

SECOND REGULAR SESSION

SENATE BILL NO. 951

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WASSON.

Read 1st time January 21, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

5686S.011

AN ACT

To repeal sections 436.405, 436.430, 436.450, 436.455, 436.456, 436.457, and 436.460, RSMo, and to enact in lieu thereof seven new sections relating to preneed funeral contracts.

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

Section A. Sections 436.405, 436.430, 436.450, 436.455, 436.456, 436.457, and 436.460, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 436.405, 436.430, 436.450, 436.455, 436.456, 436.457, and 436.460, to read as follows:

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

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

(2) "Board", the board of embalmers and funeral directors;

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

(4) "Insurance-funded preneed contract", a preneed contract which is designated to be funded by payments or proceeds from an insurance policy or a deferred annuity contract **where the annuitant is the beneficiary of the preneed contract**, that is not classified as a variable annuity, and has death

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

17 benefit proceeds that are never less than the sum of premiums paid;

18 (5) "Joint account-funded preneed contract", a preneed contract which
19 designates that payments for the preneed contract made by or on behalf of the
20 purchaser will be deposited and maintained in a joint account in the names of
21 the purchaser and seller, as provided in this chapter;

22 (6) "Market value", a fair market value:

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

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

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

31 (7) "Nonguaranteed contract", a preneed contract in which the seller does
32 not promise, assure, or guarantee that all or any portion of the costs for the
33 disposition, facilities, service, or merchandise identified in a preneed contract
34 will be limited to the amount designated in the contract upon the preneed
35 beneficiary's death or that such costs will be otherwise limited or restricted;

36 (8) "Preneed contract", any contract or other arrangement which provides
37 for the final disposition in Missouri of a dead human body, funeral or burial
38 services or facilities, or funeral merchandise, where such disposition, services,
39 facilities, or merchandise are not immediately required. Such contracts include,
40 but are not limited to, agreements providing for a membership fee or any other
41 fee for the purpose of furnishing final disposition, funeral or burial services or
42 facilities, or funeral merchandise at a discount or at a future date;

43 (9) "Preneed trust", a trust to receive deposits of, administer, and
44 disburse payments received under preneed contracts, together with income
45 thereon;

46 (10) "Purchaser", the person who is obligated to pay under a preneed
47 contract;

48 (11) "Trustee", the trustee of a preneed trust, including successor
49 trustees;

50 (12) "Trust-funded preneed contract", a preneed contract which provides
51 that payments for the preneed contract shall be deposited and maintained in
52 trust.

53 2. All terms defined in chapter 333 shall be deemed to have the same
54 meaning when used in sections 436.400 to 436.520.

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

3 2. A seller must deposit all payments received on a preneed contract into
4 the designated preneed trust within [~~sixty~~] **thirty** days of receipt of the funds
5 by the seller, the preneed sales agent or designee. A seller may not require the
6 consumer to pay any fees or other charges except as authorized by the
7 provisions of chapter 333 and this chapter or other state or federal law.

8 3. A seller may request the trustee to distribute to the seller an amount
9 up to the first five percent of the total amount of any preneed contract as an
10 origination fee. The seller may make this request at any time after five percent
11 of the total amount of the preneed contract has been deposited into the
12 trust. The trustee shall make this distribution to the seller within fifteen days
13 of the receipt of the request.

14 4. In addition to the origination fee, the trustee may distribute to the
15 seller an amount up to ten percent of the face value of the contract on a preneed
16 contract at any time after the consumer payment has been deposited into the
17 trust. The seller may make written request for this distribution and the trustee
18 shall make this distribution to the seller within fifteen days of the receipt of the
19 request or as may be provided in any written agreement between the seller and
20 the trustee.

21 5. The trustee of a preneed trust shall be a state- or federally-chartered
22 financial institution authorized to exercise trust powers in Missouri. The
23 trustee shall accept all deposits made to it for a preneed contract and shall hold,
24 administer, and distribute such deposits, in trust, as trust principal, under
25 sections 436.400 to 436.520.

26 6. The financial institution referenced herein may neither control, be
27 controlled by, nor be under common control with the seller or preneed
28 agent. The terms "control", "controlled by" and "under common control with"
29 means the direct or indirect possession of the power to direct or cause the
30 direction of the management and policies of a person, whether through the
31 ownership of voting securities, by contract other than a commercial contract for
32 goods or nonmanagement services, or otherwise, unless the power is the result
33 of an official position with or corporate office held by the person. Control shall
34 be presumed to exist if any person, directly or indirectly, owns, controls, holds

35 with the power to vote, or holds proxies representing ten percent or more of the
36 voting securities. This presumption may be rebutted by a showing to the board
37 that control does not in fact exist.

38 7. Payments regarding two or more preneed contracts may be deposited
39 into and commingled in the same preneed trust, so long as the trustee maintains
40 adequate records that individually and separately identify the payments,
41 earnings, and distributions for each preneed contract.

42 8. Within a reasonable time after accepting a trusteeship or receiving
43 trust assets, a trustee shall review the trust assets and make and implement
44 decisions concerning the retention and disposition of assets in order to bring the
45 trust portfolio into compliance with the purposes, terms, distribution
46 requirements, other circumstances of the trust, and all other requirements of
47 sections 436.400 to 436.520.

48 9. All expenses of establishing and administering a preneed trust,
49 including trustee's fees, legal and accounting fees, investment expenses, and
50 taxes may be paid from income generated from the investment of the trust
51 assets. Principal of the trust shall not be used to pay the costs of
52 administration. If the income of the trust is insufficient to pay the costs of
53 administration, those costs shall be paid as per the written agreements between
54 the seller, provider and the trustee.

55 10. The seller and provider of a trust-funded guaranteed preneed
56 contract shall be entitled to all income, including, but not limited to, interest,
57 dividends, capital gains, and losses generated by the investment of preneed trust
58 property regarding such contract as stipulated in the contract between the seller
59 and provider. Income of the trust, excluding expenses allowed under [this]
60 subsection **9 of this section**, shall accrue through the life of the trust, except
61 in instances when a contract is cancelled. The trustee of the trust may
62 distribute market value of all income, net of losses, to the seller upon, but not
63 before, the final disposition of the beneficiary and provision of the funeral and
64 burial services and facilities, and merchandise to, or for, the benefit of the
65 beneficiary. This subsection shall apply to trusts established on or after August
66 28, 2009.

67 11. Providers shall request payment by submitting a certificate of
68 performance to the seller certifying that the provider has rendered services
69 under the contract or as requested. The certificate shall be signed by both the
70 provider and the person authorized to make arrangements on behalf of the

71 beneficiary. If there is no written contract between the seller and provider, the
72 provider shall be entitled to the market value of all trust assets allocable to the
73 preneed contract. Sellers shall remit payment to the provider within sixty days
74 of receiving the certificate of performance.

75 12. If a seller fails to make timely payment of an amount due a provider
76 under sections 436.400 to 436.520, the provider shall have the right, in addition
77 to other rights and remedies against such seller, to make demand upon the
78 trustee of the preneed trust for the contract to distribute to the provider from
79 the trust all amounts to which the seller would be entitled to receive for the
80 preneed contract.

81 13. The trustee of a preneed trust, including trusts established before
82 August 28, 2009, shall maintain adequate books and records of all transactions
83 administered over the life of the trust and pertaining to the trust
84 generally. The trustee shall assist the seller who established the trust or its
85 successor in interest in the preparation of the annual report described in section
86 436.460. The seller shall furnish to each contract purchaser, within thirty days
87 after receipt of the purchaser's written request, a written statement of all
88 deposits made to such trust regarding such purchaser's contract including the
89 principal and interest paid to date.

90 14. A preneed trust, including trusts established before August 28, 2009,
91 shall terminate when the trust principal no longer includes any payments made
92 under any preneed contract, and upon such termination the trustee shall
93 distribute all trust property, including principal and undistributed income, to
94 the seller which established the trust.

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

3 2. A seller, provider, or any preneed agent shall not receive or collect
4 from the purchaser of an insurance-funded preneed contract any amount in
5 excess of what is required to pay the premiums on the insurance policy as
6 assessed or required by the insurer as premium payments for the insurance
7 policy except for any amount required or authorized by this chapter or by rule.
8 A seller shall not receive or collect any administrative or other fee from the
9 purchaser for or in connection with an insurance-funded preneed contract, other
10 than those fees or amounts assessed by the insurer. As of August 29, 2009, no
11 preneed seller, provider, or agent shall use any existing preneed contract as
12 collateral or security pledged for a loan or take preneed funds of any existing

13 preneed contract as a loan for any purpose other than as authorized by this
14 chapter.

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

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

22 5. Laws regulating insurance shall not apply to preneed contracts, but
23 shall apply to any insurance or annuity sold with a preneed contract; provided,
24 however, the provisions of sections 436.400 to 436.520 shall not apply to
25 annuities or insurance policies regulated by chapters 374, 375, and 376 used to
26 fund preneed funeral agreements, contracts, or programs.

27 6. This section shall apply to all preneed contracts including those
28 entered into before August 28, 2009.

29 7. For any insurance-funded preneed contract sold after August 28, 2009,
30 the following shall apply:

31 (1) The purchaser or beneficiary **of the preneed contract** shall be the
32 owner of the insurance policy purchased to fund a preneed contract; and

33 (2) An insurance-funded preneed contract shall be valid and enforceable
34 only if the seller or provider is named as the beneficiary or assignee of the life
35 insurance policy funding the contract.

36 8. If the proceeds of the life insurance policy exceed the actual cost of the
37 goods and services provided pursuant to the nonguaranteed preneed contract,
38 any overage shall be paid to the estate of the beneficiary, or, if the beneficiary
39 received public assistance, to the state of Missouri.

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

3 2. In lieu of a trust-funded or insurance-funded preneed contract, the
4 seller and the purchaser may agree in writing that all funds paid by the
5 purchaser or beneficiary for the preneed contract shall be deposited with a
6 financial institution chartered and regulated by the federal or state government
7 authorized to do business in Missouri in an account in the joint names and
8 under the joint control of the seller and purchaser, beneficiary or party holding
9 power of attorney over the beneficiary's estate, or in an account titled in the

10 beneficiary's name and payable on the beneficiary's death to the seller. There
11 shall be a separate joint account established for each preneed contract sold or
12 arranged under this section. Funds shall only be withdrawn or paid from the
13 account upon the signatures of both the seller and the purchaser or under a
14 pay-on-death designation or as required to pay reasonable expenses of
15 administering the account.

16 3. All consideration paid by the purchaser under a joint account-funded
17 contract shall be deposited into a joint account as authorized by this section
18 within [ten] **thirty** days of receipt of payment by the seller.

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

25 5. Income generated by preneed funds deposited under this section shall
26 be used to pay the reasonable expenses of administering the account as charged
27 by the financial institution and the balance of the income shall be distributed
28 or reinvested upon fulfillment of the contract, cancellation or transfer pursuant
29 to the provisions of this chapter.

30 6. Within fifteen days after a provider delivers a copy of a certificate of
31 performance to the seller, signed by the provider and the person authorized to
32 make arrangements on behalf of the beneficiary, certifying that the provider has
33 furnished the final disposition, funeral, and burial services and facilities, and
34 merchandise as required by the preneed contract, or has provided alternative
35 funeral benefits for the beneficiary under special arrangements made with the
36 purchaser, the seller shall take whatever steps are required by the financial
37 institution to secure payment of the funds from the financial institution. The
38 seller shall pay the provider within ten days of receipt of funds.

39 7. Any seller, provider, or preneed agent shall not procure or accept a
40 loan against any investment, or asset of, or belonging to a joint account. As of
41 August 28, 2009, it shall be prohibited to use any existing preneed contract as
42 collateral or security pledged for a loan, or take preneed funds of any existing
43 preneed contract as a loan or for any purpose other than as authorized by this
44 chapter.

436.456. At any time before final disposition, or before the funeral or

2 burial services, facilities, or merchandise described in a preneed contract are
3 furnished, the purchaser may cancel the contract, if designated as revocable,
4 without cause. In order to cancel the contract the purchaser shall:

5 (1) In the case of a joint account-funded preneed contract, deliver written
6 notice of the cancellation to the seller. Within fifteen days of receipt of notice
7 of the cancellation, the seller shall take whatever steps may be required by the
8 financial institution to obtain the funds from the financial institution. Upon
9 receipt of the funds from the financial institution, the seller shall distribute the
10 principal to the purchaser. Interest shall be distributed as provided in the
11 agreement with the seller and purchaser;

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

17 (3) In the case of a trust-funded preneed contract, deliver written notice
18 of the cancellation to the seller and trustee. Within fifteen days of receipt of
19 notice of the cancellation, the trustee shall distribute one hundred percent of the
20 trust property including any percentage of the total payments received on the
21 trust-funded contract that have been withdrawn from the account under
22 subsection 4 of section 436.430 but excluding the income, to the purchaser of the
23 contract;

24 (4) In the case of a guaranteed installment payment contract where the
25 beneficiary dies before all installments have been paid, the purchaser shall pay
26 the seller the amount remaining due under the contract in order to receive the
27 goods and services set out in the contract, otherwise the purchaser or their
28 estate will receive full credit for all payments the purchaser has made towards
29 the cost of the beneficiary's funeral at the [provider] **provider's** current prices.

436.457. 1. A seller shall have the right to cancel a trust-funded or
2 joint-account funded preneed contract if the purchaser is in default of any
3 installment payment for over sixty days.

4 2. Prior to cancelling the contract, the seller shall notify the purchaser
5 and provider in writing that the contract shall be cancelled if payment is not
6 received within thirty days of the postmarked date of the notice. The notice
7 shall include the amount of payments due, the date the payment is due, and the
8 date of cancellation.

9 3. If the purchaser fails to remit the payments due within thirty days of
10 the postmarked date of the notice, then the seller, at its option, may either
11 cancel the contract or may continue the contract as a nonguaranteed contract
12 where the purchaser will receive full credit for all payments the purchaser has
13 made into the trust towards the cost of the beneficiary's funeral service or
14 merchandise from the provider.

15 4. Upon cancellation by the seller under this section, eighty-five percent
16 of the contract payments shall be refunded to the purchaser. All remaining
17 funds shall be distributed to the seller.

18 **5. Where the consideration for a preneed contract includes the**
19 **seller or provider being made the beneficiary or assignee of a life**
20 **insurance policy, should that life insurance policy have lapsed, no**
21 **longer be in force, or have had loans taken against it, the seller may**
22 **cancel the contract and shall refund to the purchaser other payments**
23 **in accordance with this section apart from insurance premiums that**
24 **were made by the purchaser of the contract.**

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

3 (1) The contract number of each preneed contract sold since the filing of
4 the last report with an indication of, and whether it is funded by a trust,
5 insurance or joint account;

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

8 (3) The contract amount of each preneed contract sold since the filing of
9 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 report;

13 (6) The list including the name, address, contract number and whether
14 it is funded by a trust, insurance or joint account of all Missouri preneed
15 contracts fulfilled, cancelled or transferred by the seller during the preceding
16 calendar year;

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

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

21 contracts;

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

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

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

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

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

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

37 (3) The current [face] **market** value of the trust fund;

38 (4) Principal contributions received by the trustee since the previous
39 report;

40 (5) Total trust earnings and total distributions to the seller since the
41 previous report;

42 (6) Authorization of the board to request from the trustee a copy of any
43 trust statement, as part of an investigation, examination or audit of the preneed
44 seller;

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

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

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

54 (1) The name and address of the financial institution in Missouri in
55 which it maintains the joint account and the account numbers for each joint
56 account;

- 57 (2) The amount on deposit in each joint account;
- 58 (3) The joint account balance as reported in the previous year's report;
- 59 (4) Principal contributions placed into each joint account since the filing
60 of the previous report;
- 61 (5) Total earnings since the previous report;
- 62 (6) Total distributions to the seller from each joint account since the
63 previous report;
- 64 (7) Total expenses deducted from the joint account, excluding
65 distributions to the seller, since the previous report; and
- 66 (8) Certification under oath that the information required by
67 subdivisions (1) to (7) of this subsection is complete and correct and attested to
68 by an authorized representative of the financial institution. The affiant shall
69 be subject to the penalty of making a false affidavit or declaration.
- 70 4. A seller that sells or who has sold any insurance-funded preneed
71 contracts shall also include in the annual report required by subsection 1 of this
72 section:
- 73 (1) The name and address of each insurance company issuing insurance
74 to fund a preneed contract sold by the seller during the preceding year;
- 75 (2) The status and total face value of each policy **if requested by the**
76 **board**;
- 77 (3) The amount of funds the seller directly received on each contract and
78 the date the amount was forwarded to any insurance company; and
- 79 (4) Certification under oath that the information required by subsections
80 1 to 3 of this section is complete and correct attested to by an authorized
81 representative of the insurer. The affiant shall be subject to the penalty of
82 making a false affidavit or declaration.
- 83 5. Each seller shall remit an annual reporting fee in an amount
84 established by the board by rule for each preneed contract sold in the year since
85 the date the seller filed its last annual report with the board. This reporting fee
86 shall be paid annually and may be collected from the purchaser of the preneed
87 contract as an additional charge or remitted to the board from the funds of the
88 seller. The reporting fee shall be in addition to any other fees authorized under
89 sections 436.400 to 436.520.
- 90 6. All reports required by this section shall be filed by the thirty-first
91 day of October of each year or by the date established by the board by
92 rule. Annual reports filed after the date provided herein shall be subject to a

93 late fee in an amount established by rule of the board.

94 7. If a seller fails to file the annual report on or before its due date, his
95 or her preneed seller license shall automatically be suspended until such time
96 as the annual report is filed and all applicable fees have been paid.

97 8. This section shall apply to contracts entered into before August 28,
98 2009.

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