

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 1
95TH GENERAL ASSEMBLY
2009

0404L.09T

AN ACT

To repeal sections 333.011, 333.091, 333.101, 333.121, 333.151, 333.221, 333.241, 333.251, 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 forty 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 333.011, 333.091, 333.101, 333.121, 333.151, 333.221, 333.241, 333.251, 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436.045, 436.048, 436.051, 436.053, 436.055, 436.061, 436.063, 436.065, 436.067, 436.069, and 436.071, RSMo, are repealed and forty new sections enacted in lieu thereof, to be known as sections 333.011, 333.091, 333.101, 333.151, 333.221, 333.251, 333.310, 333.315, 333.320, 333.325, 333.330, 333.335, 333.340, 436.400, 436.405, 436.410, 436.412, 436.415, 436.420, 436.425, 436.430, 436.435, 436.440, 436.445, 436.450, 436.455, 436.456, 436.457, 436.458, 436.460, 436.465, 436.470, 436.480, 436.485, 436.490, 436.500, 436.505, 436.510, 436.520, and 1, to read as follows:

333.011. **1.** As used in this chapter, unless the context requires otherwise, the following terms have the meanings indicated:

(1) "Board", the state board of embalmers and funeral directors created

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

4 by this chapter;

5 (2) "Embalmer", any individual licensed to engage in the practice of
6 embalming;

7 (3) "Funeral director", any individual licensed to engage in the practice
8 of funeral directing;

9 (4) "Funeral establishment", a building, place, crematory, or premises
10 devoted to or used in the care and preparation for burial or transportation of the
11 human dead and includes every building, place or premises maintained for that
12 purpose or held out to the public by advertising or otherwise to be used for that
13 purpose;

14 (5) **"Funeral merchandise", caskets, grave vaults, receptacles, and**
15 **other personal property incidental to the final disposition of a dead**
16 **human body, including, grave markers, monuments, tombstones, and**
17 **urns;**

18 (6) "Person" [includes a corporation, partnership or other type of business
19 organization], **any individual, partnership, corporation, cooperative,**
20 **association, or other entity;**

21 [(6)] (7) "Practice of embalming", the work of preserving, disinfecting and
22 preparing by arterial embalming, including the chemical preparation of a dead
23 human body for disposition. Practice of embalming includes all activities leading
24 up to and including arterial and cavity embalming, including but not limited to
25 raising of vessels and suturing of incisions of dead human bodies for funeral
26 services, transportation, burial or cremation, or the holding of oneself out as
27 being engaged in such work;

28 [(7)] (8) "Practice of funeral directing", engaging by an individual in the
29 business of preparing, otherwise than by embalming, for the burial, disposal or
30 transportation out of this state of, and the directing and supervising of the burial
31 or disposal of, dead human bodies or engaging in the general control, supervision
32 or management of the operations of a funeral establishment;

33 (9) **"Preneed agent", any person authorized to sell a preneed**
34 **contract for or on behalf of a seller;**

35 (10) **"Provider", the person designated or obligated to provide the**
36 **final disposition, funeral, or burial services or facilities, or funeral**
37 **merchandise described in a preneed contract;**

38 (11) **"Seller", the person who executes a preneed contract with a**
39 **purchaser and who is obligated under such preneed contract to remit**

40 **payment to the provider.**

41 **2. All terms defined in sections 436.400 to 436.520, RSMo, shall be**
42 **deemed to have the same meaning when used in this chapter.**

333.091. Each establishment, funeral director or embalmer receiving a
2 license under this chapter shall have [the] recorded in the office of the local
3 registrar of vital statistics of the registration district in which the licensee
4 practices. [The licenses or duplicates shall be displayed in the office(s) or place(s)
5 of business.] **All licenses or registrations, or duplicates thereof, issued**
6 **pursuant to this chapter shall be displayed at each place of business.**

333.101. The board or any member thereof or any agent duly authorized
2 by it may enter the office, premises, establishment or place of business of any
3 [funeral service licensee in this state] **licensee or registrant**, or any office,
4 premises, establishment or place where the practice of funeral directing [or],
5 embalming, **preneed selling or providing** is carried on, or where such practice
6 is advertised as being carried on for the purpose of inspecting said office,
7 premises or establishment and for the purpose of inspecting the license and
8 registration of any licensee **or registrant** and the manner and scope of training
9 given by the licensee **or registrant** to the [intern] **apprentice** operating
10 therein.

333.151. 1. The state board of embalmers and funeral directors shall
2 consist of [six] **ten** members, including one voting public member[,] appointed by
3 the governor with the advice and consent of the senate. Each member, other than
4 the public member, appointed shall possess either a license to practice embalming
5 or a license to practice funeral directing in this state or both said licenses and
6 shall have been actively engaged in the practice of embalming or funeral directing
7 for a period of five years next before his or her appointment. Each member shall
8 be a United States citizen, a resident of this state for a period of at least one
9 year, a qualified voter of this state and shall be of good moral character. Not
10 more than [three] **five** members of the board shall be of the same political party.
11 [The president of the Missouri Funeral Directors Association in office at the time
12 shall each, at least ninety days prior to the expiration of the term of a board
13 member, other than the public member, or as soon as feasible after a vacancy on
14 the board otherwise occurs, submit to the director of the division of professional
15 registration a list of five persons qualified and willing to fill the vacancy in
16 question, with the request and recommendation that the governor appoint one of
17 the five persons so listed, and with the list so submitted, the president of the

18 Missouri Funeral Directors Association shall each include in his or her letter of
19 transmittal a description of the method by which the names were chosen by that
20 association.] **The non-public members shall be appointed by the**
21 **Governor, with the advice and consent of the senate, one from each of**
22 **the state's congressional districts be of good moral character and**
23 **submit an audited financial statement of their funeral establishment by**
24 **an independent auditor for the previous five years. This audited**
25 **financial statement must include all at-need preneed business.**

26 2. Each member of the board shall serve for a term of five years. Any
27 vacancy on the board shall be filled by the governor and the person appointed to
28 fill the vacancy shall possess the qualifications required by this chapter and shall
29 serve until the end of the unexpired term of his or her predecessor, **if any.**

30 3. The public member shall be at the time of his or her appointment a
31 person who is not and never was a member of any profession licensed or regulated
32 pursuant to this chapter or the spouse of such person; and a person who does not
33 have and never has had a material, financial interest in either the providing of
34 the professional services regulated by this chapter, or an activity or organization
35 directly related to any profession licensed or regulated pursuant to this chapter.
36 All members, including public members, shall be chosen from lists submitted by
37 the director of the division of professional registration. The duties of the public
38 member shall not include the determination of the technical requirements to be
39 met for licensure or whether any person meets such technical requirements or of
40 the technical competence or technical judgment of a licensee or a candidate for
41 licensure.

333.221. 1. Each member of the board shall receive as compensation an
2 amount set by the board not to exceed fifty dollars for each day devoted to the
3 affairs of the board, and shall be entitled to reimbursement of his expenses
4 necessarily incurred in the discharge of his official duties.

5 2. The board may employ such board personnel, as defined in subdivision
6 (4) of subsection [10] **11** of section 324.001, RSMo, **including legal counsel**, as
7 is necessary for the administration of this chapter.

333.251. Nothing in this chapter shall apply to nor in any manner
2 interfere with the duties of any officer of local or state institutions, nor shall this
3 chapter apply to any person engaged simply in the furnishing of burial
4 receptacles for the dead[, but shall only apply to persons engaged in the business
5 of embalming or funeral directing] **at the time of need.**

333.310. The provisions of sections 333.310 to 333.340 shall not
2 apply to a cemetery operator who sells contracts or arrangements for
3 services for which payments received by, or on behalf of, the purchaser
4 are required to be placed in an endowed care fund or for which a
5 deposit into a segregated account is required under chapter 214, RSMo;
6 provided that a cemetery operator shall comply with sections 333.310
7 to 333.340 if the contract or arrangement sold by the operator includes
8 services that may only be provided by a licensed funeral director or
9 embalmer.

333.315. 1. No person shall be designated as a provider, or agree
2 to perform the obligations of a provider under a preneed contract
3 unless, at the time of such agreement or designation, such person is
4 licensed as a preneed provider by the board. Nothing in this section
5 shall exempt any person from meeting the licensure requirements for
6 a funeral establishment as provided in this chapter.

7 2. An applicant for a preneed provider license shall:

8 (1) File an application on a form established by the board and
9 pay an application fee in an amount established by the board by rule;

10 (2) Be authorized and registered with the Missouri secretary of
11 state to conduct business in Missouri;

12 (3) Identify the name and address of a custodian of records
13 responsible for maintaining the books and records of the provider
14 relating to preneed contracts;

15 (4) Identify the name and address of each seller authorized by
16 the provider to sell preneed contracts in which the provider is
17 designated or obligated as the provider;

18 (5) File with the state board, a written consent authorizing the
19 state board to inspect or order an investigation, examination, or audit
20 of the provider's books and records which contain information
21 concerning preneed contracts sold for or on behalf of a seller or in
22 which the applicant is named as a provider; and

23 (6) If the applicant is a corporation, each officer, director,
24 manager, or controlling shareholder shall be eligible for licensure if
25 they were applying for licensure as an individual.

26 3. Each preneed provider shall apply to renew his or her license
27 on or before October thirty-first of each year or a date established by
28 the division of professional registration pursuant to section 324.001,

29 **RSMo. A license which has not been renewed prior to the renewal date**
30 **shall expire. Applicants for renewal shall:**

31 (1) **File an application for renewal on a form established by the**
32 **board by rule;**

33 (2) **Pay a renewal fee in an amount established by the board by**
34 **rule, however no renewal fee shall be required for any funeral**
35 **establishment whose Missouri license is current and active;**

36 (3) **Be authorized and registered with the Missouri secretary of**
37 **state to conduct business in Missouri;**

38 (4) **File an annual report with the state board which shall**
39 **contain:**

40 (a) **The name and address of a custodian of records responsible**
41 **for maintaining the books and records of the provider relating to**
42 **preneed contracts;**

43 (b) **The business name or names used by the provider and all**
44 **addresses from which it engages in the practice of its business;**

45 (c) **The name and address of each seller with whom it has**
46 **entered into a written agreement since last filing an annual report with**
47 **the board authorizing the seller to designate or obligate the licensee as**
48 **the provider in a preneed contract; and**

49 (d) **Any information required by any other applicable statute or**
50 **regulation enacted pursuant to state or federal law.**

51 4. **A license which has not been renewed as provided by this**
52 **section shall expire. A licensee who fails to apply for renewal may**
53 **apply for reinstatement within two years of the renewal date by**
54 **satisfying the requirements of subsection 3 of this section and paying**
55 **a delinquent fee as established by the board by rule.**

333.320. 1. **No person shall sell, perform, or agree to perform the**
2 **seller's obligations under, or be designated as the seller of, any preneed**
3 **contract unless, at the time of the sale, performance, agreement, or**
4 **designation, such person is licensed by the board as a seller and**
5 **authorized and registered with the Missouri secretary of state to**
6 **conduct business in Missouri.**

7 2. **An applicant for a preneed seller license shall:**

8 (1) **File an application on a form established by the board and**
9 **pay an application fee in an amount established by the board by rule;**

10 (2) **Be an individual resident of Missouri who is eighteen years**

11 of age or older, or a business entity registered with the Missouri
12 secretary of state to transact business in Missouri;

13 (3) If the applicant is a corporation, each officer, director,
14 manager, or controlling shareholder, shall be eligible for licensure if
15 they were applying for licensure as an individual;

16 (4) Meet all requirements for licensure;

17 (5) Identify the name and address of a custodian of records
18 responsible for maintaining the books and records of the seller relating
19 to preneed contracts;

20 (6) Identify the name and address of each licensed provider that
21 has authorized the seller to designate such person as a provider under
22 a preneed contract;

23 (7) Have established, as grantor, a preneed trust or an agreement
24 to utilize a preneed trust with terms consistent with sections 436.400 to
25 436.520, RSMo. A trust shall not be required if the applicant certifies
26 to the board that the seller will only sell insurance funded or joint
27 account funded preneed contracts;

28 (8) Identify the name and address of a trustee or, if applicable,
29 the financial institution where any preneed trust or joint accounts will
30 be maintained; and

31 (9) File with the board, a written consent authorizing the state
32 board to inspect or order an investigation, examination, or audit of the
33 seller's books and records which contain information concerning
34 preneed contracts sold by or on behalf of the seller.

35 3. Each seller shall apply to renew his or her license on or before
36 October thirty-first of each year or a date established by the division
37 of professional registration pursuant to section 324.001, RSMo. A
38 license which has not been renewed prior to the renewal date shall
39 expire. Applicants for renewal shall:

40 (1) File an application for renewal on a form established by the
41 board by rule;

42 (2) Pay a renewal fee in an amount established by the board by
43 rule; and

44 (3) File annually with the board, a signed and notarized annual
45 report as required by section 436.460, RSMo.

46 4. Any license which has not been renewed as provided by this
47 section shall expire. A licensee who fails to apply for renewal within

48 two years of the renewal date may apply for reinstatement by satisfying
49 the requirements of subsection 3 of this section and paying a
50 delinquent fee as established by the board by rule.

333.325. 1. No person shall sell, negotiate, or solicit the sale of
2 preneed contracts for, or on behalf of, a seller unless registered with
3 the board as a preneed agent except for individuals who are licensed
4 as funeral directors under this chapter. The board shall maintain a
5 registry of all preneed agents registered with the board. The registry
6 shall be deemed an open record and made available on the board's web
7 site.

8 2. An applicant for a preneed agent registration shall be an
9 individual who shall:

10 (1) File an application on a form established by the board and
11 pay an application fee in an amount established by the board by rule
12 which shall not exceed fifty percent of the application fee established
13 by the board under this chapter for a funeral director license;

14 (2) Be eighteen years of age or older;

15 (3) Be otherwise eligible for registration under section 333.330;

16 (4) Have successfully passed the Missouri law examination as
17 designated by the board;

18 (5) Provide the name and address of each seller for whom the
19 applicant is authorized to sell, negotiate, or solicit the sale of preneed
20 contracts for, or on behalf of.

21 3. Each preneed agent shall apply to renew his or her
22 registration on or before October thirty-first of each year or a date
23 established by the division of professional registration pursuant to
24 section 324.001, RSMo. A registration which has not been renewed
25 prior to the renewal date shall expire. Applicants for renewal shall:

26 (1) File an application for renewal on a form established by the
27 board by rule;

28 (2) Pay a renewal fee in an amount established by the board by
29 rule which shall not exceed fifty percent of the application fee
30 established by the board under this chapter for a funeral director
31 license renewal; and

32 (3) Provide the name and address of each seller for whom the
33 preneed agent is authorized to sell, negotiate, or solicit the sale of
34 preneed contracts for or on behalf of.

35 4. Any funeral director acting as a preneed agent shall be
36 required to report the name and address of each preneed seller for
37 whom the funeral director is authorized to sell, negotiate, or solicit the
38 sale of preneed contracts as part of their biennial renewal form. Each
39 funeral director preneed agent shall be included on the board's
40 registry.

41 5. Any registration which has not been renewed as provided by
42 this section shall expire and the registrant shall be immediately
43 removed from the preneed agent registry by the board. A registrant
44 who fails to apply for renewal may apply for reinstatement within two
45 years of the renewal date by satisfying the requirements of subsection
46 3 of this section and paying a delinquent fee as established by the
47 board.

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

8 2. The board may cause a complaint to be filed with the
9 administrative hearing commission as provided by chapter 621, RSMo,
10 against any holder of any certificate of registration or authority,
11 permit, or license required by chapter 333, RSMo, or any person who
12 has failed to renew or has surrendered his or her certificate of
13 registration or authority, permit, or license for any one or any
14 combination of the following causes:

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

19 (2) The person has been finally adjudicated and found guilty, or
20 entered a plea of guilty or nolo contendere, in a criminal prosecution
21 under the laws of any state or of the United States, for any offense
22 reasonably related to the qualifications, functions, or duties of any
23 profession licensed or regulated under this chapter, for any offense
24 involving a controlled substance, or for any offense an essential

25 element of which is fraud, dishonesty, or an act of violence;

26 (3) Use of fraud, deception, misrepresentation, or bribery in
27 securing any certificate of registration or authority, permit, or license
28 issued under this chapter or in obtaining permission to take any
29 examination given or required under this chapter;

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

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

35 (6) Violation of, or assisting or enabling any person to violate,
36 any provision of this chapter, or of any lawful rule or regulation
37 adopted pursuant thereto;

38 (7) Impersonation of any person holding a certificate of
39 registration or authority, permit, or license or allowing any person to
40 use his or her certificate of registration or authority, permit, license,
41 or diploma from any school;

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

46 (9) A person is finally adjudged mentally incompetent by a court
47 of competent jurisdiction;

48 (10) Misappropriation or theft of preneed funds;

49 (11) Assisting or enabling any person to practice or offer to
50 practice any profession licensed or regulated by this chapter regulating
51 preneed who is not licensed or registered and currently eligible to
52 practice thereunder;

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

55 (13) Failure to display a valid certificate or license if so required
56 by this chapter regulating preneed or any rule established thereunder;

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

58 (15) Making or filing any report required by sections 436.400 to
59 436.520, RSMo, regulating preneed which the licensee knows to be false
60 or knowingly failing to make or file a report required by such sections;

61 (16) Use of any advertisement or solicitation which is false,

62 misleading, or deceptive to the general public or persons to whom the
63 advertisement or solicitation is primarily directed; or

64 (17) Willfully and through undue influence selling a funeral;

65 (18) Willfully and through undue influence selling a preneed
66 contract;

67 (19) Violation of any of the provisions of chapter 193, 194, 407, or
68 436, RSMo;

69 (20) Presigning a death certificate or signing a death certificate
70 on a body not yet embalmed by, or under the personal supervision of,
71 the licensee;

72 (21) Failure to execute and sign the death certificate on a body
73 embalmed by, or under the personal supervision of, a licensee;

74 (22) Failure to refuse to properly guard against contagious,
75 infectious, or communicable diseases or the spread thereof;

76 (23) Refusing to surrender a dead human body upon request by
77 the next of kin, legal representative, or other person entitled to the
78 custody and control of the body.

79 3. After the filing of such complaint, the proceedings shall be
80 conducted in accordance with the provisions of chapter 621,
81 RSMo. Upon a finding by the administrative hearing commission that
82 the grounds, provided in subsection 2 of this section, for disciplinary
83 action are met, the board may, singly or in combination, censure or
84 place the person named in the complaint on probation on such terms
85 and conditions as the board deems appropriate for a period not to
86 exceed five years, or may suspend, for a period not to exceed three
87 years, or revoke any certificate of registration or authority, permit, or
88 license issued under this chapter.

89 4. In addition to all other powers and authority granted by the
90 board, the board may seek an injunction, restraining order or other
91 order from the Circuit Court of Cole County to enjoin any seller from
92 engaging in preneed sales upon a showing by the board that the seller
93 has failed to make deposits into the preneed trust, has obtained funds
94 out of the trust to which the seller is not entitled or has exercised
95 influence or control over the trustee or has engaged in any other act
96 that has resulted in a shortage in any preneed trust or joint account
97 which exceeds twenty percent of the total amount required to be held
98 or deposited into the trust or joint account under the provisions of

99 sections 436.400 to 436.520, RSMo. In addition to the power to enjoin
100 for this conduct, the Circuit Court of Cole County shall also be entitled
101 to suspend or revoke the preneed seller's license and any other license
102 issued pursuant to chapter 333 RSMo, held by the seller.

103 **5. An individual whose certificate of registration or authority,**
104 **permit, or license has been revoked shall wait three years from the date**
105 **of revocation to apply for any certificate of registration or authority,**
106 **permit, or license under this chapter, either as an individual or as a**
107 **manager, director, shareholder, or partner of any business entity. Any**
108 **certificate of registration or authority, permit, or license shall be**
109 **issued at the discretion of the board after compliance with all the**
110 **requirements of this chapter relative to the licensing or registration of**
111 **the applicant for the first time.**

112 **6. Use of the procedures set out in this section shall not preclude**
113 **the application of the provisions of subsection 2 of section 333.335.**

333.335. 1. Upon application by the board and the necessary
2 **burden having been met, a court of competent jurisdiction may grant**
3 **an injunction, restraining order, or other order as may be appropriate**
4 **to enjoin a person from:**

5 **(1) Offering to engage or engaging in the performance of any acts**
6 **or practices for which a registration or authority, permit, or license is**
7 **required by sections 333.310 to 333.340, upon a showing that such acts**
8 **or practices were performed or offered to be performed without the**
9 **required registration or authority, permit, or license; or**

10 **(2) Engaging in any practice or business authorized by a**
11 **registration or authority, permit, or license issued under this chapter,**
12 **that is in violation of this chapter or sections 436.400 to 436.520, RSMo,**
13 **or upon a showing that the holder presents a substantial probability of**
14 **serious danger to the health, safety, or welfare of any resident of this**
15 **state or client or customer of the licensee or registrant; or**

16 **(3) Engaging in any practice or business that presents a**
17 **substantial probability of serious danger to the solvency of any seller.**

18 **2. Any such action shall be commenced in the county in which**
19 **such conduct occurred or in the county in which the defendant resides**
20 **or, in the case of a firm or corporation, where the firm or corporation**
21 **maintains its principal office or in Cole County.**

22 **3. Any action brought under this section shall be in addition to**

23 and not in lieu of any authority provided by this chapter, and may be
24 brought concurrently with other actions to enforce this chapter or
25 sections 436.400 to 436.520, RSMo.

333.340. 1. The board shall adopt and enforce rules for the
2 transaction of its business and for standards of service and practice to
3 be followed in the professions of embalming and funeral directing
4 deemed by it necessary for the public good and consistent with the laws
5 of this state. The board may also prescribe a standard of proficiency
6 as to the qualifications and fitness of those engaging in the practice of
7 embalming or funeral directing.

8 2. The board shall set the amount of the fees which this chapter
9 authorizes and requires by rules promulgated under section 536.021,
10 RSMo. The fees shall be set at a level to produce revenue which shall
11 not substantially exceed the cost and expense of administering this
12 chapter.

13 3. The board shall promulgate and enforce rules for the
14 transaction of its business and for standards of service and practice to
15 be followed for the licensing and registration of providers, sellers, and
16 preneed agents deemed necessary for the public good and consistent
17 with the laws of this state.

18 4. Any rule or portion of a rule, as that term is defined in section
19 536.010, RSMo, that is created under the authority delegated in this
20 section shall become effective only if it complies with and is subject to
21 all of the provisions of chapter 536, RSMo, and, if applicable, section
22 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable
23 and if any of the powers vested with the general assembly pursuant to
24 chapter 536, RSMo, to review, to delay the effective date, or to
25 disapprove and annul a rule are subsequently held unconstitutional,
26 then the grant of rulemaking authority and any rule proposed or
27 adopted after August 28, 2009, shall be invalid and void.

436.400. The provisions of sections 436.400 to 436.520 shall be
2 referenced as the "Missouri Preneed Funeral Contract Act" and shall
3 apply only to preneed contracts entered into, and accounts created on
4 or after, August 28, 2009, unless otherwise specified.

436.405. 1. As used in sections 436.400 to 436.520, unless the
2 context otherwise requires, the following terms shall mean:

3 (1) "Beneficiary", the individual who is to be the subject of the

4 disposition or who will receive funeral services, facilities, or
5 merchandise described in a preneed contract;

6 (2) "Guaranteed contract", a preneed contract in which the seller
7 promises, assures, or guarantees to the purchaser that all or any
8 portion of the costs for the disposition, services, facilities, or
9 merchandise identified in a preneed contract will be no greater than
10 the amount designated in the contract upon the preneed beneficiary's
11 death or that such costs will be otherwise limited or restricted;

12 (3) "Insurance-funded preneed contract", a preneed contract
13 which is designated to be funded by payments or proceeds from an
14 insurance policy or single premium annuity contract;

15 (4) "Joint account-funded preneed contract", a preneed contract
16 which designates that payments for the preneed contract made by or
17 on behalf of the purchaser will be deposited and maintained in a joint
18 account in the names of the purchaser and seller, as provided in this
19 chapter;

20 (5) "Market value", a fair market value:

21 (a) As to cash, the amount thereof;

22 (b) As to a security as of any date, the price for the security as
23 of that date obtained from a generally recognized source, or to the
24 extent no generally recognized source exists, the price to sell the
25 security in an orderly transaction between unrelated market
26 participants at the measurement date; and

27 (c) As to any other asset, the price to sell the asset in an orderly
28 transaction between unrelated market participants at the measurement
29 date consistent with statements of financial accounting standards;

30 (6) "Nonguaranteed contract", a preneed contract in which the
31 seller does not promise, assure, or guarantee that all or any portion of
32 the costs for the disposition, facilities, service, or merchandise
33 identified in a preneed contract will be limited to the amount
34 designated in the contract upon the preneed beneficiary's death or that
35 such costs will be otherwise limited or restricted;

36 (7) "Preneed contract", any contract or other arrangement which
37 provides for the final disposition in Missouri of a dead human body,
38 funeral or burial services or facilities, or funeral merchandise, where
39 such disposition, services, facilities, or merchandise are not
40 immediately required. Such contracts include, but are not limited to,

41 agreements providing for a membership fee or any other fee for the
42 purpose of furnishing final disposition, funeral or burial services or
43 facilities, or funeral merchandise at a discount or at a future date;

44 (8) "Preneed trust", a trust to receive deposits of, administer, and
45 disburse payments received under preneed contracts, together with
46 income thereon;

47 (9) "Purchaser", the person who is obligated to pay under a
48 preneed contract;

49 (10) "Trustee", the trustee of a preneed trust, including successor
50 trustees;

51 (11) "Trust-funded preneed contract", a preneed contract which
52 provides that payments for the preneed contract shall be deposited and
53 maintained in trust.

54 2. All terms defined in chapter 333, RSMo, shall be deemed to
55 have the same meaning when used in sections 436.400 to 436.520.

436.410. The provisions of sections 436.400 to 436.520 shall not
2 apply to any contract or other arrangement sold by a cemetery
3 operator for which payments received by or on behalf of the purchaser
4 are required to be placed in an endowed care fund or for which a
5 deposit into a segregated account is required under chapter 214, RSMo;
6 provided that a cemetery operator shall comply with sections 436.400
7 to 436.520 if the contract or arrangement sold by the operator includes
8 services that may only be provided by a licensed funeral director or
9 embalmer.

436.412. Each preneed contract made before August 28, 2009, and
2 all payments and disbursements under such contract shall continue to
3 be governed by this chapter as the chapter existed at the time the
4 contract was made. Any licensee or registrant of the board may be
5 disciplined for violation of any provision of sections 436.005 to 436.071
6 within the applicable statute of limitations. In addition, the provisions
7 of section 436.031, RSMo, as it existed on August 27, 2009, shall continue
8 to govern disbursements to the seller from the trust and payment of
9 trust expenses. Joint accounts in existence as of August 27, 2009, shall
10 continue to be governed by the provisions of section 436.053, as that
11 section existed on August 27, 2009.

436.415. 1. Except as otherwise provided in sections 436.400 to
2 436.520, the provider designated in a preneed contract shall be

3 obligated to provide final disposition, funeral or burial services and
4 facilities, and funeral merchandise as described in the preneed
5 contract.

6 2. The seller designated in a preneed contract shall be obligated
7 to collect and properly deposit and disburse all payments made by, or
8 on behalf of, a purchaser of a preneed contract and ensure that is
9 statutorily and contractual duties are met, in compliance with sections
10 436.400 to 436.520, RSMo.

436.420. 1. No person shall be designated as a provider in a
2 preneed contract unless the provider has a written contractual
3 agreement with the seller. Any seller who designates a person as a
4 provider in a preneed contract without a contractual relationship with
5 such person is in violation of the provisions of sections 436.400 to
6 436.520. No contract is required if the seller and provider are the same
7 legal entity.

8 2. The written agreement required by this section shall include:

9 (1) Written consent from the provider authorizing the seller to
10 designate or obligate the provider under a preneed contract;

11 (2) Procedures for tracking preneed contract funds or payments
12 received by the provider and for remitting such funds or payments to
13 the seller, including, the time period authorized by the seller for the
14 remittance of funds and payments; and

15 (3) The signatures of the seller and the provider or their
16 authorized representatives and the date such signature was obtained.

17 3. A provider shall notify the board within fifteen days of
18 authorizing or otherwise agreeing to allow a seller to designate himself
19 or herself as the provider under any preneed contract.

20 4. Upon request of the board, a seller, provider, or preneed agent
21 shall provide a copy of any preneed contract or any contract or
22 agreement with a seller or provider to the board.

436.425. 1. All preneed contracts shall be sequentially numbered
2 and in writing and in a font type and size that are easily read, and shall
3 clearly and conspicuously:

4 (1) Include the name, address and phone number of the
5 purchaser, beneficiary, provider and seller;

6 (2) Identify the name, address, phone and license number of the
7 provider and the seller;

8 **(3) Set out in detail the disposition, funeral and burial services**
9 **and facilities, and merchandise requested;**

10 **(4) Identify whether the contract is trust funded, insurance**
11 **funded, or joint account funded;**

12 **(5) Include notice that the cancellation of the contract shall not**
13 **cancel any life insurance funding the contract, and that insurance**
14 **cancellation is required to be made in writing to the insurer;**

15 **(6) Include notice that the purchaser will only receive the cash**
16 **surrender value of any insurance policy funding the contract if**
17 **cancelled after a designated time, which may be less than the amount**
18 **paid into the policy;**

19 **(7) Include notice that the board provides by rule that the**
20 **purchaser has the right to transfer the provider designation to another**
21 **provider;**

22 **(8) Prominently identify whether the contract is revocable or**
23 **irrevocable;**

24 **(9) Set forth the terms for cancellation by the purchaser or by**
25 **the seller;**

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

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

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

36 **(13) Prominently identify whether the contract is a guaranteed**
37 **or nonguaranteed contract;**

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

40 **(15) Include a disclosure on all guaranteed installment payment**
41 **contracts informing the purchaser what will take place in the event the**
42 **beneficiary dies before all installments have been paid, including an**
43 **explanation of what will be owed by the purchaser for the funeral**
44 **services in such an event.**

45 **(16) Comply with the provisions of sections 436.400 to 436.520 or**
46 **any rule promulgated thereunder.**

47 **2. A preneed contract shall be voidable and unenforceable at the**
48 **option of the purchaser, or the purchaser's legal representative, if it is**
49 **determined in a court of competent jurisdiction that the contract is not**
50 **in compliance with this section or not issued by a seller licensed under**
51 **chapter 333, RSMo, or if the provider has not consented to serve as**
52 **provider at the time the contract was executed. Upon exercising the**
53 **option by written notice to the seller and provider, all payments made**
54 **under such contract shall be recoverable by the purchaser, or the**
55 **purchaser's legal representative, from the contract seller, trustee, or**
56 **other payee thereof.**

57 **3. A beneficiary who seeks to become eligible to receive public**
58 **assistance under chapter 208, RSMo, or any other applicable state or**
59 **federal law may irrevocably waive their rights to receive any refund or**
60 **payment of any monies from the funds or insurance used to fund their**
61 **preneed contract. Such irrevocable waiver may be executed at any**
62 **time and shall be in writing, signed and dated by the beneficiary and**
63 **shall be delivered to the seller and any applicable trustee, financial**
64 **institution or insurance company;**

65 **4. All purchasers shall have the right as provided in this chapter**
66 **to cancel or rescind a revocable preneed contract and transfer any**
67 **preneed contract with or without cause.**

68 **5. A preneed contract, shall not be changed from a trust-funded,**
69 **insurance-funded, or joint account-funded preneed contract without the**
70 **written consent 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. A seller must deposit all payments received on a preneed**
4 **contract into the designated preneed trust within sixty days of receipt**
5 **of the funds by the seller, the preneed sales agent or designee. A seller**
6 **may not require the consumer to pay any fees or other charges except**
7 **as authorized by the provisions of chapter 333, RSMo, and this chapter**
8 **or other state or federal law.**

9 **3. A seller may request the trustee to distribute to the seller an**
10 **amount up to the first five percent of the total amount of any preneed**
11 **contract as an origination fee. The seller may make this request at any**

12 time after five percent of the total amount of the preneed contract has
13 been deposited into the trust. The trustee shall make this distribution
14 to the seller within 15 days of the receipt of the request.

15 4. In addition to the origination fee, the trustee may distribute
16 to the seller, an amount up to ten percent of the face value of the
17 contract on a preneed contract at any time after the consumer payment
18 has been deposited into the trust. The seller may make written request
19 for this distribution and the trustee shall make this distribution to the
20 seller within fifteen days of the receipt of the request or as may be
21 provided in any written agreement between the seller and the trustee.

22 5. The trustee of a preneed trust shall be a state- or federally-
23 chartered financial institution authorized to exercise trust powers in
24 Missouri. The trustee shall accept all deposits made to it for a preneed
25 contract and shall hold, administer, and distribute such deposits, in
26 trust, as trust principal, under sections 436.400 to 436.520.

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

40 7. Payments regarding two or more preneed contracts may be
41 deposited into and commingled in the same preneed trust, so long as
42 the trustee maintains adequate records that individually and
43 separately identify the payments, earnings, and distributions for each
44 preneed contract.

45 8. Within a reasonable time after accepting a trusteeship or
46 receiving trust assets, a trustee shall review the trust assets and make
47 and implement decisions concerning the retention and disposition of
48 assets in order to bring the trust portfolio into compliance with the

49 purposes, terms, distribution requirements, other circumstances of the
50 trust, and all other requirements of sections 436.400 to 436.520.

51 9. All expenses of establishing and administering a preneed trust,
52 including trustee's fees, legal and accounting fees, investment expenses,
53 and taxes may be paid from income generated from the investment of
54 the trust assets. Principal of the trust shall not be used to pay the costs
55 of administration. If the income of the trust is insufficient to pay the
56 costs of administration, those costs shall be paid as per the written
57 agreements between the seller, provider and the trustee.

58 10. The seller and provider of a trust funded preneed contract
59 shall be entitled to all income, including, but not limited to, interest,
60 dividends, capital gains, and losses generated by the investment of
61 preneed trust property regarding such contract as stipulated in the
62 contract between the seller and provider. Income of the trust,
63 excluding expenses allowed under subsection 10 of this section, shall
64 accrue through the life of the trust, except in instances when a contract
65 is cancelled. The trustee of the trust may distribute market value of all
66 income, net of losses, to the seller upon, but not before, the final
67 disposition of the beneficiary and provision of the funeral and burial
68 services and facilities, and merchandise to, or for, the benefit of the
69 beneficiary. This subsection shall apply to trusts established on or
70 after August 28, 2009.

71 11. Providers shall request payment by submitting a certificate
72 of performance to the seller certifying that the provider has rendered
73 services under the contract or as requested. The certificate shall be
74 signed by both the provider and the person authorized to make
75 arrangements on behalf of the beneficiary. If there is no written
76 contract between the seller and provider, the provider shall be entitled
77 to the market value of all trusts assets allocable to the preneed
78 contract. Sellers shall remit payment to the provider within sixty days
79 of receiving the certificate of performance.

80 12. If a seller fails to make timely payment of an amount due a
81 provider under sections 436.400 to 436.520, the provider shall have the
82 right, in addition to other rights and remedies against such seller, to
83 make demand upon the trustee of the preneed trust for the contract to
84 distribute to the provider from the trust all amounts to which the seller
85 would be entitled to receive for the preneed contract.

86 13. The trustee of a preneed trust, including trusts established
87 before August 28, 2009, shall maintain adequate books and records of
88 all transactions administered over the life of the trust and pertaining
89 to the trust generally. The trustee shall assist the seller who
90 established the trust or its successor in interest in the preparation of
91 the annual report described in section 436.460. The seller shall furnish
92 to each contract purchaser, within thirty days after receipt of the
93 purchaser's written request, a written statement of all deposits made
94 to such trust regarding such purchaser's contract including the
95 principal and interest paid to date.

96 14. A preneed trust, including trusts established before August
97 28, 2009, shall terminate when the trust principal no longer includes
98 any payments made under any preneed contract, and upon such
99 termination the trustee shall distribute all trust property, including
100 principal and undistributed income, to the seller which established the
101 trust.

 436.435. 1. To the extent that any provisions in this chapter
2 which come into effect on August 28, 2009, apply to trusts governed
3 under this chapter which are in existence on August 28, 2009, such
4 trusts shall be in compliance with this chapter no later than July 1,
5 2010.

6 2. All property held in a preneed trust, including principal and
7 undistributed income, shall be invested and reinvested by the trustee
8 thereof and shall only be invested and reinvested in investments which
9 have reasonable potential for growth or producing income. Funds in,
10 or belonging to, a preneed trust shall not be invested in any term life
11 insurance product.

12 3. A trustee shall invest and manage trust assets as a prudent
13 investor would, by considering the purposes, terms, distribution
14 requirements, and other circumstances of the trust. In satisfying this
15 standard, the trustee shall exercise reasonable care, skill, and caution.
16 A trustee who has special skills or expertise, or is named trustee in
17 reliance upon the trustee's representation that the trustee has special
18 skills or expertise, has a duty to use those special skills or expertise
19 when investing and managing trust assets.

20 4. A trustee shall diversify the investments of the trust unless the
21 trustee reasonably determines that, because of special circumstances,

22 the purpose of the trust is better served without diversification.

23 5. In investing and managing trust assets, a trustee shall
24 consider the following as are relevant to the trust:

25 (1) General economic conditions;

26 (2) The possible effect of inflation or deflation;

27 (3) The expected tax consequences of investment decisions or
28 strategies;

29 (4) The role that each investment or course of action plays
30 within the overall trust portfolio;

31 (5) The expected total return from income and the appreciation
32 of capital;

33 (6) Needs for liquidity, regularity of income, and preservation or
34 appreciation of capital;

35 6. No seller, provider, or preneed agent shall procure or accept
36 a loan against any investment or asset of or belonging to a preneed
37 trust. As of August 29, 2009, no preneed seller, provider, or agent shall
38 use any existing preneed contract as collateral or security pledged for
39 a loan or take preneed funds of any existing preneed contract as a loan
40 or for any purpose other than as authorized by this chapter.

436.440. 1. The provisions of this section shall apply to all
2 preneed trusts, including trusts established before August 28, 2009.

3 2. A preneed trustee may delegate to an agent, duties and powers
4 that a prudent trustee of comparable skills would reasonably delegate
5 under the circumstances. The trustee shall exercise reasonable care,
6 skill, and caution in:

7 (1) Selecting an agent;

8 (2) Establishing the scope and terms of the agency, consistent
9 with the purposes and terms of the trust; and

10 (3) Periodically reviewing the agent's actions in order to monitor
11 the agent's performance and compliance with the terms of the agency.

12 3. In performing a delegated function, an agent owes a duty to
13 the trust to exercise reasonable care to comply with the terms of the
14 agency.

15 4. By accepting a delegation of powers or duties from the trustee
16 of a preneed trust, an agent submits to the jurisdiction of the courts of
17 this state.

18 5. Delegation of duties and powers to an agent shall not relieve

19 the trustee of any duty or responsibility imposed on the trustee by
20 sections 436.400 to 436.520 or the trust agreement.

21 6. For trusts in existence as of August 28, 2009, it shall be
22 permissible for those trusts to continue to utilize the services of an
23 independent financial advisor, if said advisor was in place pursuant to
24 section 436.031, RSMo, as of August 28, 2009.

436.445. A trustee of any preneed trust, including trusts
2 established before August 28, 2009, shall not after August 28, 2009, make
3 any decisions to invest any trust fund with:

4 (1) The spouse of the trustee;

5 (2) The descendants, siblings, parents, or spouses of a seller or
6 an officer, manager, director or employee of a seller, provider, or
7 preneed agent;

8 (3) Agents or attorneys of a trustee, seller, or provider; or

9 (4) A corporation or other person or enterprise in which the
10 trustee, seller, or provider owns a controlling interest or has an
11 interest that might affect the trustee's judgment.

436.450. 1. An insurance-funded preneed contract shall comply
2 with sections 436.400 to 436.520 and the specific requirements of this
3 section.

4 2. A seller, provider, or any preneed agent shall not receive or
5 collect from the purchaser of an insurance-funded preneed contract,
6 any amount in excess of what is required to pay the premiums on the
7 insurance policy as assessed or required by the insurer as premium
8 payments for the insurance policy except for any amount required or
9 authorized by this chapter or by rule. A seller shall not receive or
10 collect any administrative or other fee from the purchaser for or in
11 connection with an insurance-funded preneed contract, other than
12 those fees or amounts assessed by the insurer. As of August 29, 2009,
13 no preneed seller, provider, or agent shall use any existing preneed
14 contract as collateral or security pledged for a loan or take preneed
15 funds of any existing preneed contract as a loan for any purpose other
16 than as authorized by this chapter.

17 3. Payments collected by or on behalf of a seller for an
18 insurance-funded preneed contract shall be promptly remitted to the
19 insurer or the insurer's designee as required by the insurer; provided
20 that payments shall not be retained or held by the seller or preneed

21 agent for more than thirty days from the date of receipt.

22 4. It is unlawful for a seller, provider, or preneed agent to
23 procure or accept a loan against any insurance contract used to fund
24 a preneed contract.

25 5. Laws regulating insurance shall not apply to preneed
26 contracts, but shall apply to any insurance or single premium annuity
27 sold with a preneed contract; provided, however, the provisions of this
28 act shall not apply to single premium annuities or insurance policies
29 regulated by chapters 374, 375, and 376, RSMo, used to fund preneed
30 funeral agreements, contracts, or programs.

31 6. This section shall apply to all preneed contracts including
32 those entered into before August 28, 2009.

33 7. For any insurance-funded preneed contract sold after August
34 28, 2009, the following shall apply:

35 (1) The purchaser or beneficiary shall be the owner of the
36 insurance policy purchased to fund a preneed contract; and

37 (2) An insurance-funded preneed contract shall be valid and
38 enforceable only if the seller or provider is named as the beneficiary
39 or assignee of the life insurance policy funding the contract.

40 8. If the proceeds of the life insurance policy exceed the actual
41 cost of the goods and services provided pursuant to the nonguaranteed
42 preneed contract, any overage shall be paid to the estate of the
43 beneficiary, or, if the beneficiary received public assistance, to the
44 state of Missouri.

436.455. 1. A joint account-funded preneed contract shall comply
2 with sections 436.400 to 436.520 and the specific requirements of this
3 section.

4 2. In lieu of a trust-funded or insurance-funded preneed contract,
5 the seller and the purchaser may agree in writing that all funds paid
6 by the purchaser or beneficiary for the preneed contract shall be
7 deposited with a financial institution chartered and regulated by the
8 federal or state government authorized to do business in Missouri in an
9 account in the joint names and under the joint control of the seller and
10 purchaser, beneficiary or party holding power of attorney over the
11 beneficiary's estate. There shall be a separate joint account established
12 for each preneed contract sold or arranged under this section. Funds
13 shall only be withdrawn or paid from the account upon the signatures

14 of both the seller and the purchaser or under a pay-on-death
15 designation or as required to pay reasonable expenses of administering
16 the account.

17 3. All consideration paid by the purchaser under a joint account-
18 funded contract shall be deposited into a joint account as authorized
19 by this section within ten days of receipt of payment by the seller.

20 4. The financial institution shall hold, invest, and reinvest funds
21 deposited under this section in other accounts offered to depositors by
22 the financial institutions as provided in the written agreement of the
23 purchaser and the seller, provided the financial institution shall not
24 invest or reinvest any funds deposited under this section in term life
25 insurance or any investment that does not reasonably have the
26 potential to gain income or increase in value.

27 5. Income generated by preneed funds deposited under this
28 section shall be used to pay the reasonable expenses of administering
29 the account as charged by the financial institution and the balance of
30 the income shall be distributed or reinvested upon fulfillment of the
31 contract, cancellation or transfer pursuant to the provisions of this
32 chapter.

33 6. Within fifteen days after a provider and a witness certifies to
34 the financial institution in writing that the provider has furnished the
35 final disposition, funeral, and burial services and facilities, and
36 merchandise as required by the preneed contract, or has provided
37 alternative funeral benefits for the beneficiary under special
38 arrangements made with the purchaser, the financial institution shall
39 distribute the deposited funds to the seller if the certification has been
40 approved by the purchaser. The seller shall pay the provider within
41 ten days of receipt of funds.

42 7. Any seller, provider, or preneed agent shall not procure or
43 accept a loan against any investment, or asset of, or belonging to a joint
44 account. As of August 28, 2009, it shall be prohibited to use any
45 existing preneed contract as collateral or security pledged for a loan,
46 or take preneed funds of any existing preneed contract as a loan or for
47 any purpose other than as authorized by this chapter.

436.456. At any time before final disposition, or before the
2 funeral or burial services, facilities, or merchandise described in a
3 preneed contract are furnished, the purchaser may cancel the contract,

4 if designated as revocable, without cause. In order to cancel the
5 contract the purchaser shall:

6 (1) In the case of a joint account-funded preneed contract,
7 deliver written notice of the cancellation to the seller and the financial
8 institution. Within fifteen days of receipt of notice of the cancellation,
9 the financial institution shall distribute all deposited funds to the
10 purchaser. Interest shall be distributed as provided in the agreement
11 with the seller and purchaser;

12 (2) In the case of an insurance-funded preneed contract, deliver
13 written notice of the cancellation to the seller. Within fifteen days of
14 receipt of notice of the cancellation, the seller shall notify the
15 purchaser that the cancellation of the contract shall not cancel any life
16 insurance funding the contract and that insurance cancellation is
17 required to be made in writing to the insurer;

18 (3) In the case of a trust-funded preneed contract, deliver
19 written notice of the cancellation to the seller and trustee. Within
20 fifteen days of receipt of notice of the cancellation, the trustee shall
21 distribute one hundred percent of the trust property including any
22 percentage of the total payments received on the trust-funded contract
23 that have been withdrawn from the account under section 436.430.4 but
24 excluding the income, to the purchaser of the contract;

25 (4) In the case of a guaranteed installment payment contract
26 where the beneficiary dies before all installments have been paid, the
27 purchaser shall pay the seller the amount remaining due under the
28 contract in order to receive the goods and services set out in the
29 contract, otherwise the purchaser or their estate will receive full credit
30 for all payments the purchaser has made towards the cost of the
31 beneficiary's funeral at the provider current prices.

436.457. 1. A seller shall have the right to cancel a trust-funded
2 or joint-account funded preneed contract if the purchaser is in default
3 of any installment payment for over sixty days.

4 2. Prior to cancelling the contract, the seller shall notify the
5 purchaser and provider in writing that the contract shall be cancelled
6 if payment is not received within thirty days of the postmarked date of
7 the notice. The notice shall include the amount of payments due, the
8 date the payment is due, and the date of cancellation.

9 3. If the purchaser fails to remit the payments due within thirty

10 days of the postmarked date of the notice, then the seller, at its option,
11 may either cancel the contract or may continue the contract as a
12 nonguaranteed contract where the purchaser will receive full credit for
13 all payments the purchaser has made into the trust towards the cost of
14 the beneficiary's funeral service or merchandise from the provider.

15 4. Upon cancellation by the seller under this section, eighty-five
16 percent of the contract payments shall be refunded to the
17 purchaser. All remaining funds shall be distributed to the seller.

436.458. 1. A purchaser may select an alternative provider as the
2 designated provider under the original contract if the purchaser
3 notifies the seller and original provider in writing of the purchaser's
4 intent, stating the name of the alternative provider and the alternative
5 provider consents to the new designation. Purchasers shall not be
6 penalized or assessed any additional fee or cost for such transfer of the
7 provider designation.

8 2. The seller shall pay the newly designated provider all
9 payments owed to the original provider under the contract. The newly
10 designated provider shall assume all rights, duties, obligations, and
11 liabilities as the original provider under the contract. Interest shall
12 continue to be allocated to the seller as provided under the contract.

13 3. In the case of a trust funded contract and upon written notice
14 to the seller of the purchaser's intent to select an alternative provider
15 under subsection 1 of this section, the seller shall either continue the
16 trust with the new provider in place of, and to receive all payment
17 owed to, the original provider under the original agreement, or pay to
18 the new trust all of the trust property, including principal and income.

436.460. 1. Each seller shall file an annual report with the board
2 which shall contain the following information:

3 (1) The contract number of each preneed contract sold since the
4 filing of the last report with an indication of, and whether it is funded
5 by a trust, insurance or joint account;

6 (2) The total number and total face value of preneed contracts
7 sold since the filing of the last report;

8 (3) The contract amount of each preneed contract sold since the
9 filing of the last report, identified by contract;

10 (4) The name, address, and license number of all preneed agents
11 authorized to sell preneed contracts on behalf of the seller;

12 **(5) The date the report is submitted and the date of the last**
13 **report;**

14 **(6) The list including the name, address, contract number and**
15 **whether it is funded by a trust, insurance or joint account of all**
16 **Missouri preneed contracts fulfilled, cancelled or transferred by the**
17 **seller during the preceding calendar year;**

18 **(7) The name and address of each provider with whom it is under**
19 **contract;**

20 **(8) The name and address of the person designated by the seller**
21 **as custodian of the seller's books and records relating to the sale of**
22 **preneed contracts;**

23 **(9) Written consent authorizing the board to order an**
24 **investigation, examination and, if necessary, an audit of any joint or**
25 **trust account established under sections 436.400 to 436.520, designated**
26 **by depository or account number;**

27 **(10) Written consent authorizing the board to order an**
28 **investigation, examination and if necessary an audit of its books and**
29 **records relating to the sale of preneed contracts; and**

30 **(11) Certification under oath that the report is complete and**
31 **correct attested to by an officer of the seller. The seller or officer shall**
32 **be subject to the penalty of making a false affidavit or declaration.**

33 **2. A seller that sells or has sold trust-funded preneed contracts**
34 **shall also include in the annual report required by section 1 of this**
35 **section:**

36 **(1) The name and address of the financial institution in which it**
37 **maintains a preneed trust account and the account numbers of such**
38 **trust accounts;**

39 **(2) The trust fund balance as reported in the previous year's**
40 **report;**

41 **(3) The current face value of the trust fund;**

42 **(4) Principal contributions received by the trustee since the**
43 **previous report;**

44 **(5) Total trust earnings and total distributions to the seller since**
45 **the previous report;**

46 **(6) Authorization of the board to request from the trustee a copy**
47 **of any trust statement, as part of an investigation, examination or audit**
48 **of the preneed seller;**

49 **(7) Total expenses, excluding distributions to the seller, since the**
50 **previous report; and**

51 **(8) Certification under oath that the information required by**
52 **subdivisions (1) to (7) of this subsection is complete and correct and**
53 **attested to by a corporate officer of the trustee. The trustee shall be**
54 **subject to the penalty of making a false affidavit or declaration.**

55 **3. A seller that sells or who has sold joint account-funded**
56 **preneed contracts shall also include in the annual report required by**
57 **subsection 1 of this section:**

58 **(1) The name and address of the financial institution in Missouri**
59 **in which it maintains the joint account and the account numbers for**
60 **each joint account;**

61 **(2) The amount on deposit in each joint account;**

62 **(3) The joint account balance as reported in the previous year's**
63 **report;**

64 **(4) Principal contributions placed into each joint account since**
65 **the filing of the previous report;**

66 **(5) Total earnings since the previous report;**

67 **(6) Total distributions to the seller from each joint account since**
68 **the previous report;**

69 **(7) Total expenses deducted from the joint account, excluding**
70 **distributions to the seller, since the previous report; and**

71 **(8) Certification under oath that the information required by**
72 **subdivisions (1) to (7) of this subsection is complete and correct and**
73 **attested to by an authorized representative of the financial**
74 **institution. The affiant shall be subject to the penalty of making a false**
75 **affidavit or declaration.**

76 **4. A seller that sells or who has sold any insurance-funded**
77 **preneed contracts shall also include in the annual report required by**
78 **subsection 1 of this section:**

79 **(1) The name and address of each insurance company issuing**
80 **insurance to fund a preneed contract sold by the seller during the**
81 **preceding year;**

82 **(2) The status and total face value of each policy;**

83 **(3) The amount of funds the seller directly received on each**
84 **contract and the date the amount was forwarded to any insurance**
85 **company; and**

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

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

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

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

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

436.465. A seller shall maintain:

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

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

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

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

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

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

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

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

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

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

44 to 436.520.

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

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

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

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

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

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

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

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

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

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

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

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

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

10 **designated provider;**

11 **(2) The name and license numbers of all sellers authorized to**
12 **designate the licensee as a provider in a preneed contract;**

13 **(3) The name, address, and license number of the provider**
14 **assuming or agreeing to assume the licensee's obligations as a provider**
15 **under a preneed contract, if any;**

16 **(4) The name, address, and phone number of a custodian who**
17 **will maintain the books and records of the provider containing**
18 **information about preneed contracts in which the licensee is or was**
19 **formerly designated as provider;**

20 **(5) A final annual report containing the information required by**
21 **section 436.460;**

22 **(6) The date the provider intends to sell or otherwise dispose of**
23 **its business assets or stock, or cease doing business; and**

24 **(7) Any other information required by any other applicable**
25 **statute or regulation enacted pursuant to state or federal law.**

26 **3. Within three days after the provider sells or disposes of its**
27 **assets or stock or ceases doing business, the former provider shall**
28 **notify each seller in writing that the former provider has sold or**
29 **disposed of its assets or stock or has ceased doing business.**

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

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

7 **(1) A notarized and signed statement from the person assuming**
8 **or agreeing to assume the obligations of the seller indicating that the**
9 **assuming seller has been provided with a copy of the seller's final**
10 **annual report and has consented to assuming the outstanding**
11 **obligations of the seller;**

12 **(2) In lieu of the notarized statement required by subdivision (1)**
13 **of this subsection, the seller may file a plan detailing how the assets of**
14 **the seller will be set aside and used to service all outstanding preneed**
15 **contracts sold by the seller; and**

16 **(3) Any other information required by any other applicable**
17 **statute or regulation enacted pursuant to state or federal law.**

18 **3. Within thirty days after assuming the obligations of a seller**
19 **under this section, the assuming seller shall:**

20 **(1) Notify each provider in writing that the former seller has**
21 **sold or disposed of its assets or stock or has ceased doing business; and**

22 **(2) Provide written notification to the purchasers of each**
23 **preneed contract assumed by the seller indicating that the former**
24 **seller has transferred ownership or has ceased doing business.**

25 **4. Nothing in this section shall be construed to require the board**
26 **to audit, inspect, investigate, examine, or edit the books and records of**
27 **a seller subject to the provisions of this section nor shall this section**
28 **be construed to amend, rescind, or supersede any duty imposed on, or**
29 **due diligence required of, an entity assuming the obligations of the**
30 **seller.**

31 **5. The office of the attorney general shall have the authority to**
32 **initiate legal action to compel or otherwise ensure compliance with this**
33 **section by a former provider licensee.**

436.505. A preneed contract may offer the purchaser the option
2 **to acquire and maintain credit life insurance on the life of the**
3 **purchaser. Such insurance shall provide for the payment of death**
4 **benefits to the seller in an amount equal to the total of all contract**
5 **payments unpaid as of the date of such purchaser's death, and shall be**
6 **used solely to make those unpaid payments. Any such credit life**
7 **insurance shall be provided by a duly authorized insurance company**
8 **and the preneed contract shall clearly identify the name of the insurer**
9 **and the amount of payment allocated to the premium payment for the**
10 **credit life. No seller or provider may provide any form of self insured**
11 **credit life.**

436.510. If a seller shall fail to make timely payment of an
2 **amount due a purchaser or a provider under the provisions of sections**
3 **436.400 to 436.520, the purchaser or provider, as appropriate, shall have**
4 **the right, in addition to other rights and remedies against such seller,**
5 **to make demand upon the trustee of the preneed trust for the contract**
6 **to distribute to the purchaser or provider from the trust, as damages,**
7 **an amount equal to all deposits made into the trust for the contract.**

436.520. 1. The board shall promulgate and enforce rules for
2 **administration and enforcement of sections 436.400 to 436.520 including**
3 **the establishment of the amount of any fees authorized thereunder for**

4 the transaction of its business and for standards of service and practice
5 to be followed for the licensing and registration of providers, sellers,
6 and preneed agents deemed necessary for the public good and
7 consistent with the laws of this state. Such fees shall be set at a level
8 to produce revenue which does not substantially exceed the cost and
9 expense of administering this chapter.

10 2. Any rule or portion of a rule, as that term is defined in section
11 536.010, RSMo, that is created under the authority delegated in this
12 section shall become effective only if it complies with and is subject to
13 all of the provisions of chapter 536, RSMo, and, if applicable, section
14 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable
15 and if any of the powers vested with the general assembly under
16 chapter 536, RSMo, to review, to delay the effective date, or to
17 disapprove and annul a rule are subsequently held unconstitutional,
18 then the grant of rulemaking authority and any rule proposed or
19 adopted after August 28, 2009, shall be invalid and void.

Section 1. The board shall maintain as a closed and confidential
2 record, not subject to discovery unless the person provides written
3 consent for disclosure, all personal information about any individual
4 preneed purchaser or beneficiary, including but not limited to name,
5 address, Social Security number, financial institution account numbers,
6 and any health information disclosed in the preneed contract or any
7 document prepared in conjunction with the preneed contract; provided,
8 however, that the board may disclose such confidential information
9 without the consent of the person involved in the course of voluntary
10 interstate exchange of information; or in the course of any litigation
11 concerning that person or the provider, seller, or sales agent involved
12 with the preneed contract; or pursuant to a lawful request or to other
13 administrative or law enforcement agencies acting within the scope of
14 their statutory authority. In any such litigation, the board and its
15 attorneys shall take reasonable precautions to ensure the protection of
16 such information from disclosure to the public.

[333.121. 1. The board may refuse to issue any certificate
2 of registration or authority, permit or license required pursuant to
3 this chapter for one or any combination of causes stated in
4 subsection 2 of this section. The board shall notify the applicant
5 in writing of the reasons for the refusal and shall advise the

6 applicant of his right to file a complaint with the administrative
7 hearing commission as provided by chapter 621, RSMo.

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

15 (1) Use of any controlled substance, as defined in chapter
16 195, RSMo, or alcoholic beverage to an extent that such use
17 impairs a person's ability to perform the work of any profession
18 licensed or regulated by this chapter;

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

27 (3) Use of fraud, deception, misrepresentation or bribery in
28 securing any certificate of registration or authority, permit or
29 license issued pursuant to this chapter or in obtaining permission
30 to take any examination given or required pursuant to this chapter;

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

34 (5) Incompetency, misconduct, gross negligence, fraud,
35 misrepresentation or dishonesty in the performance of the
36 functions or duties of any profession licensed or regulated by this
37 chapter;

38 (6) Violation of, or assisting or enabling any person to
39 violate, any provision of this chapter, or of any lawful rule or
40 regulation adopted pursuant to this chapter;

41 (7) Impersonation of any person holding a certificate of

42 registration or authority, permit or license or allowing any person
43 to use his or her certificate of registration or authority, permit,
44 license or diploma from any school;

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

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

52 (10) Assisting or enabling any person to practice or offer to
53 practice any profession licensed or regulated by this chapter who
54 is not registered and currently eligible to practice under this
55 chapter;

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

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

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

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

64 (15) Violation of any of the provisions of chapter 193, RSMo,
65 chapter 194, RSMo, or chapter 436, RSMo;

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

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

72 (18) Failure to execute and sign the death certificate on a
73 body embalmed by, or under the personal supervision of, a licensee;

74 (19) Failure or refusal to properly guard against contagious,
75 infectious or communicable diseases or the spread thereof;

76 (20) Willfully and through undue influence selling a
77 funeral;

78 (21) Refusing to surrender a dead human body upon request
79 by the next of kin, legal representative or other person entitled to
80 the custody and control of the body.

81 3. After the filing of such complaint, the proceedings shall
82 be conducted in accordance with the provisions of chapter 621,
83 RSMo. Upon a finding by the administrative hearing commission
84 that the grounds, provided in subsection 2, for disciplinary action
85 are met, the board may, singly or in combination, censure or place
86 the person named in the complaint on probation on such terms and
87 conditions as the board deems appropriate for a period not to
88 exceed five years, or may suspend, for a period not to exceed three
89 years, or revoke the license, certificate, or permit.]

[333.241. 1. Upon application by the board, and the
2 necessary burden having been met, a court of general jurisdiction
3 may grant an injunction, restraining order or other order as may
4 be appropriate to enjoin a person from:

5 (1) Offering to engage or engaging in the performance of
6 any acts or practices for which a certificate of registration or
7 authority, permit or license is required upon a showing that such
8 acts or practices were performed or offered to be performed without
9 a certificate of registration or authority, permit or license; or

10 (2) Engaging in any practice or business authorized by a
11 certificate of registration or authority, permit or license issued
12 pursuant to this chapter upon a showing that the holder presents
13 a substantial probability of serious danger to the health, safety or
14 welfare of any resident of this state or client or patient of the
15 licensee.

16 2. Any such action shall be commenced either in the county
17 in which such conduct occurred or in the county in which the
18 defendant resides.

19 3. Any action brought under this section shall be in
20 addition to and not in lieu of any penalty provided by this chapter
21 and may be brought concurrently with other actions to enforce this
22 chapter.]

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

- 3 (1) "Beneficiary", the individual who is to be the subject of
4 the disposition and who will receive funeral services, facilities or
5 merchandise described in a preneed contract;
- 6 (2) "Division", the division of professional registration;
- 7 (3) "Funeral merchandise", caskets, grave vaults, or
8 receptacles, and other personal property incidental to a funeral or
9 burial service, and such term shall also include grave lots, grave
10 space, grave markers, monuments, tombstones, crypts, niches or
11 mausoleums if, but only if, such items are sold:
- 12 (a) By a companion agreement which is sold in
13 contemplation of trade or barter for grave vaults or funeral or
14 burial services and funeral merchandise; or
- 15 (b) At prices, in excess of prevailing market prices, intended
16 to be offset by reductions in the costs of funeral or burial services
17 or facilities which are not immediately required;
- 18 (4) "Person", any individual, partnership, corporation,
19 cooperative, association, or other entity;
- 20 (5) "Preneed contract", any contract or other arrangement
21 which requires the current payment of money or other property in
22 consideration for the final disposition of a dead human body, or for
23 funeral or burial services or facilities, or for funeral merchandise,
24 where such disposition, services, facilities or merchandise are not
25 immediately required, including, but not limited to, an agreement
26 providing for a membership fee or any other fee having as its
27 purpose the furnishing of burial or funeral services or merchandise
28 at a discount, except for contracts of insurance, including payment
29 of proceeds from contracts of insurance, unless the preneed seller
30 or provider is named as the owner or beneficiary in the contract of
31 insurance;
- 32 (6) "Preneed trust", a trust established by a seller, as
33 grantor, to receive deposits of, administer, and disburse payments
34 received under preneed contracts by such seller, together with
35 income thereon;
- 36 (7) "Provider", the person obligated to provide the
37 disposition and funeral services, facilities, or merchandise
38 described in a preneed contract;

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

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

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

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

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

3 (1) It is in writing;

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

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

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

12 (5) The terms of such trust and related agreements among
13 two or more of the contract seller, the contract provider, and the
14 trustee of such trust are in compliance with the provisions of
15 sections 436.005 to 436.071;

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

18 2. If a preneed contract does not comply with the provisions
19 of sections 436.005 to 436.071, all payments made under such
20 contract shall be recoverable by the purchaser, his heirs, or legal
21 representative, from the contract seller or other payee thereof,
22 together with interest at the rate of ten percent per annum and all
23 reasonable costs of collection, including attorneys' fees.

24 3. Each preneed contract made before August 13, 1982, and
25 all payments and disbursements under such contract shall continue
26 to be governed by sections 436.010 to 436.080, as those sections
27 existed at the time the contract was made; but, the provisions of

28 subsection 2 of section 436.035 may be applied to all preneed
29 contracts which are executory on August 13, 1982.

30 4. Subject to the provisions of subdivision (5) of section
31 436.005, the provisions of sections 436.005 to 436.071 shall apply
32 to the assignment of proceeds of any contract of insurance for the
33 purpose of funding a preneed contract or written in conjunction
34 with a preneed contract. Laws regulating insurance shall not
35 apply to preneed contracts, but shall apply to any insurance sold
36 with a preneed contract.

37 5. No preneed contract shall become effective unless and
38 until the purchaser thereof has placed his signature in a space
39 provided on such contract, or application therefor, and the
40 purchaser has received a copy of such contract signed by the seller.

41 6. The seller and the provider of a preneed contract may be
42 the same person.]

[436.011. 1. Any seller who designates a person as a
2 provider in a preneed contract without a contractual relationship
3 with such person is in violation of the provisions of sections
4 436.005 to 436.071.

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

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

[436.015. 1. No person shall perform or agree to perform
2 the obligations of, or be designated as, the provider under a

3 preneed contract unless, at the time of such performance,
4 agreement or designation:

5 (1) Such person is licensed by the state board as a funeral
6 establishment pursuant to the provisions of section 333.061, RSMo,
7 but such person need not be licensed as a funeral establishment if
8 he is the owner of real estate situated in Missouri which has been
9 formally dedicated for the burial of dead human bodies and the
10 contract only provides for the delivery of one or more grave vaults
11 at a future time and is in compliance with the provisions of chapter
12 214, RSMo; and

13 (2) Such person is registered with the state board and files
14 with the state board a written consent authorizing the state board
15 to order an examination and if necessary an audit by the staff of
16 the division of professional registration who are not connected with
17 the board of its books and records which contain information
18 concerning preneed contracts sold for, in behalf of, or in which he
19 is named as provider of the described funeral merchandise or
20 services.

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

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

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

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

34 (b) The name and address of each seller with whom it has
35 entered into a written agreement since last filing a report;

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

39 (3) Cooperate with the state board, the office of the attorney
40 general of Missouri, and the division in any investigation,
41 examination or audit brought under the provisions of sections
42 436.005 to 436.071;

43 (4) At least thirty days prior to selling or otherwise
44 disposing of its business assets, or its stock if a corporation, or
45 ceasing to do business, give written notification to the state board
46 and to all sellers with whom it has one or more preneed contracts
47 of its intent to engage in such sale or to cease doing business. In
48 the case of a sale of assets or stock, the written notice shall also
49 contain the name and address of the purchaser. Upon receipt of
50 such written notification, the state board may take reasonable and
51 necessary action to determine that any preneed contracts which the
52 provider is obligated to service will be satisfied at the time of
53 need. The state board may waive the requirements of this
54 subsection, or may shorten the period of notification whenever in
55 its discretion it determines that compliance with its provisions are
56 not necessary. Failure of the state board to take action regarding
57 such sale or termination of business within thirty days shall
58 constitute such a waiver.

59 3. It is a violation of the provisions of sections 436.005 to
60 436.071 and subdivision (3) of section 333.121, RSMo, for any
61 person to sell, transfer or otherwise dispose of the assets of a
62 provider without first complying with the provisions of subdivision
63 (4) of subsection 2 of this section. This violation shall be in
64 addition to the provisions of section 436.061.

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

70 5. With respect to a provider or seller licensed under the
71 provisions of chapter 333, RSMo, any violation of the provisions of
72 sections 436.005 to 436.071 shall constitute a violation of
73 subdivision (3) of section 333.121, RSMo.]

[436.021. 1. No person, including without limitation a

2 person who is a provider under one or more preneed contracts,
3 shall sell, perform or agree to perform the seller's obligations
4 under, or be designated as the seller of, any preneed contract
5 unless, at the time of that sale, performance, agreement, or
6 designation, that person shall:

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

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

11 (3) Have registered with the state board.

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

13 (1) Maintain adequate records of all such contracts and
14 related agreements with providers and the trustee of preneed
15 trusts regarding such contracts, including copies of all such
16 agreements;

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

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

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

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

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

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

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

36 (f) A consent authorizing the state board to order an
37 examination and if necessary an audit by staff of the division of

38 professional registration who are not connected with the board of
39 the trust account, designated by depository and account
40 number. The staff of the division of professional registration in
41 conducting the audit shall not release a detailed accounting of the
42 trust account to the board unless there exist circumstances
43 indicating that the account does not comply with the requirements
44 of sections 436.005 to 436.071, but shall provide the board with a
45 summary of the examination or audit showing general compliance
46 with the provisions of sections 436.005 to 436.071;

47 (4) File with the state board a consent authorizing the state
48 board to order an examination and if necessary an audit by staff of
49 the division of professional registration who are not connected with
50 the board of its books and records relating to the sale of preneed
51 contracts and the name and address of the person designated by
52 the seller as custodian of these books and records. The staff of the
53 division of professional registration in conducting the audit shall
54 not release a detailed accounting of the trust account to the board
55 unless there exist circumstances indicating that the account does
56 not comply with the requirements of sections 436.005 to 436.071,
57 but shall provide the board with a summary of the examination or
58 audit showing general compliance with the provisions of sections
59 436.005 to 436.071;

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

63 3. Prior to selling or otherwise disposing of a majority of its
64 business assets, or a majority of its stock if a corporation, or
65 ceasing to do business as a seller, the seller shall provide written
66 notification to the state board of its intent to engage in such sale
67 at least sixty days prior to the date set for the closing of the sale,
68 or of its intent to cease doing business at least sixty days prior to
69 the date set for termination of its business. The written notice
70 shall be sent, at the same time as it is provided to the state board,
71 to all providers who are then obligated to provide funeral services
72 or merchandise under preneed contracts sold by the seller. Upon
73 receipt of the written notification, the state board may take

74 reasonable and necessary action to determine that the seller has
75 made proper plans to assure that the trust assets of the seller will
76 be set aside and used to service outstanding preneed contracts sold
77 by the seller. The state board may waive the requirements of this
78 subsection or may shorten the period of notification whenever in its
79 discretion it determines that compliance with its provisions are not
80 necessary. Failure of the state board to take action regarding such
81 sale or termination of business within sixty days shall constitute
82 such a waiver.

83 4. It is a violation of the provisions of sections 436.005 to
84 436.071 for any person to sell, transfer or otherwise dispose of the
85 assets of a seller without first complying with the provisions of
86 subsection 3 of this section.]

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

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

12 2. All property held in a preneed trust, including principal
13 and undistributed income, shall be invested and reinvested by the
14 trustee thereof. The trustee shall exercise such judgment and care
15 under circumstances then prevailing which men of ordinary
16 prudence, discretion, and intelligence exercise in the management

17 of their own affairs, not in regard to speculation but in regard to
18 the permanent disposition of their funds, considering the probable
19 income therefrom as well as the probable safety of their capital. A
20 preneed trust agreement may provide that when the principal and
21 interest in a preneed trust exceeds two hundred fifty thousand
22 dollars, investment decisions regarding the principal and
23 undistributed income may be made by a federally registered or
24 Missouri-registered independent qualified investment advisor
25 designated by the seller who established the trust; provided, that
26 title to all investment assets shall remain with the trustee and be
27 kept by the trustee to be liquidated upon request of the advisor of
28 the seller. In no case shall control of said assets be divested from
29 the trustee nor shall said assets be placed in any investment which
30 would be beyond the authority of a reasonably prudent trustee to
31 invest in. The trustee shall be relieved of all liability regarding
32 investment decisions made by such qualified investment advisor.

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

45 4. All expenses of establishing and administering a preneed
46 trust, including, without limitation, trustee's fees, legal and
47 accounting fees, investment expenses, and taxes, shall be paid or
48 reimbursed directly by the seller of the preneed contracts
49 administered through such trust and shall not be paid from the
50 principal of a preneed trust.

51 5. The trustee of a preneed trust shall maintain adequate
52 books of account of all transactions administered through the trust

53 and pertaining to the trust generally. The trustee shall assist
54 seller who established the trust or its successor in interest in the
55 preparation of the annual report described in subdivision (3) of
56 subsection 2 of section 436.021. The seller shall furnish to each
57 contract purchaser, within fifteen days after receipt of the
58 purchaser's written request, a written statement of all deposits
59 made to such trust regarding such purchaser's contract.

60 6. The trustee of a preneed trust shall, from time to time,
61 distribute trust principal as provided by sections 436.005 to
62 436.071.

63 7. A preneed trust shall terminate when trust principal no
64 longer includes any payments made under any preneed contract,
65 and upon such termination the trustee shall distribute all trust
66 property, including principal and undistributed income, to the
67 seller which established the trust.]

[436.035. 1. At any time before the final disposition of the
2 dead body, or before funeral services, facilities, or merchandise
3 described in a preneed contract are provided by the provider
4 designated in the preneed contract, the purchaser may cancel the
5 contract without cause by delivering written notice thereof to the
6 seller and the provider. Within fifteen days after its receipt of such
7 notice, the seller shall pay to the purchaser a net amount equal to
8 all payments made into trust under the contract. Upon delivery
9 of the purchaser's receipt for such payment to the trustee, the
10 trustee shall distribute to the seller from the trust an amount
11 equal to all deposits made into the trust for the contract.

12 2. Notwithstanding the provisions of subsection 1 of this
13 section, if a purchaser is eligible, becomes eligible, or desires to
14 become eligible, to receive public assistance under chapter 208,
15 RSMo, or any other applicable state or federal law, the purchaser
16 may irrevocably waive and renounce his right to cancel the contract
17 pursuant to the provisions of subsection 1 of this section, which
18 waiver and renunciation shall be made in writing and delivered to
19 the contract seller; but the purchaser may designate and
20 redesignate the provider in the irrevocable agreement or plan
21 where applicable by the terms of the contract.

22 3. Notwithstanding the provisions of subsection 1 of this
23 section, any purchaser, within thirty days of receipt of the executed
24 contract, may cancel the contract without cause by delivering
25 written notice thereof to the seller and the provider, and receive a
26 full refund of all payments made on the contract. Notice of this
27 provision and the appropriate addresses for notice of cancellation
28 shall be so designated on the face of the contract.]

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

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

 [436.045. Within thirty days after a provider and a witness
2 shall certify in writing to the seller that the provider has provided
3 the final disposition of the dead body, and funeral services,
4 facilities, and merchandise described in the contract, or has
5 provided alternative funeral benefits for the beneficiary pursuant
6 to special arrangements made with the purchaser, the seller shall
7 pay to the provider a net amount equal to all payments required to

8 be made pursuant to the written agreement between the seller and
9 the provider or all payments made under the contract. Upon
10 delivery to the trustee of the provider's receipt for such payment,
11 the trustee shall distribute to the seller from the trust an amount
12 equal to all deposits made into the trust for the contract.]

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

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

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

17 provide that:

18 (1) The total consideration to be paid by the purchaser
19 under the contract shall be made in one or more payments into the
20 joint account at the time the agreement is executed or, thereafter
21 within five days of receipt, respectively;

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

26 (3) The income generated by the deposited funds shall be
27 used to pay the reasonable expenses of administering the
28 agreement, and the balance of the income shall be distributed or
29 reinvested as provided in the agreement;

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

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

44 (6) If the death of the beneficiary occurs outside the general
45 area served by the provider, then the provider shall either provide
46 for the furnishing of comparable funeral services and merchandise
47 by a licensed mortuary selected by the purchaser or, at the
48 provider's option, shall pay over to the purchaser in fulfillment of
49 the obligation of the preneed contract, an amount equal to the
50 sums actually paid in cash by such purchaser under such preneed
51 contract together with interest to be provided for in the contract,
52 in which event the financial institution shall distribute the

53 deposited funds to the provider;

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

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

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

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

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

20 and the state board shall be so notified and the complaint shall be
21 dismissed; but, if the attorney general determines that there is
22 such probable cause the registrant shall be so notified and the
23 results of such evaluation shall be transmitted to the state board
24 for further action as provided in sections 436.061 and 436.063.]

[436.061. 1. Each person who shall knowingly and willfully
2 violate any provision of sections 436.005 to 436.071, and any
3 officer, director, partner, agent, or employee of such person
4 involved in such violation is guilty of a class D felony. Each
5 violation of any provision of sections 436.005 to 436.071 constitutes
6 a separate offense and may be prosecuted individually.

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

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

[436.065. A preneed contract may offer the purchaser the
2 option to acquire and maintain credit life insurance on the life of
3 the purchaser. Such insurance shall provide for the payment of
4 death benefits to the seller in an amount equal to the total of all
5 contract payments unpaid as of the date of such purchaser's death,
6 and shall be used solely to make those unpaid payments.]

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

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

9 2. After July 16, 1985, each provider shall remit an annual
10 reporting fee of thirty dollars.

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

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

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