

FIRST REGULAR SESSION

SENATE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 585

101ST GENERAL ASSEMBLY

1393S.03C

ADRIANE D. CROUSE, Secretary

AN ACT

To repeal sections 194.119, 333.041, 333.042, 333.061, 333.081, 333.315, and 456.4-419, RSMo, and to enact in lieu thereof eight new sections relating to the deceased.

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

Section A. Sections 194.119, 333.041, 333.042, 333.061,
2 333.081, 333.315, and 456.4-419, RSMo, are repealed and eight
3 new sections enacted in lieu thereof, to be known as sections
4 194.119, 333.041, 333.042, 333.061, 333.081, 333.315, 456.1-
5 114, and 456.4-419, to read as follows:

194.119. 1. As used in this section, the term "right
2 of sepulcher" means the right to choose and control the
3 burial, cremation, or other final disposition of a dead
4 human body.

5 2. For purposes of this chapter and chapters 193, 333,
6 and 436, and in all cases relating to the custody, control,
7 and disposition of deceased human remains, including the
8 common law right of sepulcher, where not otherwise defined,
9 the term "next-of-kin" means the following persons in the
10 priority listed if such person is eighteen years of age or
11 older, is mentally competent, and is willing to assume
12 responsibility for the costs of disposition:

13 (1) An attorney in fact designated in a durable power
14 of attorney wherein the deceased specifically granted the

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

15 right of sepulcher over his or her body to such attorney in
16 fact;

17 (2) For a decedent who was on active duty in the
18 United States military at the time of death, the person
19 designated by such decedent in the written instrument known
20 as the United States Department of Defense Form 93, Record
21 of Emergency Data, in accordance with [P.L. 109-163, Section
22 564,] 10 U.S.C. Section 1482;

23 (3) The surviving spouse, **unless an action for the**
24 **dissolution of the marriage has been filed and is pending in**
25 **a court of competent jurisdiction;**

26 (4) Any surviving child of the deceased. If a
27 surviving child is less than eighteen years of age and has a
28 legal or natural guardian, such child shall not be
29 disqualified on the basis of the child's age and such
30 child's legal or natural guardian, if any, shall be entitled
31 to serve in the place of the child unless such child's legal
32 or natural guardian was subject to an action in dissolution
33 from the deceased. In such event the person or persons who
34 may serve as next-of-kin shall serve in the order provided
35 in subdivisions (5) to (9) of this subsection;

36 (5) (a) Any surviving parent of the deceased; or

37 (b) If the deceased is a minor, a surviving parent who
38 has custody of the minor; or

39 (c) If the deceased is a minor and the deceased's
40 parents have joint custody, the parent whose residence is
41 the minor child's residence for purposes of mailing and
42 education;

43 (6) Any surviving sibling of the deceased;

44 (7) The next nearest surviving relative of the
45 deceased by consanguinity or affinity;

46 (8) Any person or friend who assumes financial
47 responsibility for the disposition of the deceased's remains
48 if no next-of-kin assumes such responsibility;

49 (9) The county coroner or medical examiner; provided
50 however that such assumption of responsibility shall not
51 make the coroner, medical examiner, the county, or the state
52 financially responsible for the cost of disposition.

53 3. The next-of-kin of the deceased shall be entitled
54 to control the final disposition of the remains of any dead
55 human being consistent with all applicable laws, including
56 all applicable health codes. **The next-of-kin may delegate**
57 **the control of the final disposition of the remains of any**
58 **dead human being to an agent through either a specific or**
59 **general grant of power in accordance with section 404.710**
60 **if, at the time of delegation, the next-of-kin was eighteen**
61 **years of age or older and mentally competent and the**
62 **principal or agent is taking financial responsibility for**
63 **the disposition.**

64 4. A funeral director or establishment is entitled to
65 rely on and act according to the lawful instructions of any
66 person claiming to be the next-of-kin of the deceased;
67 provided however, in any civil cause of action against a
68 funeral director or establishment licensed pursuant to this
69 chapter for actions taken regarding the funeral arrangements
70 for a deceased person in the director's or establishment's
71 care, the relative fault, if any, of such funeral director
72 or establishment may be reduced if such actions are taken in
73 reliance upon a person's claim to be the deceased person's
74 next-of-kin.

75 5. Any person who desires to exercise the right of
76 sepulcher and who has knowledge of an individual or
77 individuals with a superior right to control disposition

78 shall notify such individual or individuals prior to making
79 final arrangements.

80 6. If an individual with a superior claim is
81 [~~personally served with written notice from~~] **notified in**
82 **person or by written notice with delivery confirmation to**
83 **such person's last known address by** a person with an
84 inferior claim that such person desires to exercise the
85 right of sepulcher and the individual so served does not
86 object within forty-eight hours of [~~receipt~~] **such notice,**
87 such individual shall be deemed to have waived such right.
88 An individual with a superior right may also waive such
89 right at any time if such waiver is in writing and dated.

90 7. If there is more than one person in a class who are
91 equal in priority and the funeral director has no knowledge
92 of any objection by other members of such class, the funeral
93 director or establishment shall be entitled to rely on and
94 act according to the instructions of the first such person
95 in the class to make arrangements; provided that such person
96 assumes responsibility for the costs of disposition and no
97 other person in such class provides written notice of his or
98 her objection. If the funeral director has knowledge that
99 there is more than one person in a class who are equal in
100 priority and who do not agree on the disposition, the
101 decision of the majority of the members of such class shall
102 control the disposition.

103 8. For purposes of conducting a majority vote under
104 subsection 7 of this section, the funeral director shall
105 allow voting by proxy using a written authorization or
106 instrument.

333.041. 1. [Each applicant for a license to practice
2 funeral directing shall furnish evidence to establish to the
3 satisfaction of the board that he or she is at least

4 eighteen years of age, and possesses a high school diploma,
5 a general equivalency diploma, or equivalent thereof, as
6 determined, at its discretion, by the board.

7 2. Every person desiring to enter the profession of
8 embalming dead human bodies within the state of Missouri and
9 who is enrolled in a program accredited by the American
10 Board of Funeral Service Education, any successor
11 organization, or other accrediting entity as approved by the
12 board shall register with the board as a practicum student
13 upon the form provided by the board. After such
14 registration, a student may assist, under the direct
15 supervision of Missouri licensed embalmers and funeral
16 directors, in Missouri licensed funeral establishments,
17 while serving his or her practicum. The form for
18 registration as a practicum student shall be accompanied by
19 a fee in an amount established by the board.

20 3.] Each applicant for a **student** license to practice
21 embalming shall **submit an application to the state board of**
22 **embalmers and funeral directors, pay all application fees,**
23 **and** furnish evidence to establish to the satisfaction of the
24 board that he or she:

25 (1) Is at least eighteen years of age, and possesses a
26 high school diploma, a general equivalency diploma, or
27 equivalent thereof, as determined, at its discretion, by the
28 board; **and**

29 (2) **Is currently enrolled in a funeral service**
30 **education program or** has completed a funeral service
31 education program accredited by the American Board of
32 Funeral Service Education, any successor organization, or
33 other accrediting entity as approved by the board. [If an
34 applicant does not complete all requirements for licensure
35 within five years from the date of his or her completion of

36 an accredited program, his or her registration as an
37 apprentice embalmer shall be automatically cancelled. The
38 applicant shall be required to file a new application and
39 pay applicable fees. No previous apprenticeship shall be
40 considered for the new application;

41 (3) Upon due examination administered by the board, is
42 possessed of a knowledge of the subjects of embalming,
43 anatomy, pathology, bacteriology, mortuary administration,
44 chemistry, restorative art, together with statutes, rules
45 and regulations governing the care, custody, shelter and
46 disposition of dead human bodies and the transportation
47 thereof or has passed the national board examination of the
48 Conference of Funeral Service Examining Boards. If any
49 applicant fails to pass the state examination, he or she may
50 retake the examination at the next regular examination
51 meeting. The applicant shall notify the board office of his
52 or her desire to retake the examination at least thirty days
53 prior to the date of the examination. Each time the
54 examination is retaken, the applicant shall pay a new
55 examination fee in an amount established by the board;

56 (4) Has been employed full time in funeral service in
57 a licensed funeral establishment and has personally embalmed
58 at least twenty-five dead human bodies under the personal
59 supervision of an embalmer who holds a current and valid
60 Missouri embalmer's license during an apprenticeship of not
61 less than twelve consecutive months. "Personal supervision"
62 means that the licensed embalmer shall be physically present
63 during the entire embalming process in the first six months
64 of the apprenticeship period and physically present at the
65 beginning of the embalming process and available for
66 consultation and personal inspection within a period of not
67 more than one hour in the remaining six months of the

68 apprenticeship period. All transcripts and other records
69 filed with the board shall become a part of the board files.

70 4. If the applicant does not complete the application
71 process within the five years after his or her completion of
72 an approved program, then he or she must file a new
73 application and no fees paid previously shall apply toward
74 the license fee.

75 5. Examinations required by this section and section
76 333.042 shall be held at least twice a year at times and
77 places fixed by the board. The board shall by rule and
78 regulation prescribe the standard for successful completion
79 of the examinations.]

80 2. After a student's application has been approved by
81 the board, student licensees who are enrolled in a funeral
82 service education program may assist, under the direct
83 supervision of an embalmer or funeral director licensed
84 under this chapter, in an establishment licensed for
85 embalming under this chapter. Student licensees shall not
86 assist when not under such supervision.

87 3. In order to be eligible for full licensure under
88 subsection 6 of this section, a student licensee shall,
89 after completing a funeral service education program
90 accredited by the American Board of Funeral Service
91 Education, any successor organization, or other accrediting
92 entity as approved by the board, demonstrate that he or she
93 has completed an apprenticeship of no less than six months
94 and has personally embalmed at least twenty-five dead human
95 bodies under the personal supervision of an embalmer who is
96 licensed under this chapter.

97 4. In order to be eligible for full licensure under
98 subsection 6 of this section, a student licensee shall pass

99 the National Board or State Board Arts examination, National
100 Board Science examination, and the Missouri law examination.

101 5. A student licensee shall have five years to
102 complete the requirements for full licensure under
103 subsection 6 of this section. If the student fails to
104 complete the requirements within such period, the student's
105 application for licensure shall be cancelled. If the
106 application is cancelled, the student shall be required to
107 file a new application and pay applicable fees. No previous
108 apprenticeship shall be considered for the new application.
109 If the student licensee completes the requirements of this
110 section within five years, the student licensee may apply
111 for an embalmer license by completing the appropriate
112 application.

113 6. Upon establishment of his or her qualifications as
114 specified by this section or section 333.042, the board
115 shall issue to the applicant a license to practice funeral
116 directing or embalming, as the case may require, and shall
117 register the applicant as a duly licensed funeral director
118 or a duly licensed embalmer. Any person having the
119 qualifications required by this section and section 333.042
120 may be granted both a license to practice funeral directing
121 and to practice embalming.

122 7. The board shall, upon request, waive any
123 requirement of this chapter and issue a temporary funeral
124 director's license, valid for six months, to the surviving
125 spouse or next of kin or the personal representative of a
126 licensed funeral director, or to the spouse, next of kin,
127 employee or conservator of a licensed funeral director
128 disabled because of sickness, mental incapacity or injury.
129 **No student licensee or embalmer licensed under this chapter**
130 **shall be required to sign a death certificate as the**

131 embalmer of the body for any body that they have embalmed.
132 This provision does not relieve a person who holds both an
133 embalmer and funeral director's license from signing the
134 death certificate as the funeral director in charge if
135 otherwise required to do so.

333.042. 1. Every person desiring to engage in the
2 practice of funeral directing as an apprentice in this state
3 shall obtain a provisional funeral director license from the
4 board. To apply for a provisional license, the applicant
5 shall make application with the state board of embalmers and
6 funeral directors and pay the current application fees and
7 furnish evidence to establish to the satisfaction of the
8 board that he or she:

- 9 (1) Is at least eighteen years of age; and
- 10 (2) Is working as an apprentice funeral director under
11 personal supervision of a funeral director licensed under
12 this chapter.

13 The applicant shall provide to the board the name and
14 license number of the funeral director performing his or her
15 supervision and the location where the applicant will
16 practice.

17 2. An applicant for a provisional funeral director
18 license under subsection 1 of this section shall have twenty-
19 four months to complete the requirements for licensure under
20 this section. If the applicant fails to complete the
21 requirements within such period, the student's application
22 for licensure shall be cancelled. If the application is
23 cancelled, the applicant shall be required to file a new
24 application and pay applicable fees. No previous
25 apprenticeship shall be considered for the new application.

26 3. Every person desiring to enter the profession of
27 funeral directing in this state shall make application with
28 the state board of embalmers and funeral directors, [and]
29 pay the current application [and examination] fees, [.]
30 Except as otherwise provided in section 41.950, applicants
31 not entitled to a license pursuant to section 333.051 or
32 324.009 shall serve an apprenticeship for at least twelve
33 consecutive months in a funeral establishment licensed for
34 the care and preparation for burial and transportation of
35 the human dead in this state or in another state which has
36 established standards for admission to practice funeral
37 directing equal to, or more stringent than, the requirements
38 for admission to practice funeral directing in this state.
39 The applicant shall devote at least fifteen hours per week
40 to his or her duties as an apprentice under the supervision
41 of a Missouri licensed funeral director. Such applicant
42 shall submit proof to the board, on forms provided by the
43 board, that the applicant has arranged and conducted ten
44 funeral services during the applicant's apprenticeship under
45 the supervision of a Missouri licensed funeral director.
46 Upon completion of the apprenticeship, the applicant shall
47 appear before the board to be tested on the applicant's
48 legal and practical knowledge of funeral directing, funeral
49 home licensing, preneed funeral contracts and the care,
50 custody, shelter, disposition and transportation of dead
51 human bodies. Upon acceptance of the application and fees
52 by the board, an applicant shall have twenty-four months to
53 successfully complete the requirements for licensure found
54 in this section or the application for licensure shall be
55 cancelled.

56 2. If a person applies for a limited license to work
57 only in a funeral establishment which is licensed only for

58 cremation, including transportation of dead human bodies to
59 and from the funeral establishment, he or she shall make
60 application, pay the current application and examination fee
61 and successfully complete the Missouri law examination. He
62 or she shall be exempt from the twelve-month apprenticeship
63 required by subsection 1 of this section and the practical
64 examination before the board. If a person has a limited
65 license issued pursuant to this subsection, he or she may
66 obtain a full funeral director's license if he or she
67 fulfills the apprenticeship and successfully completes the
68 funeral director practical examination.

69 3. If an individual is a Missouri licensed embalmer or
70 has completed a program accredited by the American Board of
71 Funeral Service Education, any successor organization, or
72 other accrediting entity as approved by the board or has
73 successfully completed a course of study in funeral
74 directing offered by an institution accredited by a
75 recognized national, regional or state accrediting body and
76 approved by the state board of embalmers and funeral
77 directors, and desires to enter the profession of funeral
78 directing in this state, the individual shall comply with
79 all the requirements for licensure as a funeral director
80 pursuant to subsection 1 of section 333.041 and subsection 1
81 of this section; however, the individual is exempt from the
82 twelve-month apprenticeship required by subsection 1 of this
83 section] **and furnish evidence to establish to the**
84 **satisfaction of the board that he or she:**

85 (1) **Is at least eighteen years of age and possesses a**
86 **high school diploma, a general equivalency diploma, or**
87 **equivalent thereof, as determined, at its discretion, by the**
88 **board;**

89 (2) **Has successfully completed:**

90 (a) A program accredited by the American Board of
91 Funeral Service Education, any successor organization, or
92 other accrediting entity as approved by the board;

93 (b) A course of study in funeral directing offered by
94 an institution accredited by a recognized national,
95 regional, or state accrediting body and approved by the
96 state board of embalmers or funeral directors; or

97 (c) A qualifying apprenticeship for at least twelve
98 months; and

99 (3) Has passed the National Board or State Board Arts
100 examination and the Missouri law examination.

101 For purposes of this subsection, a qualifying apprenticeship
102 means one in which the applicant devoted at least fifteen
103 hours per week to his or her duties as an apprentice under
104 the personal supervision of a funeral director licensed
105 under this chapter in a funeral establishment licensed for
106 the care and preparation for burial and transportation of
107 the human dead under this chapter. Personal supervision
108 means that the licensed funeral director shall be physically
109 present during any arrangement conferences, but such person
110 shall not be required to be present in the building when the
111 apprentice performs any other functions relating to the
112 practice of funeral directing. In order for an
113 apprenticeship to qualify under this subsection, applicants
114 shall arrange and conduct at least ten funeral services
115 under the supervision of a funeral director licensed under
116 this chapter and present proof of such performance to the
117 board on forms provided by the board.

118 4. Every person desiring to obtain a funeral director
119 limited license in this state shall make application with
120 the state board of embalmers and funeral directors and pay

121 the current application fees and furnish evidence to
122 establish to the satisfaction of the board that he or she:

123 (1) Is at least eighteen years of age; and

124 (2) Has successfully completed the Missouri law
125 examination.

126 5. A person holding a funeral director limited license
127 shall not be authorized to practice funeral directing in the
128 state, except as follows:

129 (1) He or she may work in a funeral establishment
130 licensed only for cremation, including transportation of
131 dead human bodies to and from the funeral establishment; and

132 (2) He or she may perform cremations and duties
133 relating to cremations.

134 6. If a person has a funeral director limited license
135 issued under this section, he or she may obtain a full
136 funeral director's license by fulfilling the apprenticeship
137 requirements of subsection 3 of this section or by
138 successfully completing a program accredited by the American
139 Board of Funeral Service Education, any successor
140 organization, or other accrediting entity as approved by the
141 board and successfully completing the National Board or
142 State Board Arts examination.

333.061. 1. No funeral establishment shall be
2 operated in this state unless the owner or operator thereof
3 has a **funeral establishment** license issued by the board.

4 2. A license for the operation of a funeral
5 establishment shall be issued by the board, if the board
6 finds:

7 (1) That the establishment is under the general
8 management and the supervision of a duly licensed funeral
9 director;

10 (2) That all embalming performed therein is performed
11 by or under the direct supervision of a duly licensed
12 embalmer;

13 (3) That any place in the funeral establishment where
14 embalming is conducted contains a preparation room with a
15 sanitary floor, walls and ceiling, and adequate sanitary
16 drainage and disposal facilities including running water,
17 and complies with the sanitary standard prescribed by the
18 department of health and senior services for the prevention
19 of the spread of contagious, infectious or communicable
20 diseases;

21 (4) Each funeral establishment shall have a register
22 book or log which shall be available at all times for the
23 board's inspector and that shall contain:

24 (a) The name of each body that has been in the
25 establishment;

26 (b) The date the body arrived at the establishment;

27 (c) If applicable, the place of embalming, if known;

28 and

29 (d) If the body was embalmed at the establishment, the
30 date and time that the embalming took place, and the name,
31 signature, and license number of the embalmer; and

32 (5) The establishment complies with all applicable
33 state, county or municipal zoning ordinances and regulations.

34 3. The board shall grant or deny each application for
35 a license pursuant to this section within thirty days after
36 it is filed. The applicant may request in writing up to two
37 thirty-day extensions of the application, provided the
38 request for an extension is received by the board prior to
39 the expiration of the thirty-day application or extension
40 period.

41 4. Licenses shall be issued pursuant to this section
42 upon application and the payment of a funeral establishment
43 fee and shall be renewed at the end of the licensing period
44 on the establishment's renewal date.

45 5. The board may refuse to renew or may suspend or
46 revoke any license issued pursuant to this section if it
47 finds, after hearing, that the funeral establishment does
48 not meet any of the requirements set forth in this section
49 as conditions for the issuance of a license, or for the
50 violation by the owner of the funeral establishment of any
51 of the provisions of section 333.121. No new license shall
52 be issued to the owner of a funeral establishment or to any
53 corporation controlled by such owner for three years after
54 the revocation of the license of the owner or of a
55 corporation controlled by the owner. Before any action is
56 taken pursuant to this subsection the procedure for notice
57 and hearing as prescribed by section 333.121 shall be
58 followed.

59 **6. Beginning November 1, 2021, each funeral**
60 **establishment licensed by the board under this section to**
61 **make funeral arrangements shall also be a licensed provider**
62 **for preneed funeral contracts under section 333.315 unless a**
63 **licensee provides written notification to the board that the**
64 **licensee does not want to be a provider for preneed funeral**
65 **contracts. No separate application or renewal of the**
66 **preneed provider license shall be necessary so long as the**
67 **funeral establishment license is current and active and**
68 **that, as part of the application or renewal of the funeral**
69 **establishment license, the licensee provides the name and**
70 **address of the custodian of records responsible for**
71 **maintaining the books and records of the licensee relating**
72 **to preneed contracts and the names and addresses of each**

73 seller authorized by the licensee to sell preneed contracts
74 in which the licensee is designated or obligated as the
75 provider. A licensee that has notified the board that it
76 does not want to be a provider for preneed funeral contracts
77 may rescind that notification in a writing to the board that
78 includes the custodian of records responsible for
79 maintaining the books and records of the licensee relating
80 to preneed contracts and the names and addresses of each
81 seller authorized by the licensee to sell preneed contracts
82 in which the licensee is designated or obligated as the
83 provider.

333.081. 1. Each license issued to a funeral
2 director, [or] embalmer, **or funeral establishment** pursuant
3 to this chapter shall expire unless renewed on or before the
4 renewal date. The board may, however, provide for the
5 renewal of licenses held by individuals who are not actively
6 engaged in practice and who are over sixty-five years of age
7 without fee. The board shall renew any such license upon
8 due application for renewal and upon the payment of the
9 renewal fee, except that no license shall expire during the
10 period when the holder thereof is actively engaged in the
11 military service of the United States. Any licensee
12 exempted from the renewal of his or her license because of
13 military service shall, before beginning practice in this
14 state after leaving military service, apply for and pay the
15 renewal fee for the current licensing period.

16 2. When renewing a funeral director's or embalmer's
17 license the licensee shall specify the address of the
18 funeral establishment at which he or she is practicing or
19 proposes to practice and shall notify the board of any
20 termination of his or her connection therewith. The
21 licensee shall notify the board of any new employment or

22 connection with a funeral establishment of a permanent
23 nature. If the licensee is not employed at or connected
24 with a funeral establishment he shall notify the board of
25 his or her permanent address.

26 3. The holder of an expired license shall be issued a
27 new license by the board within two years of the renewal
28 date after he or she has paid delinquent renewal fees. Any
29 license not renewed within two years shall be void.

30 4. Failure of the licensee to receive the renewal
31 notice shall not relieve the licensee of the duty to pay the
32 renewal fee and renew his or her license.

333.315. 1. No person shall be designated as a
2 provider or agree to perform the obligations of a provider
3 under a preneed contract unless, at the time of such
4 agreement or designation, such person is licensed as a
5 preneed provider by the board. Nothing in this section
6 shall exempt any person from meeting the licensure
7 requirements for a funeral establishment as provided in this
8 chapter.

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

10 (1) File an application on a form established by the
11 board and pay an application fee in an amount established by
12 the board by rule;

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

15 (3) Identify the name and address of a custodian of
16 records responsible for maintaining the books and records of
17 the provider relating to preneed contracts;

18 (4) Identify the name and address of each seller
19 authorized by the provider to sell preneed contracts in
20 which the provider is designated or obligated as the
21 provider;

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

28 (6) If the applicant is a corporation, each officer,
29 director, manager, or controlling shareholder shall be
30 eligible for licensure if they were applying for licensure
31 as an individual.

32 **Funeral establishments licensed under section 333.031 shall**
33 **be exempt from the requirements of this subsection.**

34 3. Each preneed provider shall apply to renew his or
35 her license on or before October thirty-first of each year
36 or a date established by the division of professional
37 registration pursuant to section 324.001. A license which
38 has not been renewed prior to the renewal date shall
39 expire. Applicants for renewal shall:

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

42 (2) Pay a renewal fee in an amount established by the
43 board by rule, however no renewal fee shall be required for
44 any funeral establishment whose Missouri license is current
45 and active;

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

48 (4) File an annual report with the state board which
49 shall contain:

50 (a) The name and address of a custodian of records
51 responsible for maintaining the books and records of the
52 provider relating to preneed contracts;

53 (b) The business name or names used by the provider
54 and all addresses from which it engages in the practice of
55 its business;

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

61 (d) Any information required by any other applicable
62 statute or regulation enacted pursuant to state or federal
63 law.

64 4. A license which has not been renewed as provided by
65 this section shall expire. A licensee who fails to apply
66 for renewal may apply for reinstatement within two years of
67 the renewal date by satisfying the requirements of
68 subsection 3 of this section and paying a delinquent fee as
69 established by the board by rule.

70 **5. A preneed provider license held by a licensed**
71 **funeral establishment shall automatically renew with the**
72 **renewal of the funeral establishment license.**

456.1-114. 1. For purposes of interpreting a term of
2 **familial relationship in a trust, "descendants", "issue",**
3 **"children", and similar terms of relationship shall be**
4 **construed as follows:**

5 **(1) A child conceived or born of a marriage is**
6 **presumed to be a child of the persons so married unless a**
7 **judicial proceeding is commenced before the death of the**
8 **presumed parent and it is finally determined in such**
9 **proceeding that the presumed parent is not the parent of the**
10 **child;**

11 (2) A child who is not conceived or born of a marriage
12 is presumed to not be a child of a person who did not give
13 birth to the child unless:

14 (a) A judicial proceeding commenced before the death
15 of such person determined that such person is a parent of
16 the child; or

17 (b) Such person openly recognized the child as his or
18 her child and such person has not refused to voluntarily
19 support the child. A trustee may rely on its discretion
20 regarding the sufficiency of recognition or support, and the
21 trustee shall not be liable to any person for its exercise
22 of this discretion unless the trustee acts in bad faith or
23 with reckless indifference to the purposes of the trust or
24 the interest of the beneficiaries.

25 If a parent-child relationship is established pursuant to
26 paragraph (a) or (b) of this subdivision, the rights
27 afforded to the child shall not be retroactive, but instead
28 shall apply from the time the relationship is established;
29 and

30 (3) A child adopted prior to the age of eighteen is
31 the child of an adopting parent and not of the natural
32 parents, except that adoption of a child by the spouse of a
33 natural parent has no effect on the relationship between the
34 child and such natural parent.

35 2. The terms of a trust shall prevail over any
36 provision of this section.

456.4-419. 1. Unless the terms of the trust
2 instrument expressly provide otherwise, a trustee, **other**
3 **than a settlor**, who has discretionary power under the terms
4 of a trust to make a distribution of income or principal,
5 whether or not limited by an ascertainable standard, to or

6 for the benefit of one or more beneficiaries of a trust, the
7 first trust, may instead exercise such discretionary power
8 by [appointing] **distributing** all or part of the income or
9 principal subject to such discretionary power in favor of a
10 trustee of a second trust, the second trust, created under
11 either the same or different trust instrument in the event
12 that the trustee of the first trust decides that the
13 [appointment] **distribution** is necessary or desirable after
14 taking into account the terms and purposes of the first
15 trust, the terms and purposes of the second trust, and the
16 consequences of the distribution. **A trustee may exercise**
17 **the power described in this subsection by distributing**
18 **property from the first trust to one or more second trusts**
19 **or by modifying the trust instrument for the first trust**
20 **which, as modified, becomes one or more second trusts.**

21 2. With respect to a second trust to which a
22 distribution is made pursuant to subsection 1 of this
23 section:

24 (1) At least one permissible distributee of the first
25 trust shall be a permissible distributee of the second trust
26 immediately after the distribution;

27 (2) If, at the time of the distribution, the settlor
28 of the first trust is living and the first trust is not a
29 grantor trust under Subpart E of Part I of Subchapter J of
30 Chapter 1 of the Internal Revenue Code of 1986, as amended,
31 there may not be any permissible distributee of the second
32 trust immediately after the distribution who is not a
33 permissible distributee of the first trust;

34 (3) If, at the time of the distribution, the settlor
35 of the first trust is deceased or if, at the time of the
36 distribution, the first trust is a grantor trust under
37 Subpart E of Part I of Subchapter J of Chapter 1 of the

38 Internal Revenue Code of 1986, as amended, for reasons other
39 than the trustee having the power granted by this section,
40 any beneficiary of the first trust may be included as a
41 permissible distributee of the second trust immediately
42 after the distribution;

43 (4) The second trust may not include any beneficiary
44 who is not a beneficiary of the first trust; and

45 (5) The trust instrument for the second trust may
46 retain, modify, or omit a power of appointment granted in
47 the first trust, and the trust instrument for the second
48 trust may create a power of appointment if the powerholder
49 is a beneficiary of the second trust. Except to the extent
50 provided otherwise in subsection 4 of this section, a power
51 of appointment in the trust instrument for the second trust
52 may be a general or nongeneral power of appointment and the
53 permissible appointees of the power need not be limited to
54 the beneficiaries of the first trust.

55 3. The following provisions apply to a trust that has
56 a beneficiary with a disability:

57 (1) As used in this subsection, the following terms
58 mean:

59 (a) "Beneficiary with a disability", a beneficiary of
60 a first trust who the special-needs fiduciary believes may
61 qualify for governmental benefits based on disability,
62 whether or not the beneficiary currently receives those
63 benefits or is an individual who has been adjudicated
64 disabled or adjudicated incapacitated;

65 (b) "Governmental benefits", financial aid or services
66 from a state, federal, or other public agency;

67 (c) "Special-needs fiduciary", with respect to a trust
68 that has a beneficiary with a disability:

69 a. A trustee or other fiduciary, other than a settlor,
70 who has discretionary power under the terms of a trust to
71 make a distribution of income or principal, whether or not
72 limited by an ascertainable standard, to or for the benefit
73 of one or more beneficiaries; or

74 b. If no trustee or fiduciary has discretion under
75 subparagraph a. of this paragraph, a trustee or other
76 fiduciary, other than a settlor, who is required to
77 distribute part or all of the income or principal of the
78 first trust to or for the benefit of one or more
79 beneficiaries;

80 (d) "Special-needs trust", a trust the trustee
81 believes would not be considered a resource for purposes of
82 determining whether a beneficiary with a disability is
83 eligible for governmental benefits;

84 (2) A special-needs fiduciary may exercise the
85 authority granted by subsection 1 of this section if:

86 (a) A second trust is a special-needs trust that
87 benefits the beneficiary with a disability; and

88 (b) The special-needs fiduciary determines that
89 exercise of the authority pursuant to subsection 1 of this
90 section will further the purposes of the first trust; and

91 (3) The following provisions apply to any exercise of
92 the authority granted by this subsection:

93 (a) Notwithstanding the provisions of subdivision (4)
94 of subsection 2 of this section to the contrary, the terms
95 of the second trust may:

96 a. Provide that an interest is held by a pooled trust
97 as defined by Medicaid law for the benefit of the
98 beneficiary with a disability under 42 U.S.C. Section
99 1396p(d) (4) (C); or

100 **b. Contain payback provisions complying with**
101 **reimbursement requirements of Medicaid law under 42 U.S.C.**
102 **Section 1396p(d) (4) (A) ;**

103 **(b) The provisions of subdivision (3) of subsection 4**
104 **of this section shall not apply to the interests of the**
105 **beneficiary with a disability; and**

106 **(c) Except as affected by any change to the interests**
107 **of the beneficiary with a disability, the second trust, or**
108 **if there are two or more second trusts, the second trusts in**
109 **the aggregate, shall grant each other beneficiary of the**
110 **first trust beneficial interests in the second trusts which**
111 **are substantially similar to the beneficiary's beneficial**
112 **interests in the first trust, unless such other**
113 **beneficiary's interest is modified in accordance with the**
114 **provisions of this section other than this subsection.**

115 **4.** The following provisions apply to any exercise of
116 the authority granted by subsection 1 of this section:

117 **(1) [The second trust may have as beneficiaries only**
118 **one or more of those beneficiaries of the first trust to or**
119 **for whom any discretionary distribution may be made from the**
120 **first trust and who are proper objects of the exercise of**
121 **the power, or one or more of those other beneficiaries of**
122 **the first trust to or for whom a distribution of income or**
123 **principal may have been made in the future from the first**
124 **trust at a time or upon the happening of an event specified**
125 **under the first trust;**

126 **(2) Unless the exercise of such power is limited by an**
127 **ascertainable standard, no trustee of the first trust may**
128 **exercise such authority to make a distribution from the**
129 **first trust if:**

130 **(a) Such trustee is a beneficiary of the first trust;**
131 **or**

132 (b) Any beneficiary may remove and replace the trustee
133 of the first trust with a related or subordinate party to
134 such beneficiary within the meaning of Section 672(c) of the
135 Internal Revenue Code;

136 (3) Except if participating in a change that is needed
137 for a distribution to any such beneficiary under an
138 ascertainable standard, no trustee shall exercise such
139 authority to the extent that doing so would have the effect
140 either of:

141 (a) Increasing the distributions that can be made in
142 the future from the second trust to the trustee of the first
143 trust or to a beneficiary who can remove and replace the
144 trustee of the first trust with a related or subordinate
145 party to such beneficiary within the meaning of Section
146 672(c) of the Internal Revenue Code; or

147 (b) Removing restrictions on discretionary
148 distributions imposed by the instrument under which the
149 first trust was created;

150 (4) In the case of any trust contributions which have
151 been treated as gifts qualifying for the exclusion from gift
152 tax described in Section 2503(b) of the Internal Revenue
153 Code, by reason of the application of Section 2503(c), the
154 governing instrument for the second trust shall provide that
155 the beneficiary's remainder interest shall vest no later
156 than the date upon which such interest would have vested
157 under the terms of the governing instrument for the first
158 trust;

159 (5) The exercise of such authority may not reduce any
160 income interest of any income beneficiary of any of the
161 following trusts:

162 (a) A trust for which a marital deduction has been
163 taken for federal tax purposes under Section 2056 or 2523 of

164 the Internal Revenue Code or for state tax purposes under
165 any comparable provision of applicable state law;

166 (b) A charitable remainder trust under Section 664 of
167 the Internal Revenue Code;

168 (c) A grantor retained annuity trust under Section
169 2702 of the Internal Revenue Code; or

170 (d) A trust which has been qualified as a Subchapter S
171 trust under Section 1361(d) of the Internal Revenue Code or
172 an electing small business trust under Section 1361(e) of
173 the Internal Revenue Code] **If the exercise of the authority**
174 **granted by subsection 1 of this section is limited by an**
175 **ascertainable standard and the trustee exercising such**
176 **authority is a permissible distributee of the first trust**
177 **under such standard, then:**

178 (a) The discretionary power under the trust instrument
179 for the second trust to distribute income or principal to
180 such trustee as a permissible distributee shall be subject
181 to the same ascertainable standard as, or a more restrictive
182 ascertainable standard than, such standard in the trust
183 instrument for the first trust; and

184 (b) The trust instrument for the second trust shall
185 not:

186 a. Modify a power of appointment granted to such
187 trustee in the first trust; or

188 b. Grant a power of appointment to such trustee that
189 did not exist in the first trust;

190 (2) An exercise of the authority granted by subsection
191 1 of this section is subject to the following limitations:

192 (a) If the first trust contains property that
193 qualified, or would have qualified but for provisions of
194 this section other than this subdivision, for a marital
195 deduction for purposes of the gift or estate tax under the

196 Internal Revenue Code of 1986, as amended, the trust
197 instrument for the second trust shall not include or omit
198 any term that, if included in or omitted from the trust
199 instrument for the second trust, would have prevented the
200 transfer from qualifying for the deduction, or would have
201 reduced the amount of the deduction, under the same
202 provisions of the Internal Revenue Code under which the
203 transfer qualified;

204 (b) If the first trust contains property that
205 qualified, or would have qualified but for provisions of
206 this section other than this subdivision, for a charitable
207 deduction for purposes of the income, gift, or estate tax
208 under the Internal Revenue Code of 1986, as amended, the
209 trust instrument for the second trust shall not include or
210 omit any term that, if included in or omitted from the trust
211 instrument for the second trust, would have prevented the
212 transfer from qualifying for the deduction, or would have
213 reduced the amount of the deduction, under the same
214 provisions of the Internal Revenue Code under which the
215 transfer qualified;

216 (c) If the first trust contains property that
217 qualified, or would have qualified but for provisions of
218 this section other than this subdivision, for the exclusion
219 from the gift tax described in Section 2503(b) of the
220 Internal Revenue Code of 1986, as amended, the trust
221 instrument for the second trust shall not include or omit a
222 term that, if included in or omitted from the trust
223 instrument for the second trust, would have prevented the
224 transfer from qualifying under Section 2503(b) of the
225 Internal Revenue Code. If the first trust contains property
226 that qualified, or would have qualified but for provisions
227 of this section other than this subdivision, for the

228 exclusion from the gift tax described in Section 2503(b) of
229 the Internal Revenue Code, by application of Section 2503(c)
230 of the Internal Revenue Code, the trust instrument for the
231 second trust shall not include or omit a term that, if
232 included or omitted from the trust instrument for the second
233 trust, would have prevented the transfer from meeting the
234 requirements of Section 2503(c) of the Internal Revenue Code;

235 (d) If the property of the first trust includes shares
236 of stock in an S corporation, as defined in Section 1361 of
237 the Internal Revenue Code of 1986, as amended, and the first
238 trust is, or but for provisions of this section other than
239 this subdivision would be, a permitted shareholder under any
240 provision of Section 1361 of the Internal Revenue Code, the
241 trustee of the first trust may exercise such authority with
242 respect to part or all of the S corporation stock only if
243 the second trust receiving the stock is a permitted
244 shareholder under Section 1361(c)(2) of the Internal Revenue
245 Code. If the property of the first trust includes shares of
246 stock in an S corporation and the first trust is, or but for
247 provisions of this section other than this subdivision would
248 be, a qualified subchapter-S trust within the meaning of
249 Section 1361(d) of the Internal Revenue Code, the trust
250 instrument for the second trust shall not include or omit a
251 term that prevents the second trust from qualifying as a
252 qualified subchapter-S trust; and

253 (e) If the first trust contains property that
254 qualified, or would have qualified but for provisions of
255 this section other than this subdivision, for a zero
256 inclusion ratio for purpose of the generation-skipping
257 transfer tax under Section 2642(c) of the Internal Revenue
258 Code of 1986, as amended, the trust instrument for the
259 second trust shall not include or omit a term that, if

260 included in or omitted from the first trust, would have
261 prevented the transfer to the first trust from qualifying
262 for a zero inclusion ratio under Section 2642(c) of the
263 Internal Revenue Code;

264 [(6)] (3) The exercise of such authority does not
265 apply to trust property subject to a presently exercisable
266 power of withdrawal held by a trust beneficiary to whom, or
267 for the benefit of whom, the trustee has authority to make
268 distributions, unless after the exercise of such authority,
269 such beneficiary's power of withdrawal is unchanged with
270 respect to the trust property; and

271 [(7)] (4) A spendthrift clause or a provision in the
272 trust instrument that prohibits amendment or revocation of
273 the trust shall not preclude the trustee from exercising the
274 authority granted by subsection 1 of this section.

275 [3.] 5. At least sixty days prior to making a
276 discretionary distribution under subsection 1 of this
277 section, the trustee of the first trust shall notify **the**
278 **permissible distributees of the first trust and** the
279 permissible distributees of the second trust[, or the
280 qualified beneficiaries of the second trust if there are no
281 permissible distributees of the second trust,] of the
282 distribution. A beneficiary may waive the right to the
283 notice required by this subsection and, with respect to
284 future distributions, may withdraw a waiver previously given.

285 [4.] 6. In exercising the authority granted by
286 subsection 1 of this section, the trustee shall remain
287 subject to all fiduciary duties otherwise imposed under the
288 trust instrument and Missouri law.

289 [5.] 7. This section does not impose on a trustee a
290 duty to exercise the authority granted by subsection 1 of

291 this section in favor of another trust or to consider
292 exercising such authority in favor of another trust.

293 **8. A second trust may have a duration that is the same**
294 **as or different from the duration of the first trust.**

295 **However, to the extent that property of the second trust is**
296 **attributable to property of the first trust, the property of**
297 **the second trust is subject to any rules governing maximum**
298 **perpetuity, accumulation, or suspension of the power of**
299 **alienation which apply to property of the first trust. The**
300 **provisions of this subsection shall not preclude the**
301 **creation of a general power of appointment in the trust**
302 **instrument for a second trust as authorized by subdivision**
303 **(5) of subsection 2 of this section.**

304 **9. In the event the trust instrument for the second**
305 **trust in part does not comply with this section but would**
306 **otherwise be effective under this section, the exercise of**
307 **the power is effective and the following rules apply with**
308 **respect to the principal of the second trust attributable to**
309 **the exercise of the power:**

310 **(1) A provision in the trust instrument for the second**
311 **trust which is not permitted under this section is void to**
312 **the extent necessary to comply with this section; and**

313 **(2) A provision required by this section to be in the**
314 **trust instrument for the second trust which is not contained**
315 **in the trust instrument is deemed to be included in the**
316 **trust instrument to the extent necessary to comply with this**
317 **section.**

318 **[6.] 10. This section is intended to codify and, from**
319 **and after enactment, to provide certain limitations to the**
320 **common law of this state, and this section applies to any**
321 **trust governed by the laws of this state, including a trust**

322 whose principal place of administration is transferred to
323 this state before or after the enactment of this section.

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