annual report with the board
2 which shall contain the following information:

3 (1) The name, addresses and the contract number, if any, of all
4 purchasers as reflected in any preneed contract sold since the filing of
5 the last report;

6 **(2) The total number and total face value of preneed contracts**
7 **sold since the filing of the last report;**

8 **(3) The contract amount of each preneed contract sold since the**
9 **filing of the last report, identified by contract;**

10 **(4) The name, address, and license number of all preneed agents**
11 **authorized to sell preneed contracts on behalf of the seller;**

12 **(5) The date the report is submitted and the date of the last**
13 **report;**

14 **(6) The number of all Missouri preneed contracts fulfilled by the**
15 **seller during the preceding calendar year;**

16 **(7) The name and address of each provider with whom it is under**
17 **contract;**

18 **(8) The name and address of the person designated by the seller**
19 **as custodian of the seller's books and records relating to the sale of**
20 **preneed contracts;**

21 **(9) Written consent authorizing the board to order an**
22 **examination and, if necessary, an audit of any joint or trust account**
23 **established under sections 436.400 to 436.520, designated by depository**
24 **or account number;**

25 **(10) Written consent authorizing the board to order an**
26 **investigation, examination and if necessary an audit of its books and**
27 **records relating to the sale of preneed contracts; and**

28 **(11) Certification under oath that the report is complete and**
29 **correct attested to by an officer of the seller. The seller or officer shall**
30 **be subject to the penalty of making a false affidavit or declaration.**

31 **2. A seller that sells or has sold trust funded preneed contracts**
32 **shall also include in the annual report required by section 1 of this**
33 **section:**

34 **(1) The name and address of the financial institution in Missouri**
35 **in which it maintains a preneed trust account and the account numbers**
36 **of such trust accounts;**

37 **(2) The trust fund balance as reported in the previous year's**
38 **report;**

39 **(3) The current trust fund balance;**

40 **(4) Principal contributions received by the trustee since the**
41 **previous report;**

42 **(5) Total trust earnings and total distributions to the seller since**

43 the previous report;

44 (6) A statement of all assets and investments of the trust listing
45 cash, real and personal property, stocks, bonds, and other assets,
46 showing cost, acquisition date, and current market value of each asset
47 and investment;

48 (7) Total expenses, excluding distributions to the seller, since the
49 previous report; and

50 (8) Certification under oath that the information required by
51 subdivisions (1) to (7) of this subsection is complete and correct and
52 attested to by a corporate officer of the trustee. The trustee shall be
53 subject to the penalty of making a false affidavit or declaration.

54 3. A seller that sells or who has sold joint account funded
55 preneed contracts shall also include in the annual report required by
56 section 1 of this section:

57 (1) The name and address of the financial institution in Missouri
58 in which it maintains the joint account and the account numbers for
59 each joint account;

60 (2) The amount on deposit in each joint account;

61 (3) The joint account balance as reported in the previous year's
62 report;

63 (4) Principal contributions placed into each joint account since
64 the filing of the previous report;

65 (5) Total earnings since the previous report;

66 (6) Total distributions to the seller from each joint account since
67 the previous report;

68 (7) Total expenses deducted from the joint account, excluding
69 distributions to the seller, since the previous report; and

70 (8) Certification under oath that the information required by
71 subdivisions (1) to (7) of this subsection is complete and correct and
72 attested to by an authorized representative of the financial
73 institution. The affiant shall be subject to the penalty of making a false
74 affidavit or declaration.

75 4. A seller that sells or who has sold any insurance funded
76 preneed contracts shall also include in the annual report required by
77 section 1 of this section:

78 (1) The name and address of each insurance company issuing
79 insurance to fund a preneed contract sold by the seller during the

80 preceding year;

81 (2) The status, total face value and total cash surrender value of
82 each policy; and

83 (3) Certification under oath that the information required by
84 subsections 1 to 5 of this section is complete and correct attested to by
85 an authorized representative of the insurer. The affiant shall be
86 subject to the penalty of making a false affidavit or declaration.

87 5. Each seller shall remit an annual reporting fee in an amount
88 established by the board by rule for each preneed contract sold in the
89 year since the date the seller filed its last annual report with the
90 board. This reporting fee shall be paid annually and may be collected
91 from the purchaser of the preneed contract as an additional charge or
92 remitted to the board from the funds of the seller. The reporting fee
93 shall be in addition to any other fees authorized under sections 436.400
94 to 436.520.

95 6. All reports required by this section shall be filed by the
96 thirty-first day of October of each year or by the date established by
97 the board by rule. Annual reports filed after the date provided herein
98 shall be subject to a late fee in an amount established by rule of the
99 board.

100 7. A seller who fails to file the annual report on or before the
101 thirty-first day of October shall be prohibited from selling any preneed
102 contracts until the annual report, and all applicable fees, have been
103 paid to the board.

104 8. This section shall apply to contracts entered into before
105 August 28, 2009.

436.465. A seller shall maintain:

2 (1) Adequate records of all preneed contracts and related
3 agreements with providers, trustees of a preneed trust, and financial
4 institutions holding a joint account established under sections 436.400
5 to 436.520;

6 (2) Records of preneed contracts, including financial institution
7 statements and death certificates, shall be maintained by the seller for
8 the duration of the contract and for no less than five years after the
9 performance or cancellation of the contract.

436.470. 1. The board shall have authority to conduct inspections
2 and investigations of providers, sellers, and preneed agents and

3 conduct financial examinations of the books and records of providers,
4 sellers, and preneed agents and any trust or joint account to determine
5 compliance with sections 436.400 to 436.520, or to determine whether
6 grounds exist for disciplining a person licensed or registered under
7 sections 333.300 to 333.340, RSMo, at the discretion of the board and
8 with or without cause. The board shall conduct a financial examination
9 of the books and records of each seller as authorized by this section at
10 least once every five years, subject to available funding.

11 2. Upon determining that an inspection, investigation,
12 examination or audit shall be conducted, the board shall issue a notice
13 authorizing an employee or other person appointed by the board to
14 perform such inspection, investigation, examination or audit. The
15 notice shall instruct the person appointed by the board as to the scope
16 of the inspection, investigation, examination or audit.

17 3. The board shall not appoint or authorize any person to
18 conduct an inspection, investigation, examination, or audit under this
19 section if the individual has a conflict of interest or is affiliated with
20 the management of, or owns a pecuniary interest in, any person subject
21 to inspection, investigation, examination or audit under chapter 333,
22 RSMo, or sections 436.400 to 436.520.

23 4. The board may request that the director of the division of
24 professional registration, the director of the department of insurance,
25 financial institutions and professional registration, or the office of the
26 attorney general designate one or more investigators or financial
27 examiners to assist in any investigation, examination or audit, and such
28 assistance shall not be unreasonably withheld.

29 5. The person conducting the inspection, investigation, or audit
30 may enter the office, premises, establishment, or place of business of
31 any seller or licensed provider of preneed contracts, or any office,
32 premises, establishment, or place where the practice of selling or
33 providing preneed funerals is conducted, or where such practice is
34 advertised as being conducted for the purpose of conducting the
35 inspection, investigation, examination, or audit.

36 6. Upon request by the board, a licensee or registrant shall make
37 the books and records of the licensee or registrant available to the
38 board for inspection and copying at any reasonable time, including, any
39 insurance, trust, joint account, or financial institution records deemed

40 necessary by the board to determine compliance with sections 436.400
41 to 436.520.

42 7. The board shall have the power to issue subpoenas to compel
43 the production of records and papers by any licensee, trustee or
44 registrant of the board. Subpoenas issued under this section shall be
45 served in the same manner as subpoenas in a criminal case.

46 8. All sellers, providers, preneed agents, and trustees shall
47 cooperate with the board or its designee, the division of finance, the
48 department of insurance, financial institutions and professional
49 registration and the office of the attorney general, in any inspection,
50 investigation, examination or audit brought under this section.

51 9. This section shall not be construed to limit the board's
52 authority to file a complaint with the administrative hearing
53 commission charging a licensee or registrant with any actionable
54 conduct or violation, regardless of whether such complaint exceeds the
55 scope of acts charged in a preliminary public complaint filed with the
56 board and whether any public complaint has been filed with the board.

57 10. The board, the division of finance, the department of
58 insurance, financial institutions and professional registration and the
59 office of the attorney general may share information relating to any
60 preneed inspection, investigation, examination, or audit.

61 11. If an inspection, investigation, examination, or audit reveals
62 a violation of sections 436.400 to 436.520, the office of the attorney
63 general, with the consent and cooperation of the division of finance, the
64 office of the Comptroller of Currency or the Federal Deposit Insurance
65 Corporation, may initiate a judicial proceeding to:

- 66 (1) Declare rights;
- 67 (2) Approve a nonjudicial settlement;
- 68 (3) Interpret or construe the terms of the trust;
- 69 (4) Determine the validity of a trust or of any of its terms;
- 70 (5) Compel a trustee to report or account;
- 71 (6) Enjoin a seller, provider, or preneed agent from performing
72 a particular act;
- 73 (7) Enjoin a trustee from performing a particular act or grant to
74 a trustee any necessary or desirable power;
- 75 (8) Review the actions of a trustee, including the exercise of a
76 discretionary power;

- 77 **(9) Appoint or remove a trustee;**
78 **(10) Determine trustee liability and grant any available remedy**
79 **for a breach of trust;**
80 **(11) Approve employment and compensation of preneed agents;**
81 **(12) Determine the propriety of investments;**
82 **(13) Determine the timing and quantity of distributions and**
83 **dispositions of assets; or**
84 **(14) Utilize any other power or authority vested in the attorney**
85 **general by law.**

436.480. Upon the death or legal incapacity of a purchaser, all
2 **rights and remedies granted to the purchaser under sections 436.400 to**
3 **436.520 shall be enforceable by and accrue to the benefit of the**
4 **purchaser's legal representative or his designated successor, and all**
5 **payments otherwise payable to the purchaser shall be paid to that**
6 **person.**

436.485. 1. Any person, including the officers, directors,
2 **partners, agents, or employees of such person, who shall knowingly and**
3 **willfully violate or assist or enable any person to violate any provision**
4 **of sections 436.400 to 436.520 by incompetence, misconduct, gross**
5 **negligence, fraud, misrepresentation, or dishonesty is guilty of a class**
6 **C felony. Each violation of any provision of sections 436.400 to 436.520**
7 **constitutes a separate offense and may be prosecuted individually. The**
8 **attorney general shall have concurrent jurisdiction with any local**
9 **prosecutor to prosecute under this section.**

10 **2. Any violation of the provisions of sections 436.400 to 436.520**
11 **shall constitute a violation of the provisions of section 407.020, RSMo.**
12 **In any proceeding brought by the attorney general for a violation of the**
13 **provisions of sections 436.400 to 436.520, the court may order all relief**
14 **and penalties authorized under chapter 407, RSMo, and, in addition to**
15 **imposing the penalties provided for in sections 436.400 to 436.520, order**
16 **the revocation or suspension of the license or registration of a**
17 **defendant seller, provider, or preneed agent.**

436.490. 1. A provider that intends to sell or otherwise dispose
2 **of all or a majority of its business assets, or its stock if a corporation,**
3 **shall notify the board at least sixty days prior to selling or otherwise**
4 **disposing of its business assets or stock, or ceasing to do business as a**
5 **provider, and shall file a notification report on a form established by**

6 the board.

7 2. The report required by this section shall include:

8 (1) The name, phone number, and address of the purchasers of
9 any outstanding preneed contract for which the licensee is the
10 designated provider;

11 (2) The name and license numbers of all sellers authorized to
12 designate the licensee as a provider in a preneed contract;

13 (3) The name, address, and license number of the provider
14 assuming or agreeing to assume the licensee's obligations as a provider
15 under a preneed contract, if any;

16 (4) The name, address, and phone number of a custodian who
17 will maintain the books and records of the provider containing
18 information about preneed contracts in which the licensee is or was
19 formerly designated as provider;

20 (5) A final annual report containing the information required by
21 section 436.460;

22 (6) The date the provider intends to sell or otherwise dispose of
23 its business assets or stock, or cease doing business; and

24 (7) Any other information required by the board by rule.

25 3. Within three days after the provider sells or disposes of its
26 assets or stock or ceases doing business, the former provider shall
27 notify each seller in writing that the former provider has sold or
28 disposed of its assets or stock or has ceased doing business.

436.500. 1. A seller that intends to sell or otherwise dispose of all
2 or a majority of its business assets or its stock, shall notify the board
3 at least sixty days prior to selling or otherwise disposing of its assets
4 or stock, or ceasing to do business as a seller, and shall file a
5 notification report on a form established by the board.

6 2. The report required by this section shall include:

7 (1) A notarized and signed statement from the person assuming
8 or agreeing to assume the obligations of the seller indicating that the
9 assuming seller has been provided with a copy of the seller's final
10 annual report and has consented to assuming the outstanding
11 obligations of the seller;

12 (2) In lieu of the notarized statement required by subdivision (1)
13 of this subsection, the seller may file a plan detailing how the assets of
14 the seller will be set aside and used to service all outstanding preneed

15 contracts sold by the seller; and

16 (3) Any other information required by the board by rule.

17 3. Within thirty days after assuming the obligations of a seller
18 under this section, the assuming seller shall:

19 (1) Notify each provider in writing that the former seller has
20 sold or disposed of its assets or stock or has ceased doing business; and

21 (2) Provide written notification to the purchasers of each
22 preneed contract assumed by the seller indicating that the former
23 seller has transferred ownership or has ceased doing business.

24 4. Nothing in this section shall be construed to require the board
25 to audit, inspect, investigate, examine, or edit the books and records of
26 a seller subject to the provisions of this section nor shall this section
27 be construed to amend, rescind, or supersede any duty imposed on, or
28 due diligence required of, an entity assuming the obligations of the
29 seller.

30 5. The office of the attorney general shall have the authority to
31 initiate legal action to compel or otherwise ensure compliance with this
32 section by a former provider licensee.

436.505. A preneed contract may offer the purchaser the option
2 to acquire and maintain credit life insurance on the life of the
3 purchaser. Such insurance shall provide for the payment of death
4 benefits to the seller in an amount equal to the total of all contract
5 payments unpaid as of the date of such purchaser's death, and shall be
6 used solely to make those unpaid payments.

436.510. If a seller shall fail to make timely payment of an
2 amount due a purchaser or a provider under the provisions of sections
3 436.400 to 436.520, the purchaser or provider, as appropriate, shall have
4 the right, in addition to other rights and remedies against such seller,
5 to make demand upon the trustee of the preneed trust for the contract
6 to distribute to the purchaser or provider from the trust, as damages
7 for its breach, an amount equal to all deposits made into the trust for
8 the contract.

436.520. 1. The board shall promulgate and enforce rules for
2 administration and enforcement of sections 436.400 to 436.520 including
3 the establishment of the amount of any fees authorized thereunder for
4 the transaction of its business and for standards of service and practice
5 to be followed for the licensing and registration of providers, sellers

6 and preneed agents deemed necessary for the public good and
7 consistent with the laws of this state. Such fees shall be set at a level
8 to produce revenue which does not substantially exceed the cost and
9 expense of administering this chapter.

10 2. Any rule or portion of a rule, as that term is defined in section
11 536.010, RSMo, that is created under the authority delegated in this
12 section shall become effective only if it complies with and is subject to
13 all of the provisions of chapter 536, RSMo, and, if applicable, section
14 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable
15 and if any of the powers vested with the general assembly under
16 chapter 536, RSMo, to review, to delay the effective date, or to
17 disapprove and annul a rule are subsequently held unconstitutional,
18 then the grant of rulemaking authority and any rule proposed or
19 adopted after August 28, 2009, shall be invalid and void.

 [436.005. As used in sections 436.005 to 436.071, unless the
2 context otherwise requires, the following terms shall mean:

3 (1) "Beneficiary", the individual who is to be the subject of
4 the disposition and who will receive funeral services, facilities or
5 merchandise described in a preneed contract;

6 (2) "Division", the division of professional registration;

7 (3) "Funeral merchandise", caskets, grave vaults, or
8 receptacles, and other personal property incidental to a funeral or
9 burial service, and such term shall also include grave lots, grave
10 space, grave markers, monuments, tombstones, crypts, niches or
11 mausoleums if, but only if, such items are sold:

12 (a) By a companion agreement which is sold in
13 contemplation of trade or barter for grave vaults or funeral or
14 burial services and funeral merchandise; or

15 (b) At prices, in excess of prevailing market prices, intended
16 to be offset by reductions in the costs of funeral or burial services
17 or facilities which are not immediately required;

18 (4) "Person", any individual, partnership, corporation,
19 cooperative, association, or other entity;

20 (5) "Preneed contract", any contract or other arrangement
21 which requires the current payment of money or other property in
22 consideration for the final disposition of a dead human body, or for

23 funeral or burial services or facilities, or for funeral merchandise,
24 where such disposition, services, facilities or merchandise are not
25 immediately required, including, but not limited to, an agreement
26 providing for a membership fee or any other fee having as its
27 purpose the furnishing of burial or funeral services or merchandise
28 at a discount, except for contracts of insurance, including payment
29 of proceeds from contracts of insurance, unless the preneed seller
30 or provider is named as the owner or beneficiary in the contract of
31 insurance;

32 (6) "Preneed trust", a trust established by a seller, as
33 grantor, to receive deposits of, administer, and disburse payments
34 received under preneed contracts by such seller, together with
35 income thereon;

36 (7) "Provider", the person obligated to provide the
37 disposition and funeral services, facilities, or merchandise
38 described in a preneed contract;

39 (8) "Purchaser", the person who is obligated to make
40 payments under a preneed contract;

41 (9) "Seller", the person who sells a preneed contract to a
42 purchaser and who is obligated to collect and administer all
43 payments made under such preneed contract;

44 (10) "State board", the Missouri state board of embalmers
45 and funeral directors;

46 (11) "Trustee", the trustee of a preneed trust, including
47 successor trustees.]

[436.007. 1. Each preneed contract made after August 13,
2 1982, shall be void and unenforceable unless:

3 (1) It is in writing;

4 (2) It is executed by a seller who is in compliance with the
5 provisions of section 436.021;

6 (3) It identifies the contract beneficiary and sets out in
7 detail the final disposition of the dead body and funeral services,
8 facilities, and merchandise to be provided;

9 (4) It identifies the preneed trust into which contract
10 payments shall be deposited, including the name and address of the
11 trustee thereof;

12 (5) The terms of such trust and related agreements among
13 two or more of the contract seller, the contract provider, and the
14 trustee of such trust are in compliance with the provisions of
15 sections 436.005 to 436.071;

16 (6) It contains the name and address of the seller and the
17 provider.

18 2. If a preneed contract does not comply with the provisions
19 of sections 436.005 to 436.071, all payments made under such
20 contract shall be recoverable by the purchaser, his heirs, or legal
21 representative, from the contract seller or other payee thereof,
22 together with interest at the rate of ten percent per annum and all
23 reasonable costs of collection, including attorneys' fees.

24 3. Each preneed contract made before August 13, 1982, and
25 all payments and disbursements under such contract shall continue
26 to be governed by sections 436.010 to 436.080, as those sections
27 existed at the time the contract was made; but, the provisions of
28 subsection 2 of section 436.035 may be applied to all preneed
29 contracts which are executory on August 13, 1982.

30 4. Subject to the provisions of subdivision (5) of section
31 436.005, the provisions of sections 436.005 to 436.071 shall apply
32 to the assignment of proceeds of any contract of insurance for the
33 purpose of funding a preneed contract or written in conjunction
34 with a preneed contract. Laws regulating insurance shall not
35 apply to preneed contracts, but shall apply to any insurance sold
36 with a preneed contract.

37 5. No preneed contract shall become effective unless and
38 until the purchaser thereof has placed his signature in a space
39 provided on such contract, or application therefor, and the
40 purchaser has received a copy of such contract signed by the seller.

41 6. The seller and the provider of a preneed contract may be
42 the same person.]

[436.011. 1. Any seller who designates a person as a
2 provider in a preneed contract without a contractual relationship
3 with such person is in violation of the provisions of sections
4 436.005 to 436.071.

5 2. Any person who knowingly permits a seller to sell a

6 preneed contract designating him as the provider or as one of two
7 or more providers who will furnish the funeral merchandise and
8 services described in the preneed contract shall provide the funeral
9 merchandise and services described in the preneed contract for the
10 beneficiary. Failure of any such person to do so shall be a violation
11 of the provisions of sections 436.005 to 436.071 and shall be cause
12 for suspension or revocation of that person's license under the
13 provisions of section 333.061, RSMo.

14 3. If a provider has knowledge that a seller is designating
15 him as the provider of funeral merchandise and services under any
16 preneed contract and fails within thirty days after first obtaining
17 such knowledge to take action to prevent the seller from so
18 designating him as the provider, the provider shall be deemed to
19 have consented to such designation.]

[436.015. 1. No person shall perform or agree to perform
2 the obligations of, or be designated as, the provider under a
3 preneed contract unless, at the time of such performance,
4 agreement or designation:

5 (1) Such person is licensed by the state board as a funeral
6 establishment pursuant to the provisions of section 333.061, RSMo,
7 but such person need not be licensed as a funeral establishment if
8 he is the owner of real estate situated in Missouri which has been
9 formally dedicated for the burial of dead human bodies and the
10 contract only provides for the delivery of one or more grave vaults
11 at a future time and is in compliance with the provisions of chapter
12 214, RSMo; and

13 (2) Such person is registered with the state board and files
14 with the state board a written consent authorizing the state board
15 to order an examination and if necessary an audit by the staff of
16 the division of professional registration who are not connected with
17 the board of its books and records which contain information
18 concerning preneed contracts sold for, in behalf of, or in which he
19 is named as provider of the described funeral merchandise or
20 services.

21 2. Each provider under one or more preneed contracts shall:

22 (1) Furnish the state board in writing with the name and

23 address of each seller authorized by the provider to sell preneed
24 contracts in which the provider is named as such within fifteen
25 days after the provider signs a written agreement or authorization
26 permitting the seller to sell preneed contracts designating or
27 obligating the provider as the "provider" under the contract. This
28 notification requirement shall include a provider who, itself, acts
29 as seller;

30 (2) File annually with the state board a report which shall
31 contain:

32 (a) The business name or names of the provider and all
33 addresses from which it engages in the practice of its business;

34 (b) The name and address of each seller with whom it has
35 entered into a written agreement since last filing a report;

36 (c) The name and address of the custodian of its books and
37 records containing information about preneed contract sales and
38 services;

39 (3) Cooperate with the state board, the office of the attorney
40 general of Missouri, and the division in any investigation,
41 examination or audit brought under the provisions of sections
42 436.005 to 436.071;

43 (4) At least thirty days prior to selling or otherwise
44 disposing of its business assets, or its stock if a corporation, or
45 ceasing to do business, give written notification to the state board
46 and to all sellers with whom it has one or more preneed contracts
47 of its intent to engage in such sale or to cease doing business. In
48 the case of a sale of assets or stock, the written notice shall also
49 contain the name and address of the purchaser. Upon receipt of
50 such written notification, the state board may take reasonable and
51 necessary action to determine that any preneed contracts which the
52 provider is obligated to service will be satisfied at the time of
53 need. The state board may waive the requirements of this
54 subsection, or may shorten the period of notification whenever in
55 its discretion it determines that compliance with its provisions are
56 not necessary. Failure of the state board to take action regarding
57 such sale or termination of business within thirty days shall
58 constitute such a waiver.

59 3. It is a violation of the provisions of sections 436.005 to
60 436.071 and subdivision (3) of section 333.121, RSMo, for any
61 person to sell, transfer or otherwise dispose of the assets of a
62 provider without first complying with the provisions of subdivision
63 (4) of subsection 2 of this section. This violation shall be in
64 addition to the provisions of section 436.061.

65 4. If any licensed embalmer, funeral director or licensed
66 funeral establishment shall knowingly allow such licensee's name
67 to be designated as the provider under, or used in conjunction with
68 the sale of, any preneed contract, such licensee shall be liable for
69 the provider's obligations under such contract.

70 5. With respect to a provider or seller licensed under the
71 provisions of chapter 333, RSMo, any violation of the provisions of
72 sections 436.005 to 436.071 shall constitute a violation of
73 subdivision (3) of section 333.121, RSMo.]

 [436.021. 1. No person, including without limitation a
2 person who is a provider under one or more preneed contracts,
3 shall sell, perform or agree to perform the seller's obligations
4 under, or be designated as the seller of, any preneed contract
5 unless, at the time of that sale, performance, agreement, or
6 designation, that person shall:

7 (1) Be an individual resident of Missouri or a business
8 entity duly authorized to transact business in Missouri;

9 (2) Have established, as grantor, a preneed trust or trusts
10 with terms consistent with sections 436.005 to 436.071;

11 (3) Have registered with the state board.

12 2. Each seller under one or more preneed contracts shall:

13 (1) Maintain adequate records of all such contracts and
14 related agreements with providers and the trustee of preneed
15 trusts regarding such contracts, including copies of all such
16 agreements;

17 (2) Notify the state board in writing of the name and
18 address of each provider who has authorized the seller to sell one
19 or more preneed contracts under which the provider is designated
20 or obligated as the contract's "provider";

21 (3) File annually with the state board a signed and

22 notarized report on forms provided by the state board. Such a
23 report shall only contain:

24 (a) The date the report is submitted and the date of the last
25 report;

26 (b) The name and address of each provider with whom it is
27 under contract;

28 (c) The total number of preneed contracts sold in Missouri
29 since the filing of the last report;

30 (d) The total face value of all preneed contracts sold in
31 Missouri since the filing of the last report;

32 (e) The name and address of the financial institution in
33 Missouri in which it maintains the trust accounts required under
34 the provisions of sections 436.005 to 436.071 and the account
35 numbers of such trust accounts;

36 (f) A consent authorizing the state board to order an
37 examination and if necessary an audit by staff of the division of
38 professional registration who are not connected with the board of
39 the trust account, designated by depository and account
40 number. The staff of the division of professional registration in
41 conducting the audit shall not release a detailed accounting of the
42 trust account to the board unless there exist circumstances
43 indicating that the account does not comply with the requirements
44 of sections 436.005 to 436.071, but shall provide the board with a
45 summary of the examination or audit showing general compliance
46 with the provisions of sections 436.005 to 436.071;

47 (4) File with the state board a consent authorizing the state
48 board to order an examination and if necessary an audit by staff of
49 the division of professional registration who are not connected with
50 the board of its books and records relating to the sale of preneed
51 contracts and the name and address of the person designated by
52 the seller as custodian of these books and records. The staff of the
53 division of professional registration in conducting the audit shall
54 not release a detailed accounting of the trust account to the board
55 unless there exist circumstances indicating that the account does
56 not comply with the requirements of sections 436.005 to 436.071,
57 but shall provide the board with a summary of the examination or

58 audit showing general compliance with the provisions of sections
59 436.005 to 436.071;

60 (5) Cooperate with the state board, the office of the attorney
61 general, and the division in any investigation, examination or audit
62 brought under the provisions of sections 436.005 to 436.071.

63 3. Prior to selling or otherwise disposing of a majority of its
64 business assets, or a majority of its stock if a corporation, or
65 ceasing to do business as a seller, the seller shall provide written
66 notification to the state board of its intent to engage in such sale
67 at least sixty days prior to the date set for the closing of the sale,
68 or of its intent to cease doing business at least sixty days prior to
69 the date set for termination of its business. The written notice
70 shall be sent, at the same time as it is provided to the state board,
71 to all providers who are then obligated to provide funeral services
72 or merchandise under preneed contracts sold by the seller. Upon
73 receipt of the written notification, the state board may take
74 reasonable and necessary action to determine that the seller has
75 made proper plans to assure that the trust assets of the seller will
76 be set aside and used to service outstanding preneed contracts sold
77 by the seller. The state board may waive the requirements of this
78 subsection or may shorten the period of notification whenever in its
79 discretion it determines that compliance with its provisions are not
80 necessary. Failure of the state board to take action regarding such
81 sale or termination of business within sixty days shall constitute
82 such a waiver.

83 4. It is a violation of the provisions of sections 436.005 to
84 436.071 for any person to sell, transfer or otherwise dispose of the
85 assets of a seller without first complying with the provisions of
86 subsection 3 of this section.]

2 [436.027. The seller may retain as his own money, for the
3 purpose of covering his selling expenses, servicing costs, and
4 general overhead, the initial funds so collected or paid until he has
5 received for his use and benefit an amount not to exceed twenty
6 percent of the total amount agreed to be paid by the purchaser of
7 such prepaid funeral benefits as such total amount is reflected in
the contract.]

1 [436.031. 1. The trustee of a preneed trust shall be a state
2 or federally chartered financial institution authorized to exercise
3 trust powers in Missouri. The trustee shall accept all deposits
4 made to it by the seller of a preneed contract and shall hold,
5 administer, and distribute such deposits, in trust, as trust
6 principal, pursuant to the provisions of sections 436.005 to
7 436.071. Payments regarding two or more preneed contracts may
8 be deposited into and commingled in the same preneed trust, so
9 long as the trust's grantor is the seller of all such preneed
10 contracts and the trustee maintains adequate records of all
11 payments received.

12 2. All property held in a preneed trust, including principal
13 and undistributed income, shall be invested and reinvested by the
14 trustee thereof. The trustee shall exercise such judgment and care
15 under circumstances then prevailing which men of ordinary
16 prudence, discretion, and intelligence exercise in the management
17 of their own affairs, not in regard to speculation but in regard to
18 the permanent disposition of their funds, considering the probable
19 income therefrom as well as the probable safety of their capital. A
20 preneed trust agreement may provide that when the principal and
21 interest in a preneed trust exceeds two hundred fifty thousand
22 dollars, investment decisions regarding the principal and
23 undistributed income may be made by a federally registered or
24 Missouri-registered independent qualified investment advisor
25 designated by the seller who established the trust; provided, that
26 title to all investment assets shall remain with the trustee and be
27 kept by the trustee to be liquidated upon request of the advisor of
28 the seller. In no case shall control of said assets be divested from
29 the trustee nor shall said assets be placed in any investment which
30 would be beyond the authority of a reasonably prudent trustee to
31 invest in. The trustee shall be relieved of all liability regarding
32 investment decisions made by such qualified investment advisor.

33 3. The seller of a preneed contract shall be entitled to all
34 income, including, without limitation, interest, dividends, and
35 capital gains, and losses generated by the investment of preneed
36 trust property regarding such contract, and the trustee of the trust

37 may distribute all income, net of losses, to the seller at least
38 annually; but no such income distribution shall be made to the
39 seller if, and to the extent that, the distribution would reduce the
40 aggregate market value on the distribution date of all property held
41 in the preneed trust, including principal and undistributed income,
42 below the sum of all deposits made to such trust pursuant to
43 subsection 1 of this section for all preneed contracts then
44 administered through such trust.

45 4. All expenses of establishing and administering a preneed
46 trust, including, without limitation, trustee's fees, legal and
47 accounting fees, investment expenses, and taxes, shall be paid or
48 reimbursed directly by the seller of the preneed contracts
49 administered through such trust and shall not be paid from the
50 principal of a preneed trust.

51 5. The trustee of a preneed trust shall maintain adequate
52 books of account of all transactions administered through the trust
53 and pertaining to the trust generally. The trustee shall assist
54 seller who established the trust or its successor in interest in the
55 preparation of the annual report described in subdivision (3) of
56 subsection 2 of section 436.021. The seller shall furnish to each
57 contract purchaser, within fifteen days after receipt of the
58 purchaser's written request, a written statement of all deposits
59 made to such trust regarding such purchaser's contract.

60 6. The trustee of a preneed trust shall, from time to time,
61 distribute trust principal as provided by sections 436.005 to
62 436.071.

63 7. A preneed trust shall terminate when trust principal no
64 longer includes any payments made under any preneed contract,
65 and upon such termination the trustee shall distribute all trust
66 property, including principal and undistributed income, to the
67 seller which established the trust.]

2 [436.035. 1. At any time before the final disposition of the
3 dead body, or before funeral services, facilities, or merchandise
4 described in a preneed contract are provided by the provider
5 designated in the preneed contract, the purchaser may cancel the
contract without cause by delivering written notice thereof to the

6 seller and the provider. Within fifteen days after its receipt of such
7 notice, the seller shall pay to the purchaser a net amount equal to
8 all payments made into trust under the contract. Upon delivery
9 of the purchaser's receipt for such payment to the trustee, the
10 trustee shall distribute to the seller from the trust an amount
11 equal to all deposits made into the trust for the contract.

12 2. Notwithstanding the provisions of subsection 1 of this
13 section, if a purchaser is eligible, becomes eligible, or desires to
14 become eligible, to receive public assistance under chapter 208,
15 RSMo, or any other applicable state or federal law, the purchaser
16 may irrevocably waive and renounce his right to cancel the contract
17 pursuant to the provisions of subsection 1 of this section, which
18 waiver and renunciation shall be made in writing and delivered to
19 the contract seller; but the purchaser may designate and
20 redesignate the provider in the irrevocable agreement or plan
21 where applicable by the terms of the contract.

22 3. Notwithstanding the provisions of subsection 1 of this
23 section, any purchaser, within thirty days of receipt of the executed
24 contract, may cancel the contract without cause by delivering
25 written notice thereof to the seller and the provider, and receive a
26 full refund of all payments made on the contract. Notice of this
27 provision and the appropriate addresses for notice of cancellation
28 shall be so designated on the face of the contract.]

2 [436.038. If the death of the beneficiary occurs outside the
3 general area served by the provider designated in a preneed
4 contract, then the seller shall either provide for the furnishing of
5 comparable funeral services and merchandise by a licensed
6 mortuary selected by the next of kin of the purchaser or, at the
7 seller's option, shall pay over to the purchaser in fulfillment of all
8 obligations under the contract, an amount equal to all sums
9 actually paid in cash by the purchaser under the preneed contract
10 together with interest to be provided for in the contract. Upon
11 seller's full performance under the provisions of this section, the
12 trustee of the preneed trust for the contract shall distribute to the
13 seller from the trust an amount equal to all deposits made into the
trust for the contract.]

2 [436.041. If the payments payable under a preneed contract
3 shall be more than three months in arrears, the seller may cancel
4 the contract by delivering written notice thereof to the purchaser
5 and the provider, and by making payment to the purchaser of a net
6 amount equal to all payments made into trust under the
7 contract. Upon delivery of the purchaser's receipt of such payment
8 to the trustee, the trustee shall distribute to the seller from the
9 trust an amount equal to all deposits made into the trust for the
contract.]

2 [436.045. Within thirty days after a provider and a witness
3 shall certify in writing to the seller that the provider has provided
4 the final disposition of the dead body, and funeral services,
5 facilities, and merchandise described in the contract, or has
6 provided alternative funeral benefits for the beneficiary pursuant
7 to special arrangements made with the purchaser, the seller shall
8 pay to the provider a net amount equal to all payments required to
9 be made pursuant to the written agreement between the seller and
10 the provider or all payments made under the contract. Upon
11 delivery to the trustee of the provider's receipt for such payment,
12 the trustee shall distribute to the seller from the trust an amount
equal to all deposits made into the trust for the contract.]

2 [436.048. If a seller shall fail to make timely payment of an
3 amount due a purchaser or a provider pursuant to the provisions
4 of sections 436.005 to 436.071, the purchaser or provider, as
5 appropriate, shall have the right, in addition to other rights and
6 remedies against such seller, to make demand upon the trustee of
7 the preneed trust for the contract to distribute to the purchaser or
8 provider from the trust, as damages for its breach, an amount
equal to all deposits made into the trust for the contract.]

2 [436.051. Upon the death or legal incapacity of a
3 purchaser, all rights and remedies granted to the purchaser
4 pursuant to the provisions of sections 436.005 to 436.071 shall be
5 enforceable by and accrue to the benefit of the purchaser's legal
6 representative or his successor designated in such contract, and all
7 payments otherwise payable to the purchaser shall be paid to that
person.]

2 [436.053. 1. Notwithstanding the provisions of sections
3 436.021 to 436.048, the provider and the purchaser may agree that
4 all funds paid the provider by the purchaser shall be deposited
5 with financial institutions chartered and regulated by the federal
6 or state government authorized to do business in Missouri in an
7 account in the joint names and under the joint control of the
8 provider and purchaser. If the purchaser has irrevocably waived
9 and renounced his right to cancel the agreement between the
10 provider and the purchaser pursuant to subdivision (5) of this
11 subsection, such agreement may provide that all funds held in the
12 account at the beneficiary's death shall be applied toward the
13 purchase of funeral or burial services or facilities, or funeral
14 merchandise, selected by the purchaser or the responsible party
15 after the beneficiary's death, in lieu of the detailed identification
16 of such items required by subdivision (3) of subsection 1 of section
17 436.007. The agreement between the provider and purchaser shall
provide that:

18 (1) The total consideration to be paid by the purchaser
19 under the contract shall be made in one or more payments into the
20 joint account at the time the agreement is executed or, thereafter
21 within five days of receipt, respectively;

22 (2) The financial institution shall hold, invest, and reinvest
23 the deposited funds in savings accounts, certificates of deposit or
24 other accounts offered to depositors by the financial institutions, as
25 the agreement shall provide;

26 (3) The income generated by the deposited funds shall be
27 used to pay the reasonable expenses of administering the
28 agreement, and the balance of the income shall be distributed or
29 reinvested as provided in the agreement;

30 (4) At any time before the final disposition, or before
31 funeral services, facilities, and merchandise described in a preneed
32 contract are furnished, the purchaser may cancel the contract
33 without cause by delivering written notice thereof to the provider
34 and the financial institution, and within fifteen days after its
35 receipt of the notice, the financial institution shall distribute the
36 deposited funds to the purchaser;

37 (5) Notwithstanding the provisions of subdivision (4) of this
38 subsection, if a purchaser is eligible, becomes eligible, or desires to
39 become eligible to receive public assistance under chapter 208,
40 RSMo, or any other applicable state or federal law, the purchaser
41 may irrevocably waive and renounce his right to cancel such
42 agreement. The waiver and renunciation must be in writing and
43 must be delivered to the provider and the financial institution;

44 (6) If the death of the beneficiary occurs outside the general
45 area served by the provider, then the provider shall either provide
46 for the furnishing of comparable funeral services and merchandise
47 by a licensed mortuary selected by the purchaser or, at the
48 provider's option, shall pay over to the purchaser in fulfillment of
49 the obligation of the preneed contract, an amount equal to the
50 sums actually paid in cash by such purchaser under such preneed
51 contract together with interest to be provided for in the contract,
52 in which event the financial institution shall distribute the
53 deposited funds to the provider;

54 (7) Within fifteen days after a provider and a witness
55 certifies in writing to the financial institution that he has
56 furnished the final disposition, or funeral services, facilities, and
57 merchandise described in a contract, or has provided alternative
58 funeral benefits for the beneficiary pursuant to special
59 arrangements made with the purchaser, if the certification has
60 been approved by the purchaser, then the financial institution shall
61 distribute the deposited funds to the provider.

62 2. There shall be a separate joint account as described in
63 subsection 1 of this section for each preneed contract sold or
64 arranged under this section.

65 3. If the total face value of the contracts sold by a provider
66 operating solely under the provisions of this section does not exceed
67 thirty-five thousand dollars in any one fiscal year, such a provider
68 shall not be required to pay the annual reporting fee for such year
69 required under subsection 1 of section 436.069.]

2 [436.055. 1. All complaints received by the state board
3 which allege a registrant's noncompliance with the provisions of
sections 436.005 to 436.071 shall be forwarded to the division of

4 professional registration for investigation, except minor complaints
5 which the state board can mediate or otherwise dispose of by
6 contacting the parties involved. A copy of each such complaint
7 shall be forwarded to the subject registrant, except that each
8 complaint in which the complainant alleges under oath that a
9 registrant has misappropriated preneed contract payments may be
10 forwarded to the division of professional registration without notice
11 to the subject registrant.

12 2. The division shall investigate each complaint forwarded
13 from the state board using staff who are not connected with the
14 state board and shall forward the results of such investigation to
15 the subject registrant and to the attorney general for evaluation. If
16 the attorney general, after independent inquiry using staff of the
17 attorney general's office who have not represented the board,
18 determines that there is no probable cause to conclude that the
19 registrant has violated sections 436.005 to 436.071, the registrant
20 and the state board shall be so notified and the complaint shall be
21 dismissed; but, if the attorney general determines that there is
22 such probable cause the registrant shall be so notified and the
23 results of such evaluation shall be transmitted to the state board
24 for further action as provided in sections 436.061 and 436.063.]

[436.061. 1. Each person who shall knowingly and willfully
2 violate any provision of sections 436.005 to 436.071, and any
3 officer, director, partner, agent, or employee of such person
4 involved in such violation is guilty of a class D felony. Each
5 violation of any provision of sections 436.005 to 436.071 constitutes
6 a separate offense and may be prosecuted individually.

7 2. Any violation of the provisions of sections 436.005 to
8 436.071 shall constitute a violation of the provisions of section
9 407.020, RSMo. In any proceeding brought by the attorney general
10 for a violation of the provisions of sections 436.005 to 436.071, the
11 court may, in addition to imposing the penalties provided for in
12 sections 436.005 to 436.071, order the revocation or suspension of
13 the registration of a defendant seller.]

[436.063. Whenever the state board determines that a
2 registered seller or provider has violated or is about to violate any

3 provision of sections 436.005 to 436.071 following a meeting at
4 which the registrant is given a reasonable opportunity to respond
5 to charges of violations or prospective violations, it may request the
6 attorney general to apply for the revocation or suspension of the
7 seller's or provider's registration or the imposition of probation
8 upon terms and conditions deemed appropriate by the state board
9 in accordance with the procedure set forth in sections 621.100 to
10 621.205, RSMo. Use of the procedures set out in this section shall
11 not preclude the application of the provisions of subsection 2 of
12 section 436.061.]

[436.065. A preneed contract may offer the purchaser the
2 option to acquire and maintain credit life insurance on the life of
3 the purchaser. Such insurance shall provide for the payment of
4 death benefits to the seller in an amount equal to the total of all
5 contract payments unpaid as of the date of such purchaser's death,
6 and shall be used solely to make those unpaid payments.]

[436.067. No information given to the board, the division or
2 the attorney general pursuant to the provisions of sections 436.005
3 to 436.071 shall, unless ordered by a court for good cause shown,
4 be produced for inspection or copying by, nor shall the contents
5 thereof be disclosed to, any person other than the seller, or the
6 provider who is the subject thereof, the authorized employee of the
7 board, the attorney general or the division, without the consent of
8 the person who produced such material. However, under such
9 reasonable conditions and terms as the board, the division or the
10 attorney general shall prescribe, such material shall be available
11 for inspection and copying by the person who produced such
12 material or any duly authorized representative of such person. The
13 state board, the division or the attorney general, or his duly
14 authorized assistant, may use such documentary material or copies
15 thereof in the enforcement of the provisions of sections 436.005 to
16 436.071 by presentation before any court or the administrative
17 hearing commission, but any such material which contains trade
18 secrets shall not be presented except with the approval of the court,
19 or the administrative hearing commission, in which the action is
20 pending after adequate notice to the person furnishing such

21 material. No documentary material provided the board, the
22 division or the attorney general pursuant to the provisions of
23 sections 436.005 to 436.071 shall be disclosed to any person for use
24 in any criminal proceeding.]

[436.069. 1. After July 16, 1985, each seller shall remit an
2 annual reporting fee in an amount of two dollars for each preneed
3 contract sold in the year since the date the seller filed its last
4 annual report with the state board. This reporting fee shall be
5 paid annually and may be collected from the purchaser of the
6 preneed contract as an additional charge or remitted to the state
7 board from the funds of the seller.

8 2. After July 16, 1985, each provider shall remit an annual
9 reporting fee of thirty dollars.

10 3. The reporting fee authorized by subsections 1 and 2 of
11 this section are in addition to the fees authorized by section
12 436.071.]

[436.071. Each application for registration under the
2 provisions of section 436.015 or 436.021 shall be accompanied by a
3 preneed registration fee as determined by the board pursuant to
4 the provisions of section 333.111, subsection 2.]

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