

1           436.005. As used in sections 436.005 to 436.071, unless the context otherwise  
2 requires, the following terms shall mean:

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

6           (2) "Division", the division of professional registration of the department of  
7 [economic development] insurance, financial institutions and professional  
8 registration;

9           (3) "Funeral merchandise", caskets, grave vaults, or receptacles, and other  
10 personal property incidental to a funeral or burial service, and such term shall also  
11 include grave lots, grave space, grave markers, monuments, tombstones, crypts, niches or  
12 mausoleums

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

15           (5) "Preneed contract", any contract or other arrangement, which requires the  
16 payment of money or other property in consideration for the final disposition of a dead  
17 human body, or for funeral or burial services or facilities, or for funeral merchandise,  
18 where such disposition, services, facilities or merchandise are not immediately required,  
19 including, but not limited to, an agreement providing for a membership fee or any other  
20 fee having as its purpose the furnishing of burial or funeral services or merchandise at a  
21 discount, except for contracts of insurance, including payment of proceeds from contracts  
22 of insurance, unless the preneed seller or provider is named as the owner or beneficiary in

1 the contract of insurance. In no instance shall a preneed contract be funded by term  
2 life insurance;

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

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

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

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

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

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

14 436.007. 1. Each preneed contract made after August 13, 1982, shall be void and  
15 unenforceable unless:

16 (1) It is in writing;

17 (2) It is executed by a seller who is in compliance with the provisions of section  
18 436.021;

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

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

1 (5) The terms of such trust and related agreements among two or more of the  
2 contract seller, the contract provider, and the trustee of such trust are in compliance with  
3 the provisions of sections 436.005 to [436.071] 436.072;

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

5 2. If a preneed contract does not comply with the provisions of sections 436.005  
6 to [436.071] 436.072, all payments made under such contract shall be recoverable by the  
7 purchaser, or legal representative, from the contract seller or other payee thereof, together  
8 with interest at the rate of ten percent per annum and all reasonable costs of collection,  
9 including attorneys' fees.

10 3. Each preneed contract made before August 13, 1982, and all payments and  
11 disbursements under such contract shall continue to be governed by sections 436.010 to  
12 436.080, as those sections existed at the time the contract was made; but, the provisions  
13 of subsection 2 of section 436.035 may be applied to all preneed contracts which are  
14 executory on August 13, 1982.

15 4. Subject to the provisions of subdivision (5) of section 436.005, the provisions  
16 of sections 436.005 to [436.071] 436.072 shall apply to the assignment of proceeds of  
17 any contract of insurance for the purpose of funding a preneed contract or written in  
18 conjunction with a preneed contract. Laws regulating insurance shall not apply to preneed  
19 contracts, but shall apply to any insurance sold with a preneed contract.

20 5. No preneed contract shall become effective unless and until the purchaser  
21 thereof has placed his or her signature in a space provided on such contract, or

1 application therefor, and the purchaser has received a copy of such contract signed by the  
2 seller.

3 6. The seller and the provider of a preneed contract may be the same person.

4 436.011. 1. Any seller who designates a person as a provider in a preneed contract  
5 without a contractual relationship with such person is in violation of the provisions of  
6 sections 436.005 to [436.071] 436.072. Upon request of the board, a licensed seller or  
7 provider shall provide a copy of any preneed contract or any contract or agreement  
8 with a seller or provider.

9 2. Any person who knowingly permits a seller to sell a preneed contract  
10 designating him as the provider or as one of two or more providers who will furnish the  
11 funeral merchandise and services described in the preneed contract shall provide the  
12 funeral merchandise and services described in the preneed contract for the beneficiary.  
13 Failure of any such person to do so shall be a violation of the provisions of sections  
14 436.005 to [436.071] 436.072 and shall be cause for suspension or revocation of that  
15 person's license under the provisions of section 333.061, RSMo.

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

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

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

10           (2) Such person **is registered to conduct business with the Missouri Secretary**  
11 **of State and** is [registered] licensed with the state board as a provider and pays a  
12 licensing fee to be established by the board and files with the state board a written  
13 consent authorizing the state board to order an investigation, examination or audit [and  
14 if necessary an audit by the staff of the division of professional registration who are not  
15 connected with the board] of its joint accounts or books and records which contain  
16 information concerning preneed contracts sold for, [in] on behalf of, or in which he or  
17 she is named as provider of the described funeral merchandise or services. The state  
18 board may order an investigation to determine compliance with this chapter.

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

20           (1) Furnish the state board in writing with the name and address of each seller  
21 authorized by the provider to sell preneed contracts in which the provider is named as  
22 such within fifteen days after the provider signs a written agreement or authorization

1 permitting the seller to sell preneed contracts designating or obligating the provider as the  
2 "provider" under the contract. This notification requirement shall include a provider who,  
3 itself, acts as seller;

4 (2) Pay an annual renewal fee and [F]file annually with the state board by the  
5 thirty first day of October a report Annual reports filed after the date provided  
6 herein shall be subject to a late fee of one hundred dollars for every six months past  
7 the renewal deadline or an amount determined by the board by rule. The annual  
8 report [which] shall contain:

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

11 (b) The name and address of each seller with whom it has entered into a written  
12 agreement since last filing a report and a list including the name, contract number and  
13 amount of each preneed contract, the phone number and address of the purchaser  
14 as identified in the contract, and the total payments collected by the provider for  
15 each preneed contract since the last annual report filed with the board;

16 (c) The name and address of the custodian of its books and records containing  
17 information about preneed contract sales and services, and;

18 (d) The name and address of the financial institutions in which joint  
19 accounts are held as authorized by 436.053.

20 (3) Cooperate with the state board , the office of the attorney general of Missouri,  
21 and the division in any investigation, examination or audit brought under the provisions  
22 of sections 436.005 to [436.071] 436.072;

1           (4) At least thirty days prior to selling or otherwise disposing of its business  
2 assets, or its stock if a corporation, or ceasing to do business, give written notification to  
3 the state board and to all sellers with whom it has one or more preneed contracts of its  
4 intent to engage in such sale or to cease doing business. In the case of a sale of assets or  
5 stock, the written notice shall also contain the name, phone number and address of the  
6 purchaser. Upon receipt of such written notification, the state board may take reasonable  
7 and necessary action to determine that any preneed contracts which the provider is  
8 obligated to service will be satisfied at the time of need, including, but not limited to,  
9 an examination of books and records or audit of any joint account. The state board  
10 may waive the requirements of this subsection, or may shorten the period of notification  
11 whenever in its discretion it determines that compliance with its provisions are not  
12 necessary. Failure of the state board to take action regarding such sale or termination of  
13 business within thirty days shall constitute such a waiver.

14           3. It is a violation of the provisions of sections 436.005 to ~~[436.071]~~ 436.072 and  
15 subdivision (3) of section 333.121, RSMo, for any person to sell, transfer or otherwise  
16 dispose of the assets of a provider without first complying with the provisions of  
17 subdivision (4) of subsection 2 of this section. This violation shall be in addition to the  
18 provisions of section 436.061.

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

1           5. With respect to a provider or seller licensed under the provisions of chapter  
2 333, RSMo, any violation of the provisions of sections 436.005 to ~~[436.071]~~ **436.072**  
3 shall constitute a violation of subdivision (3) of section 333.121, RSMo.

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

8           (1) Be an individual resident of Missouri or a business entity duly authorized to  
9 transact business in Missouri **and registered with the Missouri Secretary of State;**

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

12           (3) Have registered with the state board **and have paid a licensing fee to be**  
13 **established by the board by rules.**

14           2. **In lieu of establishing a trust, the applicant may certify to the board that a**  
15 **whole life insurance policy will be purchased on the life of the beneficiary for each**  
16 **preneed contract.**

17           3. Each seller under one or more preneed contracts shall:

18           (1) Maintain adequate records of all such contracts and related agreements with  
19 providers and the trustee of preneed trusts regarding such contracts including copies of all  
20 such agreements;

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

4 (3) File annually with the state board by the thirty-first day of October a signed  
5 and notarized report on forms provided by the state board and pay the annual renewal  
6 fee established by the board by rule. Annual reports filed after the date provided  
7 herein shall be subject to a late fee of one hundred dollars for every six months past  
8 the renewal deadline or an amount as determined by the board by rule. Any seller  
9 who fails to file their annual report on or before the thirty-first day of October shall  
10 be prohibited from selling any preneed contracts until the annual report, and all  
11 applicable fees, have been paid to the board. Such [a] report shall [only] contain:

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

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

14 (c) The total number of preneed contracts sold in Missouri since the filing of the  
15 last report and a detailed list including the name, contract number, amount of each  
16 preneed contract the seller has written in Missouri since the last filing report, the  
17 amount the seller has received as payment for each preneed contract and the  
18 address and phone number of the purchaser as reflected in the contract;

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

21 (e) The name and address of the insurance company issuing a whole life  
22 insurance policy on the life of each beneficiary for each preneed contract or the

1 financial institution in Missouri in which it maintains the trust accounts required under  
2 the provisions of sections 436.005 to [436.071] 436.072 and the account numbers of such  
3 trust accounts;

4 (f) A consent authorizing the state board to order an examination and if necessary  
5 an audit [by staff of the division of professional registration who are not connected with  
6 the board and a] of the trust account, designated by depository account number. [The staff  
7 of the division of professional registration in conducting the audit shall not release a  
8 detailed accounting of the trust account to the board unless there exist circumstances  
9 indicating that the account does not comply with the requirements of sections 436.005 to  
10 436.071, but shall provide the board with a summary of the examination or audit showing  
11 general compliance with the provisions of sections 436.005 to 436.071];

12 (4) File with the state board a consent authorizing the state board to order an  
13 investigation, examination and if necessary an audit [by staff of the division of  
14 professional registration who are not connected with the board] of its books and records  
15 relating to the sale of preneed contracts and the name and address of the person  
16 designated by the seller as custodian of these books and records. [The staff of the division  
17 of professional registration in conducting the audit shall not release a detailed accounting  
18 of the trust account to the board unless there exist circumstances indicating that the  
19 account does not comply with the requirements of sections 436.005 to 436.071, but shall  
20 provide the board with a summary of the examination or audit showing general  
21 compliance with the provisions of sections 436.005 to 436.071];

1 (5) Cooperate with the state board, the office of the attorney general, and the  
2 division in any investigation, examination or audit brought under the provisions of  
3 sections 436.005 to [436.071] 436.072.

4 [3] 4. Prior to selling or otherwise disposing of a majority of its business assets, or  
5 a majority of its stock if a corporation, or ceasing to do business as a seller, the seller  
6 shall provide written notification to the state board of its intent to engage in such sale at  
7 least sixty days prior to the date set for the closing of the sale, or of its intent to cease  
8 doing business at least sixty days prior to the date set for termination of its business. The  
9 written notice shall be sent, at the same time as it is provided to the state board, to all  
10 providers who are then obligated to provide funeral services or merchandise under  
11 preneed contracts sold by the seller. Upon receipt of the written notification, the state  
12 board may take reasonable and necessary action to determine that the seller has made  
13 proper plans to assure that the trust [assets] accounts of the seller will be set aside and  
14 used to service outstanding preneed contracts sold by the seller, including, but not  
15 limited to, an examination of books and records or audit of the trust account. The  
16 state board may waive the requirements of this subsection or may shorten the period of  
17 notification whenever in its discretion it determines that compliance with its provisions  
18 are not necessary. Failure of the state board to take action regarding such sale or  
19 termination of business within sixty days shall constitute such a waiver.

20 [4]5. It is a violation of the provisions of sections 436.005 to [436.071] 436.072  
21 for any person to sell, transfer or otherwise dispose of the assets of a seller without first  
22 complying with the provisions of subsection 3 of this section.

1           436.027. 1. The seller may retain as his own money, for the purpose of  
2 covering his selling expenses, servicing costs, and general overhead, the initial funds so  
3 collected or paid until he has received for his use and benefit an amount not to exceed  
4 twenty percent of the total amount agreed to be paid by the purchaser of such prepaid  
5 funeral benefits as such total amount is reflected in the contract. After the seller retains  
6 the amount authorized by this section, all funds paid by the purchaser shall be placed in  
7 trust as required by this chapter

8           436.031. 1. The trustee of a preneed trust shall be a state or federally chartered  
9 financial institution authorized to exercise trust powers in Missouri The trustee shall  
10 accept all deposits made to it by the seller of a preneed contract and shall hold,  
11 administer, and distribute such deposits, in trust, as trust principal, pursuant to the  
12 provisions of sections 436.005 to [436.071] 436.072. Payments regarding two or more  
13 preneed contracts may be deposited into and commingled in the same preneed trust, so  
14 long as the trust's grantor is the seller of all such preneed contracts and the trustee  
15 maintains adequate records of all payments received.

16           2. All property held in a preneed trust, including principal and undistributed  
17 income, shall be invested and reinvested by the trustee thereof. The trustee shall exercise  
18 such judgment and care under circumstances then prevailing which men of ordinary  
19 prudence, discretion, and intelligence exercise in the management of their own affairs,  
20 not in regard to speculation but in regard to the permanent disposition of their funds,  
21 considering the probable income therefrom as well as the probable safety of their capital.  
22 [A preneed trust agreement may provide that when the principal and interest in a preneed

1 trust exceeds two hundred fifty thousand dollars, investment decisions regarding the  
2 principal and undistributed income may be made by a federally registered or Missouri-  
3 registered independent qualified investment advisor designated by the seller who  
4 established the trust; provided, that title to all investment assets shall remain with the  
5 trustee and be kept by the trustee to be liquidated upon request of the advisor of the  
6 seller.] In no case shall control of said assets be divested from the trustee nor shall said  
7 assets be placed in any investment which would be beyond the authority of a reasonably  
8 prudent trustee to invest in. [The trustee shall be relieved of all liability regarding  
9 investment decisions made by such qualified investment advisor.]

10           3. The seller of a preneed contract shall be entitled to all income, including,  
11 without limitation, interest, dividends, and capital gains, and losses generated by the  
12 investment of preneed trust property regarding such contract, and the trustee of the trust  
13 may distribute all income, net of losses, to the seller at least annually; but no such income  
14 distribution shall be made to the seller if, and to the extent that, the distribution would  
15 reduce the aggregate market value on the distribution date of all property held in the  
16 preneed trust, including principal and undistributed income, below the sum of all deposits  
17 made to such trust pursuant to subsection 1 of this section for all preneed contracts then  
18 administered through such trust.

19           4. All expenses of establishing and administering a preneed trust, including,  
20 without limitation, trustee's fees, legal and accounting fees, investment expenses, and  
21 taxes, shall be paid or reimbursed directly by the seller of the preneed contracts

1 administered through such trust and shall not be paid from the principal of a preneed  
2 trust.

3 5. The trustee of a preneed trust shall maintain adequate books of account of all  
4 transactions administered through the trust and pertaining to the trust generally. The  
5 trustee shall assist seller who established the trust or its successor in interest in the  
6 preparation of the annual report described in subdivision (3) of subsection 2 of section  
7 436.021. The seller shall furnish to each contract purchaser, within fifteen days after  
8 receipt of the purchaser's written request, a written statement of all deposits made to such  
9 trust regarding such purchaser's contract.

10 6. The trustee of a preneed trust shall, from time to time, distribute trust principal  
11 as provided by sections 436.005 to ~~436.071~~ 436.072.

12 7. A preneed trust shall terminate when trust principal no longer includes any  
13 payments made under any preneed contract, and upon such termination the trustee shall  
14 distribute all trust property, including principal and undistributed income, to the seller  
15 which established the trust.

16 436.035. 1. At any time before the final disposition of the dead body, or before  
17 funeral services, facilities, or merchandise described in a preneed contract are provided  
18 by the provider designated in the preneed contract, the purchaser may cancel the contract  
19 without cause by delivering written notice thereof to the seller and the provider. Within  
20 fifteen days after its receipt of such notice, the seller shall pay to the purchaser a net  
21 amount equal to all payments made into trust under the contract. Upon delivery of the

1 purchaser's receipt for such payment to the trustee, the trustee shall distribute to the seller  
2 from the trust an amount equal to all deposits made into the trust for the contract.

3 2. Notwithstanding the provisions of subsection 1 of this section, if a purchaser is  
4 eligible, becomes eligible, or desires to become eligible, to receive public assistance  
5 under chapter 208, RSMo, or any other applicable state or federal law, the purchaser may  
6 irrevocably waive and renounce his right to cancel the contract pursuant to the provisions  
7 of subsection 1 of this section, which waiver and renunciation shall be made in writing  
8 and delivered to the contract seller; but the purchaser may designate and redesignate the  
9 provider in the irrevocable agreement or plan where applicable by the terms of the  
10 contract.

11 3. Notwithstanding the provisions of subsection 1 of this section, any purchaser,  
12 within thirty days of receipt of the executed contract, may cancel the contract without  
13 cause by delivering written notice thereof to the seller and the provider, and receive a full  
14 refund of all payments made on the contract. Notice of this provision and the appropriate  
15 addresses for notice of cancellation shall be so designated on the face of the contract.

16 436.038. If the death of the beneficiary occurs outside the general area served by  
17 the provider designated in a preneed contract, then the seller shall either provide for the  
18 furnishing of comparable funeral services and merchandise by a licensed mortuary  
19 selected by the next of kin of the purchaser or, at the seller's option, shall pay over to the  
20 purchaser in fulfillment of all obligations under the contract, an amount equal to all sums  
21 actually paid in cash by the purchaser under the preneed contract together with an interest  
22 to be provided for in the contract. Upon seller's full performance under the provisions of

1 this section, the trustee of the preneed trust for the contract shall distribute to the seller  
2 from the trust an amount equal to all deposits made into the trust for the contract.

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

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

18 436.048. If a seller shall fail to make timely payment of an amount due a  
19 purchaser, or a provider pursuant to the provisions of sections 436.005 to [\[436.071\]](#)  
20 [436.072](#), the purchaser or provider, as appropriate, shall have the right, in addition to  
21 other rights and remedies against such seller, to make demand upon the trustee of the  
22 preneed trust for the contract to distribute to the purchaser or provider from the trust, as

1 damages for its breach, an amount equal to all deposits made into the trust for the  
2 contract.

3 436.051. Upon the death or legal incapacity of a purchaser, all rights and remedies  
4 granted to the purchaser pursuant to the provisions of sections 436.005 to [436.071]  
5 436.072 shall be enforceable by and accrue to the benefit of the purchaser's legal  
6 representative or his successor designated in such contract, and all payments otherwise  
7 payable to the purchaser shall be paid to that person.

8 436.053. 1. Notwithstanding the provisions of sections 436.021 to 436.048, the  
9 provider and the purchaser may agree that all funds paid the provider by the purchaser  
10 shall be deposited with financial institutions chartered and regulated by the federal or  
11 state government authorized to do business in Missouri in an account in the joint names  
12 and under the joint control of the provider and purchaser. If the purchaser has irrevocably  
13 waived and renounced his right to cancel the agreement between the provider and the  
14 purchaser pursuant to subdivision (5) of this subsection, such agreement may provide that  
15 all funds held in the account at the beneficiary's death shall be applied toward the  
16 purchase of funeral or burial services or facilities, or funeral merchandise, selected by the  
17 purchaser or the responsible party after the beneficiary's death, in lieu of the detailed  
18 identification of such items required by subdivision (3) of subsection 1 of section  
19 436.007. The agreement between the provider and purchaser shall provide that:

20 (1) The total consideration to be paid by the purchaser under the contract shall be  
21 made in one or more payments into the joint account, including the name and address  
22 of the financial institution which holds such moneys and the account numbers of

1 such moneys, at the time the agreement is executed or, thereafter within five days of  
2 receipt, respectively;

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

6 (3) The income generated by the deposited funds shall be used to pay the  
7 reasonable expenses of administering the agreement, and the balance of the income shall  
8 be distributed or reinvested as provided in the agreement.

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

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

20 (6) If the death of the beneficiary occurs outside the general area served by the  
21 provider, then the provider shall either provide for the furnishing of comparable funeral  
22 services and merchandise by a licensed mortuary selected by the purchaser or, at the

1 provider's option, shall pay over to the purchaser in fulfillment of the obligation of the  
2 preneed contract, an amount equal to the sums actually paid in cash by such purchaser  
3 under such preneed contract together interest to be provided for in the contract, in which  
4 event the financial institution shall distribute the deposited funds to the provider;

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

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

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

17 **436.054. 1. It is unlawful for**  
18 **(1) the seller to purchase with preneed funds under this section any term life**  
19 **insurance to fund the preneed contract; or**  
20 **(2) The seller to procure or accept any loan against any life insurance**  
21 **contract.**

1           436.055 1. All complaints received by the state board which allege a [registrant's]  
2 licensee's noncompliance with the provisions of sections 436.005 to [436.071] 436.072  
3 or allege that a licensee has committed any act for which the board may discipline  
4 or refuse to issue a license under section 436.062, [shall be forwarded to the division of  
5 professional registration for investigation, except minor complaints which the state board  
6 can mediate or otherwise dispose of by contacting the parties involved] **may be**  
7 investigated by the board. A copy of each such complaint shall be forwarded to the  
8 subject [registrant] licensee, except [that each complaint] **the board shall not be**  
9 srequired to forward complaints in which the complainant alleges [under oath] that a  
10 [registrant] licensee has misappropriated preneed contract payments [may be forwarded  
11 to the division of professional registration without notice to the subject registrant.] **This**  
12 section shall not be construed to limit the board's authority to file a complaint with  
13 the administrative hearing commission charging a licensee of the board with any  
14 actionable conduct or violation, regardless of whether such complaint exceeds the  
15 scope of acts charged in a preliminary public complaint filed with the board and  
16 whether any public complaint has been filed with the board.

17           2. [The division shall investigate each complaint forwarded from the state board  
18 using staff who are not connected with the state board and shall forward the results of  
19 such investigation to the subject registrant and to the attorney general for evaluation. If  
20 the attorney general, after independent inquiry using staff of the attorney general's office  
21 who have not represented the board, determines that there is no probable cause to  
22 conclude that the registrant has violated sections 436.005 to 436.071, the registrant and

1 the state board shall be so notified and the complaint shall be dismissed; but, if the  
2 attorney general determines that there is such probable cause the registrant shall be so  
3 notified and the results of such evaluation shall be transmitted to the state board for  
4 further action as provided in sections 436.061 and 436.063.] **The board may**  
5 **investigate, examine or audit the books or records of any licensee, or examine or**  
6 **audit a preneed trust or joint account, at any time to ensure a licensee's compliance**  
7 **with the provisions of sections 436.005 to 436.072. The board shall have authority to**  
8 **conduct random inspections or audits.**

9 **3. Upon determining that an inspection, investigation, examination or**  
10 **audit shall be conducted, the board shall issue a notice authorizing one or more**  
11 **employees or independent contractors to perform such inspection, investigation,**  
12 **examination or audit and instructing such employees or independent contractors as**  
13 **to the scope of such inspection, investigation, examination or audit The board shall**  
14 **not appoint any employee or contract if such employee or contractor either directly**  
15 **or indirectly has a conflict of interest or is affiliated with the management of, or**  
16 **owns a pecuniary interest in, any person subject to inspection, investigation,**  
17 **examination or audit under section 436.005 to 436.072. The board may assess the**  
18 **cost of any related inspection, investigation, examination or audit to the licensee.**

19 436.061. 1. Each person **including the officers, directors, partners, agents, or**  
20 **employees of such person** who shall knowingly and willfully violate **or assist or enable**  
21 **any person to violate** any provision of sections 436.005 to **[436.071, and any officer,**  
22 **director, partner, agent, or employee of such person involved in such violation]** **436.072**

1 by incompetence, misconduct, gross negligence, fraud, misrepresentation, or  
2 dishonesty is guilty of a class D felony. Each violation of any provision of sections  
3 436.005 to [436.071] 436.072 constitutes a separate offense and may be prosecuted  
4 individually. The attorney general shall have concurrent jurisdiction with any local  
5 prosecutor to prosecute under this section.

6 2. Any violation of the provisions of sections 436.005 to [436.071] 436.072 shall  
7 constitute a violation of the provisions of section 407.020, RSMo. In any proceeding  
8 brought by the attorney general for a violation of the provisions of sections 436.005 to  
9 [436.071] 436.072, the court may **order all relief and penalties authorized under**  
10 **chapter 407 and**, in addition to imposing the penalties provided for in sections 436.005  
11 to [436.071] 436.072, order the revocation or suspension of the [registration] license of a  
12 defendant seller or provider.

13 436.062.1. The board may refuse to issue any certificate of registration  
14 or authority, permit or license required under this chapter to any applicant that has  
15 committed any act, or if an entity, if any officer, owner, member, director or  
16 partner has committed any act, for which disciplinary action or refusal is  
17 authorized under subsection 2 of this section. The board shall notify the applicant  
18 in writing of the reasons for the refusal and shall advise the applicant of his or her  
19 right to file a complaint with the administrative hearing commission as provided by  
20 chapter 621, RSMo.

21 2. The board may cause a complaint to be filed with the administrative  
22 hearing commission as provided by chapter 621, RSMo, against any holder of any

1 certificate of registration or authority, permit or license required by this chapter or  
2 any person who has failed to renew or has surrendered his or her certificate of  
3 registration or authority, permit or license for any one or any combination of the  
4 following causes:

5 (1) Use of any controlled substance, as defined in chapter 195, RSMo, or  
6 alcoholic beverage to an extent that such use impairs a person's ability to perform  
7 the work of any profession licensed or regulated by this chapter;

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

15 (3) Use of fraud, deception, misrepresentation or bribery in securing any  
16 certificate of registration or authority, permit or license issued under this chapter or  
17 in obtaining permission to take any examination given or required under this  
18 chapter;

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

1 (5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or  
2 dishonesty in the performance of the functions or duties of any profession licensed  
3 or regulated by this chapter;

4 (6) Violation of, or assisting or enabling any person to violate, any provision  
5 of this chapter, or of any lawful rule or regulation adopted under this chapter;

6 (7) Impersonation of any person holding a certificate of registration or  
7 authority, permit or license or allowing any person<sup>061</sup> to use his or her certificate of  
8 registration or authority, permit, license or diploma from any school;

9 (8) Disciplinary action against the holder of a license or other right to  
10 practice any profession regulated by this chapter granted by another state,  
11 territory, federal agency or country upon grounds for which revocation or  
12 suspension is authorized in this state;

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

15 (10) Misappropriation of preneed funds or funds belonging to a preneed  
16 trust or joint account holding preneed funds, or funds issued by an insurance  
17 company pursuant to a preneed contract;

18 (11) Assisting or enabling any person to practice or offer to practice any  
19 profession licensed or regulated by this chapter who is not registered and currently  
20 eligible to practice under this chapter;

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

1 (13) Failure to display a valid certificate or license if so required by this  
2 chapter or any rule promulgated hereunder;

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

4 (15) Use of any advertisement or solicitation which is false, misleading or  
5 deceptive to the general public or persons to whom the advertisement or solicitation  
6 is primarily directed;

7 (16) Violation of any statute or regulation related to the funeral industry or  
8 to consumer protection.

9 (17) Having any license, permit, or registration revoked by any insurance or  
10 preneed regulatory agency or professional licensing board of any state;

11 (18) Violation of any of the provisions of chapter 193, RSMo, chapter 194,  
12 RSMo, or chapter 333, RSMo, and;

13 (19) Willfully and through undue influence selling a preneed contract.

14 3. After the filing of such complaint, the proceedings shall be conducted in  
15 accordance with the provisions of chapter 621, RSMo. Upon a finding by the  
16 administrative hearing commission that the grounds, provided in subsection 2 of  
17 this section, for disciplinary action are met, the board may, singly or in  
18 combination, censure or place the person named in the complaint on probation on  
19 such terms and conditions as the board deems appropriate for a period not to  
20 exceed five years, or may suspend, for a period not to exceed three years, or revoke  
21 the license, certificate, or permit.

1 4. Notwithstanding any other provision of this section, the board may  
2 automatically suspend a license if the Board finds, after an inspection, examination,  
3 investigation or audit, a shortage of more than five thousand dollars in any preneed  
4 trust or joint account maintained pursuant to this chapter. Failure to provide  
5 access to the licensee's books, records or accounts as requested by the board in any  
6 inspection, investigation, examination or audit initiated pursuant to this subsection  
7 to determine whether suspension is warranted shall constitute grounds for  
8 automatic suspension as provided in this section.

9 5. Any person whose license is suspended under subsection 4 of this section  
10 may appeal such suspension to the administrative hearing commission. Notice of  
11 such appeal must be received by the administrative hearing commission within  
12 ninety days of mailing, by certified mail, the notice of suspension. Failure of a  
13 person whose license was suspended to notify the administrative hearing  
14 commission of his or her intent to appeal waives all rights to appeal the suspension.  
15 Upon notice of such person's intent to appeal, a hearing shall be held before the  
16 administrative hearing commission pursuant to Chapter 621.

17 6. The board shall only issue a license if the applicant, or if a business entity,  
18 each owner, partner, officer, member, or controlling ownership interest of the  
19 entity, is a person of good moral character.

20 [436.063. Whenever the state board determines that a registered seller or provider  
21 has violated or is about to violate any provision of sections 436.005 to 436.071 following  
22 a meeting at which the registrant is given a reasonable opportunity to respond to charges

1 of violations or prospective violations, it may request the attorney general to apply for the  
2 revocation or suspension of the seller's or provider's registration or the imposition of  
3 probation upon terms and conditions deemed appropriate by the state board in accordance  
4 with the procedure set forth in sections 621.100 to 621.205, RSMo. Use of the procedures  
5 set out in this section shall not preclude the application of the provisions of subsection 2  
6 of section 436.061.]

7 436.065. A preneed contract may offer the purchaser the option to acquire and  
8 maintain credit life insurance on the life of the purchaser. Such insurance shall provide  
9 for the payment of death benefits to the seller in an amount equal to the total of all  
10 contract payments unpaid as of the date of such purchaser's death, and shall be used  
11 solely to make those unpaid payments.

12 436.067. [No information given to the board, the division or the attorney general  
13 pursuant to the provisions of sections 436.005 to 436.071 shall, unless ordered by a court  
14 for good cause shown, be produced for inspection or copying by, nor shall the contents  
15 thereof be disclosed to, any person other than the seller, or the provider who is the subject  
16 thereof, the authorized employee of the board, the attorney general or the division,  
17 without the consent of the person who produced such material. However, under such  
18 reasonable conditions and terms as the board, the division or the attorney general shall  
19 prescribe, such material shall be available for inspection and copying by the person who  
20 produced such material or any duly authorized representative of such person. The state  
21 board, the division or the attorney general, or his duly authorized assistant, may use such  
22 documentary material or copies thereof in the enforcement of the provisions of sections

1 436.005 to 436.071 by presentation before any court or the administrative hearing  
2 commission, but any such material which contains trade secrets shall not be presented  
3 except with the approval of the court, or the administrative hearing commission, in which  
4 the action is pending after adequate notice to the person furnishing such material. No  
5 documentary material provided the board, the division or the attorney general pursuant to  
6 the provisions of sections 436.005 to 436.071 shall be disclosed to any person for use in  
7 any criminal proceeding.] **All complaints, investigation materials, annual**  
8 **registrations, reports, and information pertaining to the licensee shall be closed and**  
9 **may be disclosed only as authorized by statute or order of the court.**

10 **436.068. 1. The board may promulgate rules to implement the provisions of**  
11 **sections 436.005 to 436.072 and rules governing standards of service and practice to**  
12 **be followed by licensed providers and sellers as deemed necessary for the public**  
13 **good and consistent with the laws of this state. The board may prescribe a standard**  
14 **of proficiency as to the qualifications and fitness of those engaging in the practice of**  
15 **the preneed industry.**

16 **2. The board shall establish the amount of the fees authorized in this chapter**  
17 **and required by rules promulgated thereunder. Such fees shall be set at a level to**  
18 **produce revenue which does not substantially exceed the cost and expense of**  
19 **administering this chapter.**

20 **3. Any rule or portion of a rule, as that term is defined in section 536.010,**  
21 **RSMo, that is created under the authority delegated in this section shall become**  
22 **effective only if it complies with and is subject to all of the provisions of chapter 536,**

1 RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536,  
2 RSMo, are nonseverable and if any of the powers vested with the general assembly  
3 under chapter 536, RSMo, to review, to delay the effective date, or to disapprove  
4 and annul a rule are subsequently held unconstitutional, then the grant of  
5 rulemaking authority and any rule proposed or adopted after August 28, 2008, shall  
6 be invalid and void.

7 436.069. 1. [After July 16, 1985, e]Each seller shall remit an annual reporting fee  
8 in an amount of [two] ten dollars for each preneed contract sold in the year since the date  
9 the seller filed its last annual report with the state board or the fee established by the  
10 board by rule. This reporting fee shall be paid annually and may be collected from the  
11 purchaser of the preneed contract as an additional charge or remitted to the state board  
12 from the [funds] moneys of the seller.

13 2. [After July 16, 1985, e]Each provider shall remit an annual reporting fee of  
14 [thirty] fifty dollars, or the annual reporting fee established by the board by rule.

15 3. The reporting fee authorized by subsections 1 and 2 of this section are in  
16 addition to the fees authorized by section 436.071.

17 436.071. 1. Each application for [registration] licensure under the provisions of  
18 section 436.015 or 436.021 shall be accompanied by a preneed registration fee as  
19 determined by the board pursuant to the provisions of subsection 2 of section 333.111[,  
20 subsection 2].

21 436.072. The board or a designated member thereof or any agent authorized  
22 by the board may enter the office, premises, establishment, or place of business of

1 any preneed seller or provider of funeral service contracts licensed in this state, or  
2 any office, premises, establishment, or place where the practice of selling and/or  
3 providing preneed funerals is carried on, or where such practice is advertised as  
4 being carried on for the purpose of inspecting such office, premises, establishment,  
5 or place to determine compliance with chapter 436, or for the purpose of inspecting,  
6 examining, investigating or auditing the licensee or the sale of preneed contracts.

7