

SECOND REGULAR SESSION

**HOUSE BILL NO. 2594**

**94TH GENERAL ASSEMBLY**

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INTRODUCED BY REPRESENTATIVE MEADOWS.

Read 1st time April 1, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

5594L.02I

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**AN ACT**

To repeal sections 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, 436.067, 436.069, and 436.071, RSMo, and to enact in lieu thereof twenty-one new sections relating to preneed funeral contracts, with a penalty provision.

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

Section A. Sections 436.005, 436.007, 436.011, 436.015, 436.021, 436.027, 436.031, 2 436.035, 436.038, 436.041, 436.045, 436.048, 436.051, 436.053, 436.055, 436.061, 436.063, 3 436.067, 436.069, and 436.071, RSMo, are repealed and twenty-one new sections enacted in lieu 4 thereof, to be known as sections 436.005, 436.007, 436.011, 436.015, 436.021, 436.023, 5 436.027, 436.031, 436.035, 436.038, 436.041, 436.045, 436.048, 436.051, 436.053, 436.055, 6 436.061, 436.067, 436.069, 436.071, and 436.072, to read as follows:

436.005. As used in sections 436.005 to [436.071] **436.072**, 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 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,

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.

9 grave space, grave markers, monuments, tombstones, crypts, niches or mausoleums [if, but only  
10 if, such items are sold:

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, **and not delivered**  
21 including, but not limited to, an agreement providing for a membership fee or any other fee  
22 having as its purpose the furnishing of burial or funeral services or merchandise at a discount,  
23 except for contracts of insurance, including payment of proceeds from contracts of insurance,  
24 unless the preneed seller or provider is named as the owner or beneficiary **or assignee** in the  
25 contract of insurance;

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

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

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

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

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

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

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

3 (1) It is in writing;

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

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

7 (4) It identifies the preneed trust **or financial institution where the joint account is**  
8 **held** into which contract payments shall be deposited, including the name and address of the  
9 trustee **or financial institution** thereof;

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

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

14 2. If a preneed contract does not comply with the provisions of sections 436.005 to  
15 [436.071] **436.072**, all payments made under such contract shall be recoverable by the purchaser,  
16 [his] **the beneficiary or the beneficiary's** heirs, or legal representative, from the contract seller  
17 or other payee thereof, together with interest at the rate of ten percent per annum and all  
18 reasonable costs of collection, including attorneys' fees.

19 3. Each preneed contract made before August 13, 1982, and all payments and  
20 disbursements under such contract shall continue to be governed by sections 436.010 to 436.080,  
21 as those sections existed at the time the contract was made; but, the provisions of subsection 2  
22 of section 436.035 may be applied to all preneed contracts which are executory on August 13,  
23 1982.

24 4. Subject to the provisions of subdivision (5) of section 436.005, the provisions of  
25 sections 436.005 to [436.071] **436.072** shall apply to the assignment of proceeds of any contract  
26 of insurance for the purpose of funding a preneed contract or written in conjunction with a  
27 preneed contract. Laws regulating insurance shall not apply to preneed contracts, but shall apply  
28 to any insurance sold with a preneed contract.

29 5. No preneed contract shall become effective unless and until the purchaser thereof has  
30 placed his **or her** signature in a space provided on such contract, or application therefor, and the  
31 purchaser has received a copy of such contract signed by the seller.

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

436.011. 1. Any seller who designates a person as a provider in a preneed contract **and**  
2 **any provider who designates a person as a seller** without a contractual relationship with such  
3 person is in violation of the provisions of sections 436.005 to [436.071] **436.072**.

4 2. Any person who knowingly permits a seller to sell a preneed contract designating him  
5 as the provider or as one of two or more providers who will furnish the funeral merchandise and  
6 services described in the preneed contract shall provide the funeral merchandise and services  
7 described in the preneed contract for the beneficiary. **Any person who knowingly permits a**  
8 **provider to sell a preneed contract designating such person as the seller who is obligated**  
9 **to collect and administer all payments made under such preneed contract shall be obligated**  
10 **for all such payments made by the purchaser under such preneed contract.** Failure of any  
11 such person to do so shall be a violation of the provisions of sections 436.005 to [436.071]  
12 **436.072** and shall be cause for suspension or revocation of that person's license under the  
13 provisions of section 333.061, RSMo. **Any seller who fails to notify the board, division, or**

14 **attorney general's office of known or probable failure of compliance with a provider acting**  
15 **as an agent of the seller is violating sections 436.005 to 436.072.**

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

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 performance,  
3 agreement or designation:

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

10 (2) Such person is registered with the state board and files with the state board a written  
11 consent authorizing the state board **and/or attorney general's office** to order an examination  
12 and if necessary an audit by the staff of the division of professional registration **and/or the**  
13 **attorney general's office** who are not connected with the board of its books and records which  
14 contain information concerning preneed contracts sold for, in behalf of, or in which he **or she**  
15 is named as provider of the described funeral merchandise or services. **The state board and**  
16 **attorney general's office may also order an investigation to determine compliance with this**  
17 **chapter.**

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

19 (1) Furnish the state board in writing with the name and address of each seller authorized  
20 by the provider to sell preneed contracts in which the provider is named as such within fifteen  
21 days after the provider signs a written agreement or authorization permitting the seller to sell  
22 preneed contracts designating or obligating the provider as the "provider" under the contract.  
23 This notification requirement shall include a provider who, itself, acts as seller;

24 (2) File annually with the state board a report which shall contain:

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

27 (b) The name and address of each seller with whom it has entered into a written  
28 agreement since last filing a report **and a detailed list including the name and contract**  
29 **number and amount of each preneed contract written with each seller since the last filing**  
30 **report;**

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

33 (3) Cooperate with the state board, the office of the attorney general of Missouri, and the  
34 division in any investigation, examination or audit brought under the provisions of sections  
35 436.005 to [436.071] **436.072;**

36 (4) At least thirty days prior to selling or otherwise disposing of its business assets, or  
37 its stock if a corporation, or ceasing to do business, give written notification to the state board  
38 and to all sellers with whom it has one or more preneed contracts of its intent to engage in such  
39 sale or to cease doing business. In the case of a sale of assets or stock, the written notice shall  
40 also contain the name and address of the purchaser. Upon receipt of such written notification,  
41 the state board [may] **shall** take reasonable and necessary action to determine that any preneed  
42 contracts which the provider is obligated to service will be satisfied at the time of need. The  
43 state board may waive the requirements of this subsection, or may shorten the period of  
44 notification whenever in its discretion it determines that compliance with its provisions are not  
45 necessary. [Failure of the state board to take action regarding such sale or termination of  
46 business within thirty days shall constitute such a waiver] **Written notice shall be provided by**  
47 **the provider to all purchasers within thirty days of the establishment selling or otherwise**  
48 **disposing of its business assets, or its stock if a corporation, or ceasing to do business and**  
49 **indicating what establishment will be assuming responsibility for the preneed contracts.**

50 3. It is a violation of the provisions of sections 436.005 to 436.071 and subdivision (3)  
51 of section 333.121, RSMo, for any person to sell, transfer or otherwise dispose of the assets of  
52 a provider without first complying with the provisions of subdivision (4) of subsection 2 of this  
53 section. This violation shall be in addition to the provisions of section 436.061.

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

58 5. With respect to a provider or seller licensed under the provisions of chapter 333,  
59 RSMo, any violation of the provisions of sections 436.005 to 436.071 shall constitute a violation  
60 of subdivision (3) of section 333.121, RSMo.

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] **436.072; except for contracts of insurance and contracts with**  
9 **moneys held in joint accounts or certify to the board that all preneed contracts are to be**  
10 **funded solely by insurance or joint accounts;**

11 (3) Have registered with the state board **and is licensed by the state board as a funeral**  
12 **preneed seller under this chapter.**

13 2. Each seller under one or more preneed contracts shall:

14 (1) Maintain adequate records of all such contracts and related agreements with  
15 providers and the trustee of preneed trusts **or financial institution holding moneys of joint**  
16 **accounts** regarding such contracts, including copies of all such agreements. **The seller shall**  
17 **maintain adequate records of all such moneys paid in by purchasers and shall be obligated**  
18 **to collect and administer all payments made under such contracts and agreements under**  
19 **section 436.005;**

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

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

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

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

27 (c) The total number of preneed contracts sold in Missouri since the filing of the last  
28 report **and a detailed list including the name and contract number and amount of each**  
29 **preneed contract written with each seller since the last filing 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] **each insurance company's** financial institution in  
33 Missouri in which it maintains the trust accounts **insurance policies, or joint accounts** required  
34 under the provisions of sections 436.005 to [436.071] **436.072** and the account numbers of such  
35 trust accounts **insurance policies or joint accounts;**

36 (f) A consent authorizing the state board **and attorney general's office** to order an  
37 examination and if necessary an audit by staff of the division of professional registration **or**  
38 **attorney general's office** who are not connected with the board of the trust account **insurance**

39 **policies or joint accounts**, designated by depository and account number. **The state board or**  
40 **attorney general's office may also order an investigation to determine compliance with this**  
41 **chapter.** The staff of the division of professional registration **or attorney general's office** in  
42 conducting the audit shall not release a detailed accounting of the trust account **insurance**  
43 **policies or joint accounts** to the board unless there exist circumstances indicating that the  
44 [account does] **accounts do** not comply with the requirements of sections 436.005 to [436.071]  
45 **436.072**, but shall provide the board with a summary of the examination or audit showing  
46 general compliance with the provisions of sections 436.005 to [436.071] **436.072**;

47 (4) File with the state board a consent authorizing the state board **and attorney**  
48 **general's office** to order an examination and if necessary an audit by staff of the division of  
49 professional registration **or attorney general's office** who are not connected with the board of  
50 its books and records relating to the sale of preneed contracts and the name and address of the  
51 person designated by the seller as custodian of these books and records. The staff of the division  
52 of professional registration **or attorney general's office** in conducting the audit shall not release  
53 a detailed accounting of the trust account **insurance policies or joint accounts** to the board  
54 unless there exist circumstances indicating that the [account does] **accounts do** not comply with  
55 the requirements of sections 436.005 to [436.071] **436.072**, but shall provide the board **and**  
56 **attorney general's office** with a summary of the examination or audit showing general  
57 compliance with the provisions of sections 436.005 to [436.071] **436.072**;

58 (5) Cooperate with the state board, the office of the attorney general, and the division in  
59 any investigation, examination or audit brought under the provisions of sections 436.005 to  
60 [436.071] **436.072**.

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

75 purchasers within thirty days of the seller selling or otherwise disposing of its business  
76 assets, or its stock if a corporation, or ceasing to do business and indicating what seller will  
77 be assuming the responsibility for the preneed contracts.

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

**436.023. 1. The board may refuse to issue any certificate of registration or  
2 authority, permit or license required under this chapter for one or any combination of  
3 causes stated in subsection 2 of this section. The board shall notify the applicant in writing  
4 of the reasons for the refusal and shall advise the applicant of his or her right to file a  
5 complaint with the administrative hearing commission as provided by chapter 621, RSMo.**

**6 2. The board may cause a complaint to be filed with the administrative hearing  
7 commission as provided by chapter 621, RSMo, against any holder of any certificate of  
8 registration or authority, permit or license required by this chapter or any person who has  
9 failed to renew or has surrendered his or her certificate of registration or authority, permit  
10 or license for any one or any combination of the following causes:**

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

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

**20 (3) Use of fraud, deception, misrepresentation or bribery in securing any certificate  
21 of registration or authority, permit or license issued under this chapter or in obtaining  
22 permission to take any examination given or required under this chapter;**

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

**25 (5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or  
26 dishonesty in the performance of the functions or duties of any profession licensed or  
27 regulated by this chapter;**

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



30           (7) Impersonation of any person holding a certificate of registration or authority,  
31 permit or license or allowing any person to use his or her certificate of registration or  
32 authority, permit, license or diploma from any school;

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

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

38           (10) Assisting or enabling any person to practice or offer to practice any profession  
39 licensed or regulated by this chapter who is not registered and currently eligible to practice  
40 under this chapter;

41           (11) Issuance of a certificate of registration or authority, permit or license based  
42 upon a material mistake of fact;

43           (12) Failure to display a valid certificate or license if so required by this chapter or  
44 any rule promulgated hereunder;

45           (13) Violation of any professional trust or confidence;

46           (14) Use of any advertisement or solicitation which is false, misleading or deceptive  
47 to the general public or persons to whom the advertisement or solicitation is primarily  
48 directed;

49           (15) Violation of any of the provisions of chapter 193, RSMo, chapter 194, RSMo,  
50 or chapter 333, RSMo;

51           (16) Presigning a death certificate or signing a death certificate on a body not  
52 embalmed by, or under the personal supervision of, the licensee;

53           (17) Obtaining possession of or embalming a dead human body without express  
54 authority to do so from the person entitled to the custody or control of the body;

55           (18) Failure or refusal to properly guard against contagious, infectious or  
56 communicable diseases or the spread thereof;

57           (19) Willfully and through undue influence selling a funeral;

58           (20) Refusing to surrender a dead human body upon request by the next of kin,  
59 legal representative or other person entitled to the custody and control of the body.

60           3. After the filing of such complaint, the proceedings shall be conducted in  
61 accordance with the provisions of chapter 621, RSMo. Upon a finding by the  
62 administrative hearing commission that the grounds, provided in subsection 2 of this  
63 section, for disciplinary action are met, the board may, singly or in combination, censure  
64 or place the person named in the complaint on probation on such terms and conditions as

65 **the board deems appropriate for a period not to exceed five years, or may suspend, for a**  
66 **period not to exceed three years, or revoke the license, certificate, or permit.**

436.027. **For each preneed contract sold after August 28, 2007,** the seller may retain  
2 as his **or her** own money, for the purpose of covering his **or her** selling expenses, servicing  
3 costs, and general overhead, the initial [funds] **moneys** so collected or paid until [he] **the seller**  
4 has received for his **or her** use and benefit an amount not to exceed twenty percent of the total  
5 amount agreed to be paid by the purchaser of such prepaid funeral benefits as such total amount  
6 is reflected in the contract. **At least eighty percent of the total amount paid by the purchaser**  
7 **of the prepaid funeral benefits as such total is reflected in the contract shall be placed and**  
8 **held in trust. Contracts funded by joint accounts shall have held and placed one hundred**  
9 **percent of the amount paid by the purchaser of the total amount agreed to be paid by the**  
10 **purchaser of such prepaid funeral benefits as such total amount is reflected in the 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 **436.072.** Payments regarding two or more preneed contracts may be deposited into and  
6 commingled in the same preneed trust, so long as the trust's grantor is the seller of all such  
7 preneed contracts and 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] **moneys**, considering the probable income  
13 therefrom as well as the probable safety of their capital. A preneed trust agreement may provide  
14 that when 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; provided, that title to all investment assets shall remain  
18 with the trustee and be kept by the trustee to be liquidated upon request of the advisor of the  
19 seller. In no case shall control of said assets be divested from the trustee nor shall said assets be  
20 placed in any investment which would be beyond the authority of a reasonably prudent trustee  
21 to invest in. The trustee shall be relieved of all liability regarding investment decisions made by  
22 such qualified investment advisor. **Each individual preneed contract sold after August 28,**  
23 **2008, shall be placed and held in trust an amount equal to at least ninety percent of the**

24 **total amount paid by the purchaser of the prepaid funeral benefits as such total is reflected**  
25 **in the contract.**

26 3. The seller of a preneed contract shall be entitled to all income, including, without  
27 limitation, interest, dividends, and capital gains, and losses generated by the investment of  
28 preneed trust property regarding such contract, and the trustee of the trust may distribute all  
29 income, net of losses, to the seller at least annually; but no such income distribution shall be  
30 made to the seller if, and to the extent that, the distribution would reduce the aggregate market  
31 value on the distribution date of all property held in the preneed trust, including principal and  
32 undistributed income, below the sum of all deposits made to such trust pursuant to subsection  
33 1 of this section for all preneed contracts then administered through such trust.

34 4. All expenses of establishing and administering a preneed trust, including, without  
35 limitation, trustee's fees, legal and accounting fees, investment expenses, and taxes, shall be paid  
36 or reimbursed directly by the seller of the preneed contracts administered through such trust and  
37 shall not be paid from the principal of a preneed trust.

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

44 6. **All payments made by the purchaser of a preneed contract shall be paid to the**  
45 **seller and moneys deposited into the trust account or joint account within sixty days of**  
46 **receiving it under the provisions set forth in section 436.027. The seller shall notify the**  
47 **provider of all payments within thirty days of receipt of such payments made by the**  
48 **purchaser. Purchasers who choose to make payments with cash and/or pay to the seller's**  
49 **agent shall sign a statement showing receipt of moneys paid to the seller's agent. The**  
50 **seller's agent shall provide a copy of receipt to the purchaser and a copy shall be submitted**  
51 **to the seller with the payment of moneys.**

52 7. The trustee of a preneed trust shall, from time to time, distribute trust principal as  
53 provided by sections 436.005 to [436.071] **436.072.**

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.

436.035. 1. At any time before the final disposition of the [dead body] **beneficiary**, or  
2 before funeral services, facilities, or merchandise described in a preneed contract are provided

3 by the provider designated in the preneed contract, the purchaser may cancel the contract without  
4 cause by delivering written notice thereof to the seller and the provider. Within fifteen days after  
5 its receipt of such notice, the seller shall pay to the purchaser a net amount equal to all payments  
6 made into trust under the contract. Upon delivery of the purchaser's receipt for such payment to  
7 the trustee, the trustee shall distribute to the seller from the trust an amount equal to all deposits  
8 made into the trust for the contract. **At the same time the seller makes payment to the**  
9 **purchaser, the seller shall notify the provider in writing of the payment made to the**  
10 **purchaser, including the date and the amount of the payment made. Each preneed**  
11 **contract made on or after August 28, 2008, cancelled by the purchaser, the seller shall pay**  
12 **to the purchaser an amount equal to all payments made by the purchaser and interest less**  
13 **actual expenses to establish and administer such contract.**

14 2. Notwithstanding the provisions of subsection 1 of this section, if a purchaser **or**  
15 **beneficiary** 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 purchaser  
17 may irrevocably waive and renounce his right to cancel the contract pursuant to the provisions  
18 of subsection 1 of this section, which waiver and renunciation shall be made in writing and  
19 delivered to the contract seller; but the purchaser may designate and redesignate the provider in  
20 the irrevocable agreement or plan [where applicable by the terms of the contract] . **If a**  
21 **purchaser or beneficiary is eligible, becomes eligible, or desires to become eligible to receive**  
22 **public assistance under chapter 208, RSMo, or any other applicable state or federal law,**  
23 **a copy of the preneed funeral contract shall be provided to the appropriate qualifying state**  
24 **or federal agency. Notwithstanding, at any time before the final disposition of the**  
25 **beneficiary or before the funeral services, facilities, or merchandise described in the**  
26 **preneed contract are provided by the provider designated in the preneed contract, the**  
27 **purchaser may designate and redesignate the provider without cause by delivering written**  
28 **notice thereof to the provider and the seller. Within fifteen days after its receipt of such**  
29 **notice, the seller shall notify the newly designated provider of the purchaser's request.**  
30 **Written consent from the newly designated provider shall be attached to the preneed**  
31 **contract to reflect such change. The seller shall notify the purchaser and the previous**  
32 **provider of the redesignated provider's consent of obligation being named the new**  
33 **provider.**

34 3. Notwithstanding the provisions of subsection 1 of this section, any purchaser, within  
35 thirty days of receipt of the executed contract, may cancel the contract without cause by  
36 delivering written notice thereof to the seller and the provider, and receive a full refund of all  
37 payments made on the contract. **Notwithstanding, at any time before the final disposition of**  
38 **the beneficiary or before the funeral services, facilities, or merchandise described in the**

39 **preneed contract are provided by the provider designated in the preneed contract, the**  
40 **purchaser may designate and redesignate the provider without cause by delivering written**  
41 **notice thereof to the provider and the seller. Within fifteen days after its receipt of such**  
42 **notice, the seller shall notify the newly designated provider of the purchaser's request.**  
43 **Written consent from the newly designated provider shall be attached to the preneed**  
44 **contract to reflect such change. The seller shall notify the purchaser and the previous**  
45 **provider of the redesignated provider's consent of obligation being named the new**  
46 **provider.** Notice of this provision and the appropriate addresses for notice of cancellation shall  
47 be so designated on the face of the contract.

436.038. If the death of the beneficiary occurs outside the general area served by the  
2 provider designated in a preneed contract, then the seller shall either provide for the furnishing  
3 of comparable funeral services and merchandise by a licensed mortuary selected by the next of  
4 kin of the purchaser or, at the seller's option, shall pay over to the purchaser in fulfillment of all  
5 obligations under the contract, an amount equal to all sums actually paid in cash by the purchaser  
6 under the preneed contract together with interest [to be provided for in the contract]. Upon  
7 seller's full performance under the provisions of this section, the trustee of the preneed trust for  
8 the contract shall distribute to the seller from the trust an amount equal to all deposits made into  
9 the trust for the contract.

436.041. **The seller shall be obligated for the collection, administering, and**  
2 **oversight of all payments made under such contract.** If the payments payable under a preneed  
3 contract shall be more than three months in arrears, the seller may cancel the contract by  
4 delivering written notice thereof **within thirty days** to the purchaser and the provider. **Written**  
5 **notice to the purchaser and provider shall allow the purchaser to have thirty days to pay**  
6 **into trust those payments in arrears. If such payments are not received by the seller within**  
7 **thirty days of notice, the seller may cancel the contract by delivering final written notice**  
8 **to the purchaser and the provider,** and by making payment to the purchaser of a net amount  
9 equal to all payments made [into trust under the contract] **by the purchaser under section**  
10 **436.027.** Upon delivery of the purchaser's receipt of such payment to the trustee, the trustee shall  
11 distribute to the seller from the trust an amount equal to all deposits made into the trust for the  
12 contract.

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] **beneficiary,** and  
3 funeral services, facilities, and merchandise described in the contract, or has provided alternative  
4 funeral **arrangements or** benefits for the beneficiary pursuant to special arrangements made with  
5 the purchaser **as detailed in the written statement of charges under section 333.145, RSMo,**  
6 **and provide to the seller a certified copy of the death certificate,** the seller shall pay to the

7 provider a net amount equal to all payments required to be made pursuant to the written  
8 agreement between the seller and the provider or all payments [made under the contract] **by the**  
9 **purchaser under section 436.027**. Upon delivery to the trustee of the provider's receipt for such  
10 payment, the trustee shall distribute to the seller from the trust an amount equal to all deposits  
11 made into the trust for the contract.

436.048. If a seller shall fail to make timely payment of an amount due a purchaser or  
2 a provider pursuant to the provisions of sections 436.005 to [436.071] **436.072**, the purchaser  
3 or provider, as appropriate, shall have the right, in addition to other rights and remedies against  
4 such seller, to make demand upon the trustee of the preneed trust for the contract to distribute  
5 to the purchaser or provider from the trust, as damages for its breach, an amount equal to all  
6 deposits made into the trust for the contract.

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

436.053. 1. Notwithstanding the provisions of sections 436.021 to 436.048, the provider  
2 and the purchaser may agree that **one hundred percent of** all [funds] **moneys** paid the provider  
3 by the purchaser shall be deposited with financial institutions chartered and regulated by the  
4 federal or state government authorized to do business in Missouri in an account in the joint  
5 names and under the joint control of the provider and purchaser. [If the purchaser has  
6 irrevocably waived and renounced his right to cancel the agreement between the provider and  
7 the purchaser pursuant to subdivision (5) of this subsection, such agreement may provide that  
8 all funds held in the account at the beneficiary's death shall be applied toward the purchase of  
9 funeral or burial services or facilities, or funeral merchandise, selected by the purchaser or the  
10 responsible party after the beneficiary's death, in lieu of the detailed identification of such items  
11 required by subdivision (3) of subsection 1 of section 436.007. The agreement between] The  
12 **contract between the seller**, provider and purchaser shall **include all applicable information**  
13 **outlined in section 436.027 and shall** provide that:

14 (1) The total consideration to be paid by the purchaser under the contract shall be made  
15 in one or more payments into the joint account, **including the name and address of the**  
16 **financial institution which holds such moneys and the account numbers of such moneys**,  
17 at the time the agreement is executed or, thereafter within five days of receipt, respectively;

18 (2) The financial institution shall hold, invest, and reinvest the deposited [funds] **moneys**  
19 in savings accounts, certificates of deposit or other accounts offered to depositors by the financial  
20 institutions, as the [agreement] **contract** shall provide;

21 (3) [The income generated by the deposited funds shall be used to pay the reasonable  
22 expenses of administering the agreement, and the balance of the income shall be distributed or  
23 reinvested as provided in the agreement] **All preneed funeral contracts with moneys held in  
24 joint accounts written on or after August 28, 2008, shall provide that the income generated  
25 by the deposited moneys shall be used to pay the actual expenses of administering the  
26 agreement, and the balance of the income shall be reinvested in such preneed account;**

27 (4) At any time before the final disposition, or before funeral services, facilities, and  
28 merchandise described in a preneed contract are furnished, the purchaser may cancel the contract  
29 without cause by delivering written notice thereof to the provider and the financial institution,  
30 and within fifteen days after its receipt of the notice **and with certification of consent from the  
31 funeral provider and purchaser**, the financial institution shall distribute the deposited [funds]  
32 **moneys to the purchaser and shall provide written notification to the provider of the amount  
33 of moneys and the date moneys were distributed to the purchaser;**

34 (5) Notwithstanding the provisions of subdivision (4) of this subsection, if a purchaser  
35 is eligible, becomes eligible, or desires to become eligible to receive public assistance under  
36 chapter 208, RSMo, or any other applicable state or federal law, the purchaser may irrevocably  
37 waive and renounce his **or her** right to cancel such [agreement] **contract**. The waiver and  
38 renunciation must be in writing and must be delivered to the provider and the financial institution  
39 **and a copy of the preneed contract shall be provided to the appropriate qualifying state or  
40 federal agency;**

41 (6) If the death of the beneficiary occurs outside the general area served by the provider,  
42 then the provider shall either provide for the furnishing of comparable funeral services and  
43 merchandise by a licensed mortuary selected by the purchaser or, at the provider's option, shall  
44 pay over to the purchaser in fulfillment of the obligation of the preneed contract, an amount  
45 equal to the sums actually paid in cash by such purchaser under such preneed contract together  
46 with interest [to be provided for in the contract] **as outlined in this section**, in which event the  
47 financial institution shall distribute the deposited [funds] **moneys** to the provider;

48 (7) Within fifteen days after a provider and a witness certifies in writing to the financial  
49 institution that he **or she** has furnished the final disposition, or funeral services, facilities, and  
50 merchandise described in a contract, or has provided alternative funeral **arrangements or**  
51 **benefits** for the beneficiary pursuant to special arrangements made with the purchaser **as detailed  
52 in the written statement of charges under section 333.145, RSMo**, if the certification has been  
53 approved by the purchaser, then the financial institution shall distribute the deposited [funds]  
54 **moneys** to the provider.

55 2. There shall be a separate joint account as described in subsection 1 of this section for  
56 each preneed contract sold or arranged under this section. **The seller shall, within fifteen days**

57 **after receipt of the purchaser's written request, furnish to each contract purchaser a**  
58 **written statement of all deposits made to such joint account regarding such purchaser's**  
59 **contract.**

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

436.055. 1. All complaints received by the state board **shall be made in writing and**  
2 **shall fully identify the complainant by name and address. Complaints may be made on**  
3 **forms which are provided by the board and available upon request. Oral or telephone**  
4 **communications shall not be considered or processed as complaints, but the person making**  
5 **such communications shall be provided with a complaint form and requested to complete**  
6 **and return it to the board in written form. Any member of the administrative staff of the**  
7 **board may make and file a complaint based upon information and belief in reliance on**  
8 **oral, telephone or written communications received by the board, unless such**  
9 **communications are believed by such staff member to be false. Such complaints which**  
10 **allege a registrant's noncompliance with the provisions of sections 436.005 to [436.071] 436.072**  
11 **shall be forwarded to the division of professional registration and attorney general's office for**  
12 **investigation, except minor complaints which the state board can mediate or otherwise dispose**  
13 **of by contacting the parties involved. A copy of each such complaint shall be forwarded to the**  
14 **subject registrant, except that each complaint in which the complainant alleges under oath that**  
15 **a registrant has misappropriated preneed contract payments may be forwarded to the division of**  
16 **professional registration and attorney general's office without notice to the subject registrant.**  
17 **This section shall not be construed to limit the board's authority to file a complaint with**  
18 **the administrative hearing commission charging a licensee of the board with any actionable**  
19 **conduct or violation, regardless of whether such complaint exceeds the scope of acts**  
20 **charged in a preliminary public complaint filed with the board and whether any public**  
21 **complaint has been filed with the board. The board shall interpret such requirement to**  
22 **exist for the benefit of those members of the public who submit complaints to the board**  
23 **and for those persons or entities within the legislative and executive branches of**  
24 **government having supervisory or other responsibilities or control over the professional**  
25 **licensing boards. This section shall not be construed to protect or ensure to the benefit of**  
26 **those licensees, permit holders, registrants, or other persons against whom the board has**  
27 **instituted or may institute administrative or judicial proceeding concerning possible**  
28 **violations of sections 436.005 to 436.072.**



29           2. The division **and attorney general's office** shall investigate each complaint  
30 forwarded from the state board using staff who are not connected with the state board. **The**  
31 **division and/or attorney general's office shall cooperate in their investigation** and shall  
32 forward the results of such investigation to the subject registrant [and to the attorney general for  
33 evaluation] . **The board or attorney general's office may also order an investigation to**  
34 **determine compliance with this chapter.** If the attorney general, after independent inquiry  
35 using staff of the attorney general's office who have not represented the board, determines that  
36 there is no probable cause to conclude that the registrant has violated sections 436.005 to  
37 [436.071] **436.072, the division,** the registrant and the state board shall be so notified and the  
38 complaint shall be dismissed; but, if the attorney general determines that there is such probable  
39 cause the registrant shall be so notified and the results of such evaluation shall be transmitted to  
40 the state board for further action as provided in sections 436.061 and 436.063.

          436.061. 1. Each person, **including the officers, directors, partners, agents, or**  
2 **employees of such person,** who shall knowingly and willfully violate **or assist or enable any**  
3 **person to violate** any provision of sections 436.005 to [436.071, and any officer, director,  
4 partner, agent, or employee of such person involved in such violation] **436.072 by**  
5 **incompetence, misconduct, gross negligence, fraud, misrepresentation, or dishonesty** is  
6 guilty of a class D felony. Each violation of any provision of sections 436.005 to [436.071]  
7 **436.072** constitutes a separate offense and may be prosecuted individually. **The attorney**  
8 **general's office shall have concurrent authority with the local prosecutors to prosecute**  
9 **actions under this section.**

10           2. Any violation of the provisions of sections 436.005 to [436.071] **436.072** shall  
11 constitute a violation of the provisions of section 407.020, RSMo. In any proceeding brought  
12 by the attorney general for a violation of the provisions of sections 436.005 to [436.071]  
13 **436.072,** the court may, in addition to imposing the penalties provided for in sections 436.005  
14 to [436.071] **436.072,** order the revocation or suspension of the registration of a defendant seller.

          436.067. No information given to the board, the division or the attorney general pursuant  
2 to the provisions of sections 436.005 to [436.071] **436.072** 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] **436.072** by presentation before any court or  
12 the administrative hearing commission, but any such material which contains trade secrets shall  
13 not 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.]

436.069. 1. After [July 16, 1985] **August 28, 2008**, each seller shall remit an annual  
2 reporting fee in an amount [of two dollars] **to be determined by the board** for each preneed  
3 contract sold in the year since the date the seller filed its last annual report with the state board.  
4 This reporting fee shall be paid annually and may be collected from the purchaser of the preneed  
5 contract as an additional charge or remitted to the state board from the [funds] **moneys** of the  
6 seller.

7 2. After [July 16, 1985] **August 28, 2008**, each provider shall remit an annual reporting  
8 fee [of thirty dollars] **to be determined by the board**.

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

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

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

8 3. **The board shall promulgate and enforce rules for the transaction of its business**  
9 **and for standards of service and practice to be followed for the registration of providers**  
10 **and sellers deemed necessary for the public good and consistent with the laws of this state.**  
11 **The board may prescribe a standard of proficiency as to the qualifications and fitness of**  
12 **those engaging in the practice of the preneed industry.**

13 4. **Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,**  
14 **that is created under the authority delegated in this section shall become effective only if**  
15 **it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if**  
16 **applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable**  
17 **and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo,**  
18 **to review, to delay the effective date, or to disapprove and annul a rule are subsequently**

19 held unconstitutional, then the grant of rulemaking authority and any rule proposed or  
20 adopted after August 28, 2008, shall be invalid and void.

436.072. The board or a designated member thereof or any agent authorized by the  
2 board or attorney general's office may enter the office, premises, establishment, or place  
3 of business of any preneed seller or provider of funeral service contracts licensed in this  
4 state, or any office, premises, establishment, or place where the practice of selling and/or  
5 providing preneed funerals is carried on, or where such practice is advertised as being  
6 carried on for the purpose of inspecting such office, premises, establishment, or place and  
7 for the purpose of inspecting the license and registration of any licensee or inspection of  
8 preneed contracts.

[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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