

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

INTRODUCED BY SENATOR SCOTT.

Offered February 10, 2009.

Senate Substitute adopted, February 12, 2009.

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

TERRY L. SPIELER, Secretary.

0404S.05P

AN ACT

To repeal sections 208.010, 436.005, 436.007, 436.011, 436.015, 436.021, 436.027, 436.031, 436.035, 436.038, 436.041, 436.045, 436.048, 436.051, 436.053, 436.055, 436.061, 436.063, 436.065, 436.067, 436.069, and 436.071, RSMo, and to enact in lieu thereof thirty-five new sections relating to preneed funeral contracts, with penalty provisions.

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

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436.045, 436.048, 436.051, 436.053, 3 436.055, 436.061, 436.063, 436.065, 436.067, 436.069, and 436.071, RSMo, are 4 repealed and thirty-five new sections enacted in lieu thereof, to be known as 5 sections 208.010, 333.300, 333.310, 333.315, 333.320, 333.325, 333.330, 333.335,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

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

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

22 **(9) Set forth the terms for cancellation by the purchaser or by**
23 **the seller;**

24 **(10) Identify any preneed trust or joint account into which**
25 **contract payments shall be deposited, including the name and address**
26 **of the corresponding trustee or financial institution;**

27 **(11) Include the name, address and phone number of any**
28 **insurance company issuing an insurance policy used to fund the**
29 **preneed contract;**

30 **(12) Include the name and signature of the purchaser, the**
31 **preneed agent responsible for the sale of the contract, and the seller or**
32 **its authorized representative;**

33 **(13) Prominently identify whether the contract is a guaranteed**
34 **or non-guaranteed contract in a recognizable font;**

35 **(14) Include any applicable consumer disclosures required by the**
36 **board by rule and;**

37 **(15) Comply with the provisions of sections 436.400 to 436.520 or**
38 **any rule promulgated thereunder.**

39 **2. A preneed contract shall be voidable and unenforceable at the**
40 **option of the purchaser, or the purchaser's legal representative, if the**
41 **contract is not in compliance with this section or not issued by a seller**
42 **licensed under sections 333.300 to 333.340, RSMo. Upon exercising the**
43 **option, all payments made under such contract shall be recoverable by**
44 **the purchaser, or the purchaser's legal representative, from the**
45 **contract seller or other payee thereof.**

46 **3. A preneed contract shall only be designated as irrevocable if**
47 **the purchaser is using the contract to qualify for Mo HealthNet services**
48 **under chapter 208, RSMo. All purchasers shall have the right to cancel**
49 **or rescind a revocable preneed contract and transfer any preneed**
50 **contract with or without cause.**

51 **4. A preneed contract, including contracts entered into before**
52 **August 28, 2009, shall not be changed from a trust funded, insurance**
53 **funded, or joint account funded preneed contract without the consent**
54 **of the purchaser.**

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

3 2. In a trust funded preneed contract, a seller shall be allowed
4 to charge a **non-refundable origination fee of up to five percent** of the

5 total amount of the preneed contract which shall not be commingled
6 with any funds in any preneed trust. A seller shall deposit **one hundred**
7 **percent** of the payments received on a trust funded preneed contract,
8 minus the origination fee, if any is charged, into a trust designated by
9 this section within sixty days of receipt of such funds by the seller or
10 its designee. A seller may withdraw from the trust, up to **ten percent**
11 of the total payments deposited into the trust on the trust funded
12 contract.

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

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

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

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