

FIRST REGULAR SESSION  
[ P E R F E C T E D ]  
SENATE SUBSTITUTE FOR  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 1**  
95TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR SCOTT.

Offered February 10, 2009.

Senate Substitute adopted, February 12, 2009.

Taken up for Perfection February 12, 2009. Bill declared Perfected and Ordered Printed, as amended.

TERRY L. SPIELER, Secretary.

0404S.05P

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**AN ACT**

To repeal sections 208.010, 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-five new sections relating to preneed funeral contracts, with penalty provisions.

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

Section A. Sections 208.010, 436.005, 436.007, 436.011, 436.015, 436.021, 2 436.027, 436.031, 436.035, 436.038, 436.041, 436.045, 436.048, 436.051, 436.053, 3 436.055, 436.061, 436.063, 436.065, 436.067, 436.069, and 436.071, RSMo, are 4 repealed and thirty-five new sections enacted in lieu thereof, to be known as 5 sections 208.010, 333.300, 333.310, 333.315, 333.320, 333.325, 333.330, 333.335, 6 333.340, 436.400, 436.405, 436.410, 436.412, 436.415, 436.420, 436.425, 436.430, 7 436.435, 436.440, 436.445, 436.450, 436.455, 436.456, 436.457, 436.458, 436.460, 8 436.465, 436.470, 436.480, 436.485, 436.490, 436.500, 436.505, 436.510, and 9 436.520, to read as follows:

208.010. 1. In determining the eligibility of a claimant for public 2 assistance pursuant to this law, it shall be the duty of the division of family 3 services to consider and take into account all facts and circumstances

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

4 surrounding the claimant, including his or her living conditions, earning capacity,  
5 income and resources, from whatever source received, and if from all the facts and  
6 circumstances the claimant is not found to be in need, assistance shall be denied.  
7 In determining the need of a claimant, the costs of providing medical treatment  
8 which may be furnished pursuant to sections 208.151 to 208.158 and 208.162  
9 shall be disregarded. The amount of benefits, when added to all other income,  
10 resources, support, and maintenance shall provide such persons with reasonable  
11 subsistence compatible with decency and health in accordance with the standards  
12 developed by the division of family services; provided, when a husband and wife  
13 are living together, the combined income and resources of both shall be  
14 considered in determining the eligibility of either or both. "Living together" for  
15 the purpose of this chapter is defined as including a husband and wife separated  
16 for the purpose of obtaining medical care or nursing home care, except that the  
17 income of a husband or wife separated for such purpose shall be considered in  
18 determining the eligibility of his or her spouse, only to the extent that such  
19 income exceeds the amount necessary to meet the needs (as defined by rule or  
20 regulation of the division) of such husband or wife living separately. In  
21 determining the need of a claimant in federally aided programs there shall be  
22 disregarded such amounts per month of earned income in making such  
23 determination as shall be required for federal participation by the provisions of  
24 the federal Social Security Act (42 U.S.C.A. 301 et seq.), or any amendments  
25 thereto. When federal law or regulations require the exemption of other income  
26 or resources, the division of family services may provide by rule or regulation the  
27 amount of income or resources to be disregarded.

28 2. Benefits shall not be payable to any claimant who:

29 (1) Has or whose spouse with whom he or she is living has, prior to July  
30 1, 1989, given away or sold a resource within the time and in the manner  
31 specified in this subdivision. In determining the resources of an individual,  
32 unless prohibited by federal statutes or regulations, there shall be included (but  
33 subject to the exclusions pursuant to subdivisions (4) and (5) of this subsection,  
34 and subsection [5] 6 of this section) any resource or interest therein owned by  
35 such individual or spouse within the twenty-four months preceding the initial  
36 investigation, or at any time during which benefits are being drawn, if such  
37 individual or spouse gave away or sold such resource or interest within such  
38 period of time at less than fair market value of such resource or interest for the  
39 purpose of establishing eligibility for benefits, including but not limited to

40 benefits based on December, 1973, eligibility requirements, as follows:

41 (a) Any transaction described in this subdivision shall be presumed to  
42 have been for the purpose of establishing eligibility for benefits or assistance  
43 pursuant to this chapter unless such individual furnishes convincing evidence to  
44 establish that the transaction was exclusively for some other purpose;

45 (b) The resource shall be considered in determining eligibility from the  
46 date of the transfer for the number of months the uncompensated value of the  
47 disposed of resource is divisible by the average monthly grant paid or average  
48 Medicaid payment in the state at the time of the investigation to an individual  
49 or on his or her behalf under the program for which benefits are claimed,  
50 provided that:

51 a. When the uncompensated value is twelve thousand dollars or less, the  
52 resource shall not be used in determining eligibility for more than twenty-four  
53 months; or

54 b. When the uncompensated value exceeds twelve thousand dollars, the  
55 resource shall not be used in determining eligibility for more than sixty months;

56 (2) The provisions of subdivision (1) of this subsection shall not apply to  
57 a transfer, other than a transfer to claimant's spouse, made prior to March 26,  
58 1981, when the claimant furnishes convincing evidence that the uncompensated  
59 value of the disposed of resource or any part thereof is no longer possessed or  
60 owned by the person to whom the resource was transferred;

61 (3) Has received, or whose spouse with whom he or she is living has  
62 received, benefits to which he or she was not entitled through misrepresentation  
63 or nondisclosure of material facts or failure to report any change in status or  
64 correct information with respect to property or income as required by section  
65 208.210. A claimant ineligible pursuant to this subsection shall be ineligible for  
66 such period of time from the date of discovery as the division of family services  
67 may deem proper; or in the case of overpayment of benefits, future benefits may  
68 be decreased, suspended or entirely withdrawn for such period of time as the  
69 division may deem proper;

70 (4) Owns or possesses resources in the sum of one thousand dollars or  
71 more; provided, however, that if such person is married and living with spouse,  
72 he or she, or they, individually or jointly, may own resources not to exceed two  
73 thousand dollars; and provided further, that in the case of a temporary assistance  
74 for needy families claimant, the provision of this subsection shall not apply;

75 (5) Prior to October 1, 1989, owns or possesses property of any kind or

76 character, excluding amounts placed in an irrevocable prearranged funeral or  
77 burial contract pursuant to subsection 2 of section 436.035, RSMo, and  
78 subdivision (5) of subsection 1 of section 436.053, RSMo, or has an interest in  
79 property, of which he or she is the record or beneficial owner, the value of such  
80 property, as determined by the division of family services, less encumbrances of  
81 record, exceeds twenty-nine thousand dollars, or if married and actually living  
82 together with husband or wife, if the value of his or her property, or the value of  
83 his or her interest in property, together with that of such husband and wife,  
84 exceeds such amount;

85           (6) In the case of temporary assistance for needy families, if the parent,  
86 stepparent, and child or children in the home owns or possesses property of any  
87 kind or character, or has an interest in property for which he or she is a record  
88 or beneficial owner, the value of such property, as determined by the division of  
89 family services and as allowed by federal law or regulation, less encumbrances  
90 of record, exceeds one thousand dollars, excluding the home occupied by the  
91 claimant, amounts placed in an irrevocable prearranged funeral or burial contract  
92 pursuant to subsection 2 of section 436.035, RSMo, and subdivision (5) of  
93 subsection 1 of section 436.053, RSMo, one automobile which shall not exceed a  
94 value set forth by federal law or regulation and for a period not to exceed six  
95 months, such other real property which the family is making a good-faith effort  
96 to sell, if the family agrees in writing with the division of family services to sell  
97 such property and from the net proceeds of the sale repay the amount of  
98 assistance received during such period. If the property has not been sold within  
99 six months, or if eligibility terminates for any other reason, the entire amount of  
100 assistance paid during such period shall be a debt due the state;

101           (7) Is an inmate of a public institution, except as a patient in a public  
102 medical institution.

103           3. In determining eligibility and the amount of benefits to be granted  
104 pursuant to federally aided programs, the income and resources of a relative or  
105 other person living in the home shall be taken into account to the extent the  
106 income, resources, support and maintenance are allowed by federal law or  
107 regulation to be considered.

108           4. In determining eligibility and the amount of benefits to be granted  
109 pursuant to federally aided programs, the value of burial lots or any amounts  
110 placed in an irrevocable prearranged funeral or burial contract pursuant to  
111 [subsection 2 of section 436.035] **chapter 436**, RSMo, [and subdivision (5) of

112 subsection 1 of section 436.053, RSMo,] shall not be taken into account or  
113 considered an asset of the burial lot owner or the beneficiary of an irrevocable  
114 prearranged funeral or funeral contract. For purposes of this section, "burial lots"  
115 means any burial space as defined in section 214.270, RSMo, and any memorial,  
116 monument, marker, tombstone or letter marking a burial space. If the  
117 beneficiary, as defined in chapter 436, RSMo, of an irrevocable prearranged  
118 funeral or burial contract receives any public assistance benefits pursuant to this  
119 chapter and if the purchaser of such contract or his or her successors in interest  
120 cancel or amend the contract so that any person will be entitled to a refund, such  
121 refund shall be paid to the state of Missouri up to the amount of public assistance  
122 benefits provided pursuant to this chapter with any remainder to be paid to those  
123 persons designated in chapter 436, RSMo.

124 **5. In determining eligibility and the amount of benefits to be**  
125 **granted pursuant to federally aided programs, any amounts up to ten**  
126 **thousand dollars placed in an irrevocable trust designated to pay for,**  
127 **at the time of need, the final disposition of a dead human body, funeral**  
128 **or burial services or facilities, or funeral merchandise, as those terms**  
129 **are defined in section 436.405, RSMo, that is not a preneed funeral**  
130 **contract as defined in such section, shall not be considered an asset of**  
131 **the beneficiary. Any overages after final disposition shall be paid to**  
132 **the state of Missouri up to the amount of public assistance benefits**  
133 **provided to the beneficiary pursuant to this chapter with any**  
134 **remainder to be paid to those designated in the trust.**

135 **6.** In determining the total property owned pursuant to subdivision (5) of  
136 subsection 2 of this section, or resources, of any person claiming or for whom  
137 public assistance is claimed, there shall be disregarded any life insurance policy,  
138 or prearranged funeral or burial contract, or any two or more policies or  
139 contracts, or any combination of policies and contracts, which provides for the  
140 payment of one thousand five hundred dollars or less upon the death of any of the  
141 following:

- 142 (1) A claimant or person for whom benefits are claimed; or  
143 (2) The spouse of a claimant or person for whom benefits are claimed with  
144 whom he or she is living.

145 If the value of such policies exceeds one thousand five hundred dollars, then the  
146 total value of such policies may be considered in determining resources; except  
147 that, in the case of temporary assistance for needy families, there shall be

148 disregarded any prearranged funeral or burial contract, or any two or more  
149 contracts, which provides for the payment of one thousand five hundred dollars  
150 or less per family member.

151 [6.] 7. Beginning September 30, 1989, when determining the eligibility  
152 of institutionalized spouses, as defined in 42 U.S.C. Section 1396r-5, for medical  
153 assistance benefits as provided for in section 208.151 and 42 U.S.C. Sections  
154 1396a et seq., the division of family services shall comply with the provisions of  
155 the federal statutes and regulations. As necessary, the division shall by rule or  
156 regulation implement the federal law and regulations which shall include but not  
157 be limited to the establishment of income and resource standards and  
158 limitations. The division shall require:

159 (1) That at the beginning of a period of continuous institutionalization  
160 that is expected to last for thirty days or more, the institutionalized spouse, or  
161 the community spouse, may request an assessment by the division of family  
162 services of total countable resources owned by either or both spouses;

163 (2) That the assessed resources of the institutionalized spouse and the  
164 community spouse may be allocated so that each receives an equal share;

165 (3) That upon an initial eligibility determination, if the community  
166 spouse's share does not equal at least twelve thousand dollars, the  
167 institutionalized spouse may transfer to the community spouse a resource  
168 allowance to increase the community spouse's share to twelve thousand dollars;

169 (4) That in the determination of initial eligibility of the institutionalized  
170 spouse, no resources attributed to the community spouse shall be used in  
171 determining the eligibility of the institutionalized spouse, except to the extent  
172 that the resources attributed to the community spouse do exceed the community  
173 spouse's resource allowance as defined in 42 U.S.C. Section 1396r-5;

174 (5) That beginning in January, 1990, the amount specified in subdivision  
175 (3) of this subsection shall be increased by the percentage increase in the  
176 Consumer Price Index for All Urban Consumers between September, 1988, and  
177 the September before the calendar year involved; and

178 (6) That beginning the month after initial eligibility for the  
179 institutionalized spouse is determined, the resources of the community spouse  
180 shall not be considered available to the institutionalized spouse during that  
181 continuous period of institutionalization.

182 [7.] 8. Beginning July 1, 1989, institutionalized individuals shall be  
183 ineligible for the periods required and for the reasons specified in 42 U.S.C.

184 Section 1396p.

185 [8.] 9. The hearings required by 42 U.S.C. Section 1396r-5 shall be  
186 conducted pursuant to the provisions of section 208.080.

187 [9.] 10. Beginning October 1, 1989, when determining eligibility for  
188 assistance pursuant to this chapter there shall be disregarded unless otherwise  
189 provided by federal or state statutes, the home of the applicant or recipient when  
190 the home is providing shelter to the applicant or recipient, or his or her spouse  
191 or dependent child. The division of family services shall establish by rule or  
192 regulation in conformance with applicable federal statutes and regulations a  
193 definition of the home and when the home shall be considered a resource that  
194 shall be considered in determining eligibility.

195 [10.] 11. Reimbursement for services provided by an enrolled Medicaid  
196 provider to a recipient who is duly entitled to Title XIX Medicaid and Title XVIII  
197 Medicare Part B, Supplementary Medical Insurance (SMI) shall include payment  
198 in full of deductible and coinsurance amounts as determined due pursuant to the  
199 applicable provisions of federal regulations pertaining to Title XVIII Medicare  
200 Part B, except the applicable Title XIX cost sharing.

201 [11.] 12. A "community spouse" is defined as being the  
202 noninstitutionalized spouse.

203 [12.] 13. An institutionalized spouse applying for Medicaid and having  
204 a spouse living in the community shall be required, to the maximum extent  
205 permitted by law, to divert income to such community spouse to raise the  
206 community spouse's income to the level of the minimum monthly needs allowance,  
207 as described in 42 U.S.C. Section 1396r-5. Such diversion of income shall occur  
208 before the community spouse is allowed to retain assets in excess of the  
209 community spouse protected amount described in 42 U.S.C. Section 1396r-5.

**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,**  
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 to receive deposits of,  
22 administer, and disburse payments received under preneed contracts,  
23 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.

          333.310. 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.

          333.315. 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 used by 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 within two years of the renewal date by  
51 satisfying the requirements of subsection 3 of this section and paying  
52 a delinquent fee as established by the board 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 436.460, 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 within**  
47 **two years of the renewal date may apply for reinstatement by satisfying**  
48 **the requirements of subsection 3 of this section and paying a**  
49 **delinquent fee as established by the board 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 execute, sell, negotiate, or solicit the sale of**  
21 **preneed 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;**

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

36 **(4) Any funeral director acting as a preneed agent shall be**  
37 **required to report the name and address of each preneed seller for**  
38 **whom the funeral director is authorized to sell, negotiate, or solicit the**  
39 **sale of preneed contracts as part of their biennial renewal form.**

40 **4. Any registration which has not been renewed as provided by**  
41 **this section shall expire and the registrant shall be immediately**  
42 **removed from the preneed agent registry by the board. A registrant**  
43 **who fails to apply for renewal may apply for reinstatement within two**  
44 **years of the renewal date by satisfying the requirements of subsection**  
45 **3 of this section and paying a delinquent fee as established by the**  
46 **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. The board is hereby  
8 granted the authority to hire outside legal counsel to advise and  
9 represent the board in any of its duties or in any legal or  
10 administrative actions authorized by chapters 333 and 436, RSMo.

11 2. The board may cause a complaint to be filed with the  
12 administrative hearing commission as provided by chapter 621, RSMo,  
13 against any holder of any certificate of registration or authority,  
14 permit, or license required by sections 333.300 to 333.340 or any person  
15 who has failed to renew or has surrendered his or her certificate of  
16 registration or authority, permit, or license for any one or any  
17 combination of the following causes:

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

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

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

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

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

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

43 (7) Impersonation of any person holding a certificate of

44 registration or authority, permit, or license or allowing any person to  
45 use his or her certificate of registration or authority, permit, license,  
46 or diploma from any school;

47 (8) Disciplinary action against the holder of a license or other  
48 right to practice any profession regulated under sections 333.300 to  
49 333.340 granted by another state, territory, federal agency, or country  
50 upon grounds for which revocation or suspension is authorized in this  
51 state;

52 (9) A person is finally adjudged mentally incompetent by a court  
53 of competent jurisdiction;

54 (10) Misappropriation or theft of preneed funds;

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

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

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

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

65 (15) Making or filing any report required by sections 436.400 to  
66 436.520, RSMo, regulating preneed which the licensee knows to be false  
67 or knowingly failing to make or file a report required by such sections;

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

71 (17) Willfully and through undue influence selling a preneed  
72 contract.

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

81 years, or revoke the license or registration.

82 4. Notwithstanding any other provision of this section to the  
83 contrary, the board may, if necessary to protect the public, seek an  
84 injunction upon a showing of good cause in the circuit court of Cole  
85 county to immediately suspend a preneed seller license if the board  
86 finds, after an inspection, examination, investigation, or audit, a  
87 shortage in any preneed trust or joint account which exceeds twenty  
88 percent of the total amount required to be held or deposited in the  
89 trust or account pursuant to the provisions of sections 436.400 to  
90 436.520, RSMo.

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

102 6. Use of the procedures set out in this section shall not preclude  
103 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.

5 436.405. As used in sections 436.400 to 436.520, unless the context



6 otherwise requires, the following terms shall mean:

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

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

12 (3) "Division", the division of professional registration of the  
13 department of insurance, financial institutions and professional  
14 registration;

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

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

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

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

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

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

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

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

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

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

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

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

61           (13) "Preneed trust", a trust established to receive deposits of,  
62 administer, and disburse payments received under preneed contracts,  
63 together with income thereon;

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

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

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

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

74           (18) "Trust funded preneed contract", a preneed contract which  
75 provides that payments for the preneed contract shall be deposited and  
76 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, provider, or**  
31 **preneed agent shall provide a copy of any preneed contract or any**  
32 **contract or agreement 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 charge 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 minus the origination fee, if any is charged, into a trust designated by  
9 this section within sixty days of receipt of such funds by the seller or  
10 its designee. A seller may withdraw from the trust, up to ten percent  
11 of the total payments deposited into the trust on the trust funded  
12 contract.

13 3. The trustee of a preneed trust shall be a state or federally  
14 chartered financial institution authorized to exercise trust powers in  
15 Missouri. The trustee shall accept all deposits made to it for a preneed  
16 contract and shall hold, administer, and distribute such deposits, in  
17 trust, as trust principal, pursuant to sections 436.400 to 436.520.

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

32 5. Payments regarding two or more preneed contracts may be  
33 deposited into and commingled in the same preneed trust, so long as  
34 the trustee maintains adequate records that individually and  
35 separately identify the payments, earnings, and distributions for each  
36 preneed contract.

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

42 trust, and all other requirements of sections 436.400 to 436.520.

43           7. All expenses of establishing and administering a preneed trust,  
44 including trustee's fees, legal and accounting fees, investment expenses,  
45 and taxes may be paid from income generated from the investment of  
46 the trust assets.

47           8. The seller and provider of a trust funded preneed contract  
48 shall be entitled to all income, including, but not limited to, interest,  
49 dividends, capital gains, and losses generated by the investment of  
50 preneed trust property regarding such contract as stipulated in the  
51 contract. Income of the trust, excluding expenses allowed under  
52 subsection 7 of this section, shall accrue through the life of the  
53 trust. Except in instances when a contract is cancelled, the trustee of  
54 the trust may distribute all principal and interest and income, net of  
55 losses, to the seller upon, but not before, the final disposition of the  
56 beneficiary and provision of the funeral and burial services and  
57 facilities, and merchandise to, or for, the benefit of the  
58 beneficiary. This subsection shall apply to trusts established on or  
59 after August 28, 2009.

60           9. Providers shall request payment by submitting a certificate of  
61 performance to the seller certifying that the provider has rendered  
62 services pursuant to the contract or as requested. The certificate shall  
63 be signed by both the provider and the person authorized to make  
64 arrangements on behalf of the beneficiary. Sellers shall remit payment  
65 to the provider within thirty days of receiving the certificate.

66           10. The trustee of a preneed trust, including trusts established  
67 before August 28, 2009, shall maintain adequate books and records of  
68 all transactions administered over the life of the trust and pertaining  
69 to the trust generally. The trustee shall assist the seller who  
70 established the trust or its successor in interest in the preparation of  
71 the annual report described in section 436.460, RSMo. The seller shall  
72 furnish to each contract purchaser, within fifteen days after receipt of  
73 the purchaser's written request, a written statement of all deposits  
74 made to such trust regarding such purchaser's contract including the  
75 principal and interest paid to date, and the principal and interest to be  
76 paid over the life of the trust.

77           11. A preneed trust, including trusts established before August  
78 28, 2009, shall terminate when the trust principal no longer includes

79 any payments made under any preneed contract, and upon such  
80 termination the trustee shall distribute all trust property, including  
81 principal and undistributed income, to the seller which established the  
82 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) Needs for liquidity, regularity of income, and preservation or  
31 appreciation of capital;

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



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

37           **6. Any seller, provider, or preneed agent shall not procure or**  
38 **accept a loan against any investment or asset of or belonging to a**  
39 **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. A preneed contract funded by permanent life  
2 insurance or a single premium annuity shall comply with sections  
3 436.400 to 436.520 and the specific requirements of this section.

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

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

18 4. A preneed contract shall not be funded by:

19 (1) Term life insurance; or

20 (2) An annuity that permits or requires payment of more than  
21 one consideration.

22 5. A seller, provider, or preneed agent shall not procure or  
23 accept a loan against any insurance or annuity contract used to fund  
24 a preneed contract.

25 6. Laws regulating insurance shall not apply to preneed  
26 contracts, but shall apply to any insurance or annuity sold with a  
27 preneed contract.

28 7. This section shall apply to all preneed contracts including  
29 those entered into before 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. Funds shall only  
12 be withdrawn or paid from the account upon the signatures of both the  
13 seller and purchaser or under a pay-on-death designation.

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 administering the account, and the balance of the income  
26 shall be accrue through the life of the joint account until the preneed  
27 contract is cancelled or fulfilled pursuant to subsection 6 of this  
28 section.

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.

37 7. The seller shall pay the provider pursuant to the written  
38 agreement.

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 seller shall pay the newly designated provider all  
8 payments owed to the original provider under the contract. The newly  
9 designated provider shall assume all rights, duties, obligations, and  
10 liabilities as the original provider under the contract. Interest shall  
11 continue to be allocated to the seller as provided for under the  
12 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 which it**  
35 **maintains a preneed trust account and the account numbers of such**  
36 **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 showing**  
45 **cost, acquisition date, and current market value of each asset and**  
46 **investment;**

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

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

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

56 **(1) The name and address of the financial institution in Missouri**

57 in which it maintains the joint account and the account numbers for  
58 each joint account;

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

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

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

64 (5) Total earnings since the previous report;

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

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

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

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

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

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

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

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

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

98           **7. A seller who fails to file the annual report on or before the**  
99 **date specified by the board shall be prohibited from selling any**  
100 **preneed contracts until the annual report has been filed and all**  
101 **applicable fees have been paid to the board.**

102           **8. This section shall apply to contracts entered into before**  
103 **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  
28 such 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 civil 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 an amount equal to all deposits made into the trust for 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.]

2 [436.021. 1. No person, including without limitation a  
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.]

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

[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.]

[436.035. 1. At any time before the final disposition of the  
2 dead body, or before funeral services, facilities, or merchandise  
3 described in a preneed contract are provided by the provider  
4 designated in the preneed contract, the purchaser may cancel the  
5 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.]

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

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

[436.045. Within thirty days after a provider and a witness  
2 shall certify in writing to the seller that the provider has provided  
3 the final disposition of the dead body, and funeral services,  
4 facilities, and merchandise described in the contract, or has  
5 provided alternative funeral benefits for the beneficiary pursuant  
6 to special arrangements made with the purchaser, the seller shall  
7 pay to the provider a net amount equal to all payments required to  
8 be made pursuant to the written agreement between the seller and



9 the provider or all payments made under the contract. Upon  
10 delivery to the trustee of the provider's receipt for such payment,  
11 the trustee shall distribute to the seller from the trust an amount  
12 equal to all deposits made into the trust for the contract.]

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

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

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

          [436.055. 1. All complaints received by the state board  
2 which allege a registrant's noncompliance with the provisions of  
3 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.  
16 If 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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