

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

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

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

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

106 8. This section shall apply to contracts entered into before
107 August 28, 2009.

436.465. A seller shall maintain:

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

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

436.470. 1. Any person may file a complaint with the board to
2 notify the board of an alleged violation of this chapter. The board shall
3 investigate each such complaint.

4 2. The board shall have authority to conduct inspections and
5 investigations of providers, sellers, and preneed agents and conduct
6 financial examinations of the books and records of providers, sellers,

7 and preneed agents and any trust or joint account to determine
8 compliance with sections 436.400 to 436.520, or to determine whether
9 grounds exist for disciplining a person licensed or registered under
10 sections 333.310 to 333.340, RSMo, at the discretion of the board and
11 with or without cause. The board shall conduct a financial examination
12 of the books and records of each seller as authorized by this section at
13 least once every five years, subject to available funding.

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

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

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

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

39 7. Upon request by the board, a licensee or registrant shall make
40 the books and records of the licensee or registrant available to the
41 board for inspection and copying at any reasonable time, including, any
42 insurance, trust, joint account, or financial institution records deemed
43 necessary by the board to determine compliance with sections 436.400

44 to 436.520.

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

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

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

60 11. The board, the division of finance, the department of
61 insurance, financial institutions and professional registration, and the
62 office of the attorney general may share information relating to any
63 preneed inspection, investigation, examination, or audit.

64 12. If an inspection, investigation, examination, or audit reveals
65 a violation of sections 436.400 to 436.520, the office of the attorney
66 general may initiate a judicial proceeding to:

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

- 81 **(11) Approve employment and compensation of preneed agents;**
82 **(12) Determine the propriety of investments;**
83 **(13) Determine the timing and quantity of distributions and**
84 **dispositions of assets; or**
85 **(14) Utilize any other power or authority vested in the attorney**
86 **general by law.**

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

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

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

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

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

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