

FILED 9/24/09 EFFECTIVE 10/4/09

**Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND
PROFESSIONAL REGISTRATION
Division 2120—State Board of Embalmers and Funeral Directors
Chapter 2—General Rules**

EMERGENCY AMENDMENT

20 CSR 2120-2.100 Fees. The board is proposing to add subsections (U) through (GG).

PURPOSE: The State Board of Embalmers and Funeral Directors is statutorily obligated to enforce and administer the provisions of Chapter 333, RSMo and sections 436.400 to 436.520, RSMo. Pursuant to section 333.111, RSMo, the board shall by rule and regulation set the amount of fees authorized by Chapter 333, RSMo and sections 436.400 to 436.520, RSMo so that the revenue produced is sufficient, but not excessive, to cover the cost and expense to the board for administering the provisions of Chapter 333, RSMo and sections 436.400 to 436.520, RSMo. Therefore the board is proposing to adopt new fees associated with the implementation of Senate Bill 1, 95th General Assembly, First Regular Session (2009).

EMERGENCY STATEMENT: During the First Regular Session of the 95th General Assembly, Senate Substitute for Senate Committee substitute for Senate Bill 1 was passed. This legislation required for the first time that preneed sellers and preneed providers be licensed and for preneed agents to be registered. This legislation enhanced enforcement powers of both the board and the Office of the Attorney General. Additionally, this legislation strengthened consumer protection and preneed contracts funded through trust, insurance and joint accounts. This legislation took effect August 28, 2009.

The impetus for this bill was the 2008 collapse of Missouri's largest preneed funeral plan seller, National PreArranged Services (NPS), a St. Louis based preneed funeral plan seller. NPS sold preneed funeral plans in approximately forty-four (44) states and had estimated liabilities of one billion (\$1,000,000,000). NPS and its sister insurance companies are being liquidated by the District Court of Travis County, Texas. NPS was the largest third party preneed funeral plan seller in the State of Missouri and was the seller of approximately seven thousand (7,000) preneed funeral plans in Missouri at the time liquidation proceedings began. The repercussions of the liquidation of NPS will be felt throughout all of Missouri for years to come. Funeral homes will receive payment of much less than NPS promised to provide for funeral services and some Missourians will be faced with the situation of having to pay twice for a funeral because there will be no funds available through the liquidation proceedings and there may be no funeral home in Missouri obligated to provide the funeral services. The ripple effects of this liquidation will also be felt in the economies of many Missouri communities. This matter has resulted in approximately two hundred (200) complaints to the board. Multiple lawsuits have been filed against NPS and one (1) of NPS's central figures was recently placed under federal indictment.

Now that this legislation has passed and became effective on August 28, 2009, this emergency rule is necessary to preserve a compelling governmental interest of establishing fees for the requirements contained in Chapters 333 and 436 which became effective on August 28, 2009.

Adoption of this rule only through the ordinary rule making process would preclude the board from setting fees for its licensees and registrants under the new requirements of Chapters 333 and 436 and would preclude licensees and registrants from being able to meet the statutory requirements for licensure or registration, thus precluding them from doing business in the State of Missouri.

As a result, the Missouri State Board of Embalmers and Funeral Directors finds that there is a compelling governmental interest that requires this emergency action. The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the **Missouri and United States Constitutions**. The Missouri State Board of Embalmers and Funeral Directors believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed September 24, 2009, effective October 4, 2009, and expires April 1, 2010.

(1) The following fees hereby are established by the State Board of Embalmers and Funeral Directors:

(U) Provider License Application Fee (if no Funeral Establishment license)	\$200
(V) Provider License Application Fee (If also Funeral Establishment license)	\$100
(W) Provider Biennial Renewal Fee	\$ **
(X) Seller License Application Fee	\$ 75
(Y) Seller Biennial Renewal Fee	\$ **
(Z) Seller Agent Registration Fee	\$ 50
(AA) Seller Agent Biennial Registration Renewal Fee	\$ **
(BB) Seller Annual Report Fee	\$ **
(CC) Seller Annual Report Late Fee	\$ **
(DD) Seller Agent Law Examination Fee	\$ **
(EE) Seller per Contract Annual Reporting Fee (For contracts executed on or after August 28, 2009)	\$ 36
(FF) Amended Provider Application Fee	\$ 25
(GG) Amended Seller Application Fee	\$ 25

****This fee is not yet determined by the board.**

*AUTHORITY: section 333.111.1, RSMo 2000 and 333.340, as amended by Senate Bill 1, 95th General Assembly First Regular Session (2009). * This rule originally filed as 4 CSR 120-2.100. Emergency rule filed June 30, 1981, effective July 9, 1981, expired Nov. 11, 1981. Original rule filed June 30, 1981, effective Oct. 12, 1981. Emergency amendment filed April 7, 1982, effective April 17, 1982, expired Aug. 14, 1982. For intervening history, please consult the **Code of State Regulation**. Emergency amendment filed September 24, 2009, effective October 4, 2009, and expires April 1, 2010.*

PUBLIC FISCAL NOTE

I. RULE NUMBER

Title 20 - Department of Insurance, Financial Institutions and Professional Registration

Division 2120 - State Board of Embalmers and Funeral Directors

Chapter 2 - General Rules

Proposed Rule - 20 CSR 2120-2.100 Fees

Prepared September 1, 2009 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Increase in Revenue	
State Board of Embalmers and Funeral Directors	Total Increase in Annual Revenue Beginning in FY09	\$712,250

III. WORKSHEET

The State Board of Embalmers and Funeral Directors is statutorily obligated to enforce and administer the provisions of Chapter 333, RSMo and section 436.400 through 436.520, RSMo. Pursuant to Section 333.111, RSMo, the board shall by rule and regulation set the amount of fees authorized by Chapter 333 and sections 436.400 through 436.520, RSMo so that the revenue produced is sufficient, but not excessive, to cover the cost and expense to the board for administering the provisions of Chapter 333, RSMo and sections 436.400 through 436.520, RSMo. The board estimates the projections calculated in the Private Entity Fiscal Note for this rule will be the amount of revenue collected for this rule.

IV. ASSUMPTION

1. It is anticipated that the estimated revenue will recur for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee.

PRIVATE FISCAL NOTE

I. RULE NUMBER

Title 20 - Department of Insurance, Financial Institutions and Professional Registration

Division 2120 - State Board of Embalmers and Funeral Directors

Chapter 2 - General Rules

Proposed Rule - 20 CSR 2120-2.100 Fees

Prepared September 1, 2009 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

FY10 - FY11

Estimate the number of entities by class which would likely be affected by the adoption of the proposed amendment:	Classification by type of the business entities which would likely be affected:	Estimated cost of compliance with the amendment by affected entities:
10	Provider (No Establishment License) (Application Fee @ \$200.00)	\$2,000.00
690	Provider (Establishment License) (Application Fee @ \$100.00)	\$69,000.00
350	Seller License (Application Fee @ \$75.00)	\$26,250.00
50	Preneed Agent (Registration Fee @ \$50.00)	\$2,500.00
17,000	Seller Per Contract (Annual Reporting Fee @ \$36.00)	\$612,000.00
10	Provider (Amended Application Fee @ \$25.00)	\$250.00
10	Seller (Amended Application Fee @ \$25.00)	\$250.00
1,120	Applications (Postage @ \$.44)	\$492.80
1,120	Applications (Postage @ \$.44)	\$492.80
	Estimated Annual Cost of Compliance with the Amendment for the Life of the Rule	\$713,235.60

III. WORKSHEET

See table above.

IV. ASSUMPTION

1. The estimated number of applicants is based on FY08-FY09 actual licensee counts and the fiscal note for SB 1 in 2009.
2. These numbers may decrease due to added restrictions on the profession, which may cause some people to opt out of selling preneed in the future.
3. It is anticipated that the total cost will recur annually for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee.

**Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND
PROFESSIONAL REGISTRATION
Division 2120—State Board of Embalmers and Funeral Directors
Chapter 2—General Rules**

PROPOSED AMENDMENT

20 CSR 2120-2.100 Fees. The board is proposing to add subsections (U) through (GG) and amends section (3).

PURPOSE: The State Board of Embalmers and Funeral Directors is statutorily obligated to enforce and administer the provisions of Chapter 333, RSMo and sections 436.400 to 436.520, RSMo. Pursuant to section 333.111, RSMo, the board shall by rule and regulation set the amount of fees authorized by Chapter 333, RSMo and sections 436.400 to 436.520, RSMo so that the revenue produced is sufficient, but not excessive, to cover the cost and expense to the board for administering the provisions of Chapter 333, RSMo and sections 436.400 to 436.520, RSMo. Therefore the board is proposing to adopt new fees associated with the implementation of Senate Bill 1, 95th General Assembly, First Regular Session (2009).

(1) The following fees hereby are established by the State Board of Embalmers and Funeral Directors:

(U) Provider License Application Fee (if no Funeral Establishment license)	\$200
(V) Provider License Application Fee (If also Funeral Establishment license)	\$100
(W) Provider Biennial Renewal Fee	\$ **
(X) Seller License Application Fee	\$ 75
(Y) Seller Biennial Renewal Fee	\$ **
(Z) Seller Agent Registration Fee	\$ 50
(AA) Seller Agent Biennial Registration Renewal Fee	\$ **
(BB) Seller Annual Report Fee	\$ **
(CC) Seller Annual Report Late Fee	\$ **
(DD) Seller Agent Law Examination Fee	\$ **
(EE) Seller per Contract Annual Reporting Fee (For contracts executed on or after August 28, 2009)	\$ 36
(FF) Amended Provider Application Fee	\$ 25
(GG) Amended Seller Application Fee	\$ 25

****This fee is not yet determined by the board.**

(3) The provisions of this rule *[hereby]* are *[declared]* severable. If any fee fixed by this rule is held invalid by a court of competent jurisdiction *[or by the Administrative Hearing Commission]*, the remaining provisions of this rule shall remain in full force, unless otherwise determined by a court of competent jurisdiction *[or by the Administrative Hearing Commission]*.

*AUTHORITY: section 333.111.1, RSMo 2000 and 333.340, as amended by Senate Bill 1, 95th General Assembly First Regular Session (2009). * This rule originally filed as 4 CSR 120-2.100. Emergency rule filed June 30, 1981, effective July 9, 1981, expired Nov. 11, 1981. Original rule filed June 30, 1981, effective Oct. 12, 1981. Emergency amendment filed April 7, 1982, effective April 17, 1982, expired Aug. 14, 1982. For intervening history, please consult the **Code of State Regulation**. Emergency amendment filed September 24, 2009, effective October 4, 2009, and expires April 1, 2010. Amended: Filed September 24, 2009.*

PUBLIC COST: This proposed rule will increase revenue for state agencies or political subdivisions by approximately seven hundred twelve thousand two hundred-fifty dollars annually beginning in Fiscal Year 09 for the life of the rule. It is anticipated that the costs will recur for the life of the rule, may vary with inflation, and are expected to increase at the rate projected by the Legislative Oversight Committee.

PRIVATE COST: This proposed rule will cost private entities approximately seven hundred thirteen thousand two hundred thirty-five dollars and sixty cents annually for the life of the rule. It is anticipated that the costs will recur for the life of the rule, may vary with inflation, and are expected to increase at the rate projected by the Legislative Oversight Committee.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Board of Embalmers and Funeral Directors, PO Box 423, Jefferson City, MO 65102, by facsimile at 573-751-0813 or via email at embalm@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Small Business Regulatory Fairness Board Small Business Impact Statement

Date: September 17, 2009

Rule Number: 20 CSR 2120-2.100 Fees

Name of Agency Preparing Statement: State Board of Embalmers and Funeral Directors

Name of Person Preparing Statement: Becky Dunn

Phone Number: 751-0813

Email: becky.dunn@pr.mo.gov

Name of Person Approving Statement: Jane Rackers

Please describe the methods your agency considered or used to reduce the impact on small businesses (*examples: consolidation, simplification, differing compliance, differing reporting requirements, less stringent deadlines, performance rather than design standards, exemption, or any other mitigating technique*).

As required by section 333.111, RSMo fees are to be set at a level which does not substantially exceed the cost of administering the provisions of Chapter 333, RSMo and sections 436.400 to 436.520, RSMo. Additionally, section 333.231, RSMo, requires the excess to be transferred and placed to the credit of general revenue. The State Board of Embalmers and Funeral Directors regularly monitors its fund balance in an effort to maintain its balance below the "sweep" amount but also at a level to handle fluctuations in revenue and expenditures. The board constantly tries to keep license fees at the lowest level possible to maintain the necessary functions of the board.

A part of the legislative process requires state agencies to estimate the potential cost to the agency should the potential legislation pass. During the fiscal analysis of SB1, 5 scenarios were evaluated and the following concerns were noted:

- Prior to SB1, the board anticipated a fee increase would be needed by FY12 in order for the board to maintain an adequate fund balance; and
- Due to the collapse of National PreArranged Services (NPS) fewer preneed contracts were sold in the state of Missouri in FY09; thereby, reducing the board's revenue.

During the fiscal review and analysis the following scenarios and costs were considered:

Scenario	Anticipated Expenditure	Fees						Per contract Fee	Total Revenue
		Initial Applications			Renewal				
		Sellers	Provider s	Agents	Sellers	Provider s	Agents		
Scenario 1 (Supported by Contract Services during the first year - then fully supported by Scenario 2)	\$703,019	\$200	\$100	\$50	\$200	\$100	\$50	\$36	\$756,000
Scenario 2 (Full Supported by Board Staff/No Contract Services)	\$472,959	\$200	\$100	\$50	\$200	\$100	\$50	\$23	\$535,000
Scenario 3 (Supported by contract services & CIU/no additional board staff)	\$598,091	\$200	\$100	\$50	\$200	\$100	\$50	\$30	\$654,000

A copy of the legislative fiscal note can be obtained on the SB1 (2009) Senate website at <http://www.moga.mo.gov/Oversight/OVER09/fishtm/0404-09T.ORG.htm>. These scenarios were presented by Connie Clarkston, Director of Budget and Legislation and Sherry Hess, Director of Financial Services at the board's August 25, 2009 meeting. Ms. Clarkston was also available for the board's discussion during the September 2-3, 2009 meeting. Following the fiscal presentation at both meetings, the board held discussions wherein members of the board and the public could ask questions or express concerns. Members of the public expressed concern regarding the per contract fee that is currently \$2.00 being increased to \$36.00. However, in order for the board to collect the amount of revenue needed to support its enforcement responsibilities, the fees established in the rule were adopted by the board.

Please explain how your agency has involved small businesses in the development of the proposed rule.

See attached 9/1/09 memorandum.

The following members of the public were in attendance for the discussion of the proposed amendment:

August 25, 2009

Amy Battagler, Stewart Enterprises
 DJ Gross, Duncan Funeral Home
 Rep. Timothy Meadows, 101st District
 Chris Moody, Service Corporation, Inc.

Jim Moody, Service Corporation, Inc.
Don Otto, Missouri Funeral Director and Embalmer Association
Darlene Russell, CFL Preneed
Bill Statler, Statler Legal
Brad Speaks, Speaks Funeral Home
Ann Warren, Insurance Coalition
Stephen Zell, Associated Cemeteries of Missouri

September 2-3, 2009

Amy Battagler, Stewart Enterprises
DJ Gross, Duncan Funeral Home
Rep. Timothy Meadows, 101st District
John Moore, Moore Funeral Home
Don Otto, Missouri Funeral Director and Embalmer Association
Darlene Russell, CFL Preneed
Bill Statler, Statler Legal
Brad Speaks, Speaks Funeral Home
Mark Warren, Insurance Coalition

Please list the probable monetary costs and benefits to your agency and any other agencies affected. Please include the estimated total amount your agency expects to collect from additionally imposed fees and how the moneys will be used.

The board estimates that approximately 30,000 preneed contracts were sold during the 2009 reporting period. Due to the collapse of NPS the board anticipates the number of preneed contracts sold in the state of Missouri will decrease. The board estimates 17,000 preneed contracts will be sold during the 2010 reporting period. Sellers will now be required by board rule to pay a \$36.00 per contract fee as part of the annual reporting requirements.

Beginning with the submission of applications preneed sellers, preneed providers and preneed agents will be required to submit an application fee. A fiscal note has been filed in accordance with section 536.205, RSMo. The additional revenue will allow the board to fulfill the enforcement responsibilities authorized by SB1.

The board will monitor its revenue and expenditures closely and hopes to reduce the per contract fee for future reporting periods.

Please describe small businesses that will be required to comply with the proposed rule and how they may be adversely affected.

As defined by 333.011 of SB1, the preneed seller is the person who sells a preneed contract to a consumer and is obligated to collect and administer all payments made under the contract; and the preneed provider is the person obligated to provide the disposition and funeral services, facilities, or merchandise described in the preneed contract.

SB1 authorized the board to establish fees by rule in order for the board to maintain a fund balance below the “sweep” amount but also at a level to handle fluctuations in revenue and expenditures. Under the repealed section 436.069, RSMo, preneed sellers were required to submit an annual report to the board office summarizing the number of contracts sold along with a \$2.00 reporting fee for each contract sold. The proposed rule will now require sellers to pay a \$36.00 per contract fee as part of their annual reporting requirements. Preneed sellers, preneed providers and preneed agents will now be required to submit an application fee as established by rule with their application versus the annual reporting fees that were established in section 436.069, RSMo which was repealed by SB1. Applicants will also incur notary and postage fees associated with the submission of the applications.

A fiscal note has been filed in accordance with section 536.205, RSMo.

Please list direct and indirect costs (in dollars amounts) associated with compliance.

Preneed providers and preneed sellers have been maintaining records for the last reporting year in anticipation of submitting information as required by the repealed sections of 436.069, RSMo. Preneed providers and preneed sellers will benefit by being allowed to submit annual reports containing information that was required under the repealed section of 436.069, RSMo, for the October 2009 reporting period.

Some sellers have indicated the per contact fee will be passed on to the consumer as part of the preneed contract, however, it should be noted that this is the seller’s business decision and not mandated by rule.

Please list types of business that will be directly affected by, bear the cost of, or directly benefit from the proposed rule.

Preneed providers and preneed sellers licensed by the State Board of Embalmers and Funeral Directors.

Does the proposed rule include provisions that are more stringent than those mandated by comparable or related federal, state, or county standards?

Yes ___ No X

If yes, please explain the reason for imposing a more stringent standard.

For further guidance in the completion of this statement, please see §536.300, RSMo.