

SECOND REGULAR SESSION

HOUSE BILL NO. 2469

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES KUESSNER (Sponsor),
WALSH AND WILDBERGER (Co-sponsors).

Read 1st time March 26, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

5524L.01I

AN ACT

To repeal sections 436.005, 436.021, 436.027, 436.031, 436.045, 436.055, 436.061, 436.063, and 436.067, RSMo, and to enact in lieu thereof eleven new sections relating to funeral contracts, with a penalty provision.

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

Section A. Sections 436.005, 436.021, 436.027, 436.031, 436.045, 436.055, 436.061, 2 436.063, and 436.067, RSMo, are repealed and eleven new sections enacted in lieu thereof, to 3 be known as sections 436.005, 436.021, 436.027, 436.031, 436.045, 436.054, 436.055, 436.059, 4 436.061, 436.067, and 436.068, to read as follows:

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

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

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

7 (3) "Funeral merchandise", caskets, grave vaults, or receptacles, and other personal 8 property incidental to a funeral or burial service, and such term shall also include grave lots, 9 grave space, grave markers, monuments, tombstones, crypts, niches or mausoleums [if, but only 10 if, such items are sold:

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

11 (a) By a companion agreement which is sold in contemplation of trade or barter for grave
12 vaults or funeral or burial services and funeral merchandise; or

13 (b) At prices, in excess of prevailing market prices, intended to be offset by reductions
14 in the costs of funeral or burial services or facilities which are not immediately required];

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

17 (5) "Preneed contract", [any contract or other arrangement which requires the current
18 payment of money or other property in consideration for the final disposition of a dead human
19 body, or for funeral or burial services or facilities, or for funeral merchandise, where such
20 disposition, services, facilities or merchandise are not immediately required, including, but not
21 limited to, an agreement providing for a membership fee or any other fee having as its purpose
22 the furnishing of burial or funeral services or merchandise at a discount, except for contracts of
23 insurance, including payment of proceeds from contracts of insurance, unless the preneed seller
24 or provider is named as the owner or beneficiary in the contract of insurance] **any agreement,
25 contract, or plan requiring the payment of money in a lump sum or installments which is
26 made or entered into with any person for the final disposition of a dead human body, for
27 funeral or burial services, or the furnishing of funeral merchandise where the delivery of
28 the funeral merchandise or the furnishing of services is not immediately required. A
29 preneed contract includes agreements providing for a membership fee or any other fee
30 having as its purpose the furnishing of funeral merchandise or burial or funeral services
31 to accomplish final disposition of a dead human body. A preneed contract may be funded
32 by any mechanism authorized by this chapter including cash payment or whole or credit
33 life insurance;**

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

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

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

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

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

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

436.021. 1. No person, including without limitation a person who is a provider under
2 one or more preneed contracts, shall sell, perform or agree to perform the seller's obligations

3 under, or be designated as the seller of, any preneed contract unless, at the time of that sale,
4 performance, agreement, or designation, that person shall:

5 (1) Be an individual resident of Missouri or a business entity duly authorized to transact
6 business in Missouri;

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

9 (3) Have registered with the state board.

10 **2. If the establishment of a preneed trust, as required by this section, would cause**
11 **undue hardship, the applicant for registration may petition the board for exemption from**
12 **this requirement. In the petition for exemption, the applicant shall provide the board with**
13 **a plan to ensure preneed moneys are safeguarded and shall execute any personal**
14 **guarantees, agreements to fund preneed contracts solely by life insurance, or bonds or any**
15 **other agreement the board may require. Whether undue hardship exists and whether this**
16 **exemption is granted shall be within the sole discretion of the board.**

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 such
20 agreements;

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

24 (3) File annually with the state board a signed and notarized report on forms provided
25 by the state board. Such a report shall only contain:

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

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

28 (c) The total number of preneed contracts sold in Missouri since the filing of the last
29 report;

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

32 (e) The name and address of the financial institution in Missouri in which it maintains
33 the trust accounts required under the provisions of sections 436.005 to 436.071 and the account
34 numbers of such trust accounts;

35 (f) A consent authorizing the state board to order an examination and if necessary an
36 audit by staff of the division of professional registration who are not connected with the board
37 of the trust account, designated by depository and account number. The staff of the division of
38 professional registration in conducting the audit shall not release a detailed accounting of the

39 trust account to the board unless there exist circumstances indicating that the account does not
40 comply with the requirements of sections 436.005 to 436.071, but shall provide the board with
41 a summary of the examination or audit showing general compliance with the provisions of
42 sections 436.005 to 436.071;

43 (4) File with the state board a consent authorizing the state board to order an examination
44 and if necessary an audit by staff of the division of professional registration who are not
45 connected with the board of its books and records relating to the sale of preneed contracts and
46 the name and address of the person designated by the seller as custodian of these books and
47 records. The staff of the division of professional registration in conducting the audit shall not
48 release a detailed accounting of the trust account to the board unless there exist circumstances
49 indicating that the account does not comply with the requirements of sections 436.005 to
50 436.071, but shall provide the board with a summary of the examination or audit showing
51 general compliance with the provisions of sections 436.005 to 436.071;

52 (5) Cooperate with the state board, the office of the attorney general, and the division in
53 any investigation, examination or audit brought under the provisions of sections 436.005 to
54 436.071.

55 [3.] 4. Prior to selling or otherwise disposing of a majority of its business assets, or a
56 majority of its stock if a corporation, or ceasing to do business as a seller, the seller shall provide
57 written notification to the state board of its intent to engage in such sale at least sixty days prior
58 to the date set for the closing of the sale, or of its intent to cease doing business at least sixty days
59 prior to the date set for termination of its business. The written notice shall be sent, at the same
60 time as it is provided to the state board, to all providers who are then obligated to provide funeral
61 services or merchandise under preneed contracts sold by the seller. Upon receipt of the written
62 notification, the state board may take reasonable and necessary action to determine that the seller
63 has made proper plans to assure that the trust assets of the seller will be set aside and used to
64 service outstanding preneed contracts sold by the seller. The state board may waive the
65 requirements of this subsection or may shorten the period of notification whenever in its
66 discretion it determines that compliance with its provisions are not necessary. Failure of the state
67 board to take action regarding such sale or termination of business within sixty days shall
68 constitute such a waiver.

69 [4.] 5. It is a violation of the provisions of sections 436.005 to 436.071 for any person
70 to sell, transfer or otherwise dispose of the assets of a seller without first complying with the
71 provisions of subsection 3 of this section.

436.027. 1. The seller may retain as his own money, for the purpose of covering his
2 selling expenses, servicing costs, and general overhead, the initial funds so collected or paid until
3 he has received for his use and benefit an amount not to exceed twenty percent of the total

4 amount agreed to be paid by the purchaser of such prepaid funeral benefits as such total amount
5 is reflected in the contract.

6 **2. All funds the seller is not entitled to retain that are received as payment on a**
7 **preneed contract shall be deposited in the seller's trust account within three business days**
8 **of receipt.**

9 **3. After the seller has received its twenty percent, all subsequent payments made**
10 **by the consumer shall be made payable directly to the trust and not to the seller.**

11 **4. If the seller receives a lump sum payment from the purchaser, the seller shall**
12 **deposit the entire amount into the trust account and be entitled to receive back from the**
13 **trust an amount not to exceed twenty percent of the total amount due on the preneed**
14 **contract.**

436.031. 1. The trustee of a preneed trust shall be a state or federally chartered financial
2 institution authorized to exercise trust powers in Missouri. The trustee shall accept all deposits
3 made to it by the seller of a preneed contract and shall hold, administer, and distribute such
4 deposits, in trust, as trust principal, pursuant to the provisions of sections 436.005 to 436.071.
5 Payments regarding two or more preneed contracts may be deposited into and commingled in
6 the same preneed trust, so long as the trust's grantor is the seller of all such preneed contracts and
7 the trustee maintains adequate records of all payments received.

8 **2. All property held in a preneed trust, including principal and undistributed income,**
9 **shall be invested and reinvested by the trustee thereof. The trustee shall exercise such judgment**
10 **and care under circumstances then prevailing which men of ordinary prudence, discretion, and**
11 **intelligence exercise in the management of their own affairs, not in regard to speculation but in**
12 **regard to the permanent disposition of their funds, considering the probable income therefrom**
13 **as well as the probable safety of their capital. A preneed trust agreement may provide that when**
14 **the principal and interest in a preneed trust exceeds two hundred fifty thousand dollars,**
15 **investment decisions regarding the principal and undistributed income may be made by a**
16 **federally registered or Missouri-registered independent qualified investment advisor designated**
17 **by the seller who established the trust and approved by the trustee; provided, that title to all**
18 **investment assets shall remain with the trustee and be kept by the trustee to be liquidated upon**
19 **request of the advisor of the seller in accordance with the provisions of this chapter. In no**
20 **case shall control of said assets be divested from the trustee nor shall said assets be placed in any**
21 **investment which would be beyond the authority of a reasonably prudent trustee to invest in.**
22 **The trustee shall be relieved of all liability regarding reasonable and prudent investment**
23 **decisions made by such qualified investment advisor. The trustee shall have the authority to**
24 **remove and replace the financial advisor if the trustee determines that the financial advisor**
25 **has violated or is about to violate any provision of this chapter. The trustee shall provide**

26 **a written notice to the attorney general's office and to the state board of the removal, the**
27 **name and address of the new trustee, and the reason for the removal.**

28 **3. Any investment of preneed funds shall be made in investments designed to**
29 **increase the value of the preneed funds. No investments shall be made in any manner that**
30 **does not have the potential to increase the value of the preneed funds. No trustee or**
31 **financial advisor shall invest preneed funds in term life insurance policies or any similar**
32 **insurance vehicle which does not have the potential to increase the value of the funds. No**
33 **loans against any life insurance policy purchased with preneed money shall be allowed.**

34 **4.** The seller of a preneed contract shall be entitled to all income, including, [without
35 limitation,] interest, dividends, and capital gains, and losses generated by the investment of
36 preneed trust property regarding such contract, and the trustee of the trust may distribute all
37 income, net of losses, to the seller at least annually; but no such income distribution shall be
38 made to the seller if, and to the extent that, the distribution would reduce the aggregate market
39 value on the distribution date of all property held in the preneed trust, including principal and
40 undistributed income, below the sum of all deposits made to such trust pursuant to subsection
41 1 of this section for all preneed contracts then administered through such trust.

42 [4.] **5.** All expenses of establishing and administering a preneed trust, including, without
43 limitation, trustee's fees, legal and accounting fees, investment expenses, and taxes, shall be paid
44 or reimbursed directly by the seller of the preneed contracts administered through such trust and
45 shall not be paid from the principal of a preneed trust.

46 [5.] **6.** The trustee of a preneed trust shall maintain adequate books of account of all
47 transactions administered through the trust and pertaining to the trust generally. The trustee shall
48 assist seller who established the trust or its successor in interest in the preparation of the annual
49 report described in subdivision (3) of subsection [2] **3** of section 436.021. The seller shall
50 furnish to each contract purchaser, within fifteen days after receipt of the purchaser's written
51 request, a written statement of all deposits made to such trust regarding such purchaser's contract.

52 [6.] **7.** The trustee of a preneed trust shall, from time to time, distribute trust principal
53 as provided by sections 436.005 to 436.071.

54 [7.] **8.** A preneed trust shall terminate when trust principal no longer includes any
55 payments made under any preneed contract, and upon such termination the trustee shall distribute
56 all trust property, including principal and undistributed income, to the seller which established
57 the trust.

436.045. Within thirty days after a provider and a witness shall certify in writing to the
2 seller that the provider has provided the final disposition of the dead body, and funeral [services,
3 facilities, and] merchandise described in the contract, or has provided alternative funeral benefits
4 for the beneficiary pursuant to special arrangements made with the purchaser **and upon being**

5 **provided a certified copy of the death certificate of the decedent**, the seller shall pay to the
6 provider a net amount equal to all payments required to be made pursuant to the written
7 agreement between the seller and the provider or all payments made under the contract. Upon
8 delivery to the trustee of the provider's receipt for such payment, the trustee shall distribute to
9 the seller from the trust an amount equal to all deposits made into the trust for the contract.

436.054. 1. In lieu of holding preneed funds in trust, a preneed contract may be
2 **funded by a whole life insurance policy subject to the seller making the following**
3 **requirements and written disclosures to the purchaser prior to accepting a purchaser's**
4 **initial payment:**

5 (1) **The purchaser shall be fully aware and receive written notice that the preneed**
6 **contract funds are for the purchase of life insurance and that the funds will not be held in**
7 **trust;**

8 (2) **If the insurance funding the preneed contract is sold by an insurance agent who**
9 **is also an employee of the preneed seller, the agent of a preneed seller, or an employee of**
10 **a licensed funeral establishment, the purchaser shall receive written notice of such**
11 **relationship and be advised that he or she may fund the preneed contract by the purchase**
12 **of a life insurance policy from any life insurance agent or company authorized to do**
13 **business in Missouri;**

14 (3) **Written disclosure of the name, address, telephone number, and contact**
15 **information for both the life insurance company and the agent of the life insurance**
16 **company selling the policy;**

17 (4) **Written disclosure of the relationship of the life insurance policy to the funding**
18 **of the preneed funeral contract and the nature and existence of any guarantees relating to**
19 **such contract;**

20 (5) **Written disclosure of the impact on the preneed funeral contract of any:**

21 (a) **Changes in the life insurance policy, including, but not limited to, changes in the**
22 **assignment, beneficiary designation, or use of the proceeds;**

23 (b) **Penalties to be incurred by the policyholder as a result of failure to make**
24 **premium payments; and**

25 (c) **Penalties to be incurred or moneys to be received as a result of cancellation or**
26 **surrender of the life insurance policy;**

27 (6) **Written disclosure containing all relevant information concerning what occurs**
28 **and whether any entitlements or obligations arise if there is a difference between the**
29 **proceeds of the life insurance policy and the amount actually needed to fund the preneed**
30 **funeral contract.**

31 **2. The purchaser shall be the owner and the only person allowed to make changes**
32 **to the life insurance policy. In no event shall the owner of the policy be the preneed seller.**

33 **3. In no event shall the seller, or its agent, collect from the purchaser any amount**
34 **in excess of what is required to pay the premiums on the life insurance policy used to fund**
35 **the preneed contract.**

36 **4. If, after the death of the beneficiary of a preneed contract, the proceeds from the**
37 **life insurance policy are in excess of the actual cost of the funeral merchandise and services**
38 **provided, any such excess proceeds, if the proceeds are not required to be paid to the state**
39 **for reimbursement of medical benefits, shall be refunded to the person taking financial**
40 **responsibility for the payment of the funeral merchandise and services, or if none, to the**
41 **estate of the decedent.**

 436.055. 1. All complaints received by the state board which allege a registrant's
2 noncompliance with the provisions of sections 436.005 to 436.071 **or allege that a registrant**
3 **has committed any act that would make him or her ineligible for registration under section**
4 **436.059** shall be forwarded to the division of professional registration for investigation, except
5 minor complaints which the state board can mediate or otherwise dispose of by contacting the
6 parties involved. A copy of each such complaint shall be forwarded to the subject registrant,
7 except that each complaint in which the complainant alleges under oath that a registrant has
8 misappropriated preneed contract payments may be forwarded to the division of professional
9 registration without notice to the subject registrant.

10 2. The division shall investigate each complaint forwarded from the state board using
11 staff who are not connected with the state board and shall forward the results of such
12 investigation to the subject registrant and to the attorney general for evaluation. [If the attorney
13 general, after independent inquiry using staff of the attorney general's office who have not
14 represented the board, determines that there is no probable cause to conclude that the registrant
15 has violated sections 436.005 to 436.071, the registrant and the state board shall be so notified
16 and the complaint shall be dismissed; but, if the attorney general determines that there is such
17 probable cause the registrant shall be so notified and the results of such evaluation shall be
18 transmitted to the state board for further action as provided in sections 436.061 and 436.063.]
19 **The attorney general shall evaluate the results of each investigation and shall be**
20 **authorized, at his or her discretion and with no further action from either the board or the**
21 **division, to proceed with any administrative, civil, or criminal proceedings in accordance**
22 **with sections 436.005 to 436.071, or he or she may refer the matter to the local prosecuting**
23 **attorney.**

24 **3. The division may inspect or audit the records of any seller, provider, or preneed**
25 **trust at any time to ensure a registrant's compliance with the provisions of sections 436.005**

26 to 436.071. The division shall conduct random inspections or audits of sellers and
27 providers of no fewer than five, nor more than twenty-five per fiscal year plus any
28 inspection or audit requested by the board or the attorney general's office. After each
29 inspection or audit, the division shall forward the results of such investigation to the
30 subject registrant and to the attorney general. The attorney general shall have the
31 authority to act upon the results of any such inspection or audit as if it were a complaint
32 filed with the board.

436.059. 1. The board shall not register any applicant for registration as either a
2 preneed seller or provider if the applicant, or if any business entity, in which each owner,
3 partner, officer, member, or controlling ownership interest, is a:

4 (1) Person who has had any license, permit, or registration revoked by any
5 insurance regulatory agency or professional licensing board of any state; or

6 (2) Person who has been adjudicated and found guilty, or entered a plea of guilty
7 or nolo contendere, whether or not a sentence is imposed, in a criminal prosecution under
8 the laws of any state or of the United States for any:

9 (a) Felony; or

10 (b) Offense where the essential element of which is fraud, dishonesty, deception, or
11 an act of violence; or

12 (c) Offense involving a controlled substance; or

13 (d) Offense implicating the licensee's competence to practice, including violations
14 of any statute or regulation related to the funeral industry or to consumer protection.
15

16 The board may issue a registration to an applicant ineligible for registration under this
17 subsection if the applicant demonstrates to the satisfaction of the board and within the
18 discretion of the board that the applicant is sufficiently rehabilitated to be fit for licensure.

19 2. Each person seeking registration under this chapter shall provide evidence to the
20 board sufficient for the board to determine that each applicant, or if a business entity, in
21 which each owner, partner, officer, member, or controlling ownership interest of the entity,
22 is a person of good moral character.

436.061. 1. Each person who shall knowingly and willfully violate any provision of
2 sections 436.005 to 436.071, and any officer, director, partner, agent, or employee of such person
3 involved in such violation is guilty of a class D felony. Each violation of any provision of
4 sections 436.005 to 436.071 constitutes a separate offense and may be prosecuted individually.
5 The attorney general shall have concurrent jurisdiction with any local prosecutor to
6 prosecute under this section.

7 2. Any violation of the provisions of sections 436.005 to 436.071 shall constitute a
8 violation of the provisions of section 407.020, RSMo. In any proceeding brought by the attorney
9 general for a violation of the provisions of sections 436.005 to 436.071, the court may, in
10 addition to imposing the penalties provided for in sections 436.005 to 436.071, order the
11 revocation or suspension of the registration of a defendant seller **or provider**.

12 **3. The attorney general may file a complaint with the administrative hearing**
13 **commission, as provided in chapter 621, RSMo, against any seller or provider or any**
14 **person who has failed to renew or has surrendered his or her seller or provider registration**
15 **for any violation of any provision of this section or if the registrant has committed any act**
16 **that would make him or her ineligible for registration under section 436.059.**

17 **4. Upon a finding by the administrative hearing commission that a registrant has**
18 **violated any provisions of sections 436.005 to 436.071, the board may take one or more of**
19 **the following actions:**

20 (1) **Censure; or**

21 (2) **Place the registrant on probation on such terms and conditions as the board**
22 **deems appropriate for a period not to exceed five years; or**

23 (3) **Suspend the registration for a period not to exceed three years; or**

24 (4) **Revoke the registration issued under sections 436.005 to 436.071.**

 436.067. [No information given to the board, the division or the attorney general
2 pursuant to the provisions of sections 436.005 to 436.071 shall, unless ordered by a court for
3 good cause shown, be produced for inspection or copying by, nor shall the contents thereof be
4 disclosed to, any person other than the seller, or the provider who is the subject thereof, the
5 authorized employee of the board, the attorney general or the division, without the consent of the
6 person who produced such material. However, under such reasonable conditions and terms as
7 the board, the division or the attorney general shall prescribe, such material shall be available for
8 inspection and copying by the person who produced such material or any duly authorized
9 representative of such person. The state board, the division or the attorney general, or his duly
10 authorized assistant, may use such documentary material or copies thereof in the enforcement
11 of the provisions of sections 436.005 to 436.071 by presentation before any court or the
12 administrative hearing commission, but any such material which contains trade secrets shall not
13 be presented except with the approval of the court, or the administrative hearing commission,
14 in which the action is pending after adequate notice to the person furnishing such material. No
15 documentary material provided the board, the division or the attorney general pursuant to the
16 provisions of sections 436.005 to 436.071 shall be disclosed to any person for use in any criminal
17 proceeding.] **All complaints, investigation materials, annual registration, reports, and**

18 **information pertaining to the registrant shall be closed and may be disclosed only as**
19 **authorized by statute or order of the court.**

436.068. The board may promulgate rules to implement the provisions of sections
2 **436.005 to 436.071. Any rule or portion of a rule, as that term is defined in section 536.010,**
3 **RSMo, that is created under the authority delegated in this section shall become effective**
4 **only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and,**
5 **if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are**
6 **nonseverable and if any of the powers vested with the general assembly under chapter 536,**
7 **RSMo, to review, to delay the effective date, or to disapprove and annul a rule are**
8 **subsequently held unconstitutional, then the grant of rulemaking authority and any rule**
9 **proposed or adopted after August 28, 2008, shall be invalid and void.**

[436.063. Whenever the state board determines that a registered seller or
2 provider has violated or is about to violate any provision of sections 436.005 to
3 436.071 following a meeting at which the registrant is given a reasonable
4 opportunity to respond to charges of violations or prospective violations, it may
5 request the attorney general to apply for the revocation or suspension of the
6 seller's or provider's registration or the imposition of probation upon terms and
7 conditions deemed appropriate by the state board in accordance with the
8 procedure set forth in sections 621.100 to 621.205, RSMo. Use of the procedures
9 set out in this section shall not preclude the application of the provisions of
10 subsection 2 of section 436.061.]

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