

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 596
99TH GENERAL ASSEMBLY

1312H.02C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 333.151 and 436.470, RSMo, and to enact in lieu thereof two new sections relating to members of the state board of embalmers and funeral directors.

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

Section A. Sections 333.151 and 436.470, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 333.151 and 436.470, to read as follows:

333.151. 1. The state board of embalmers and funeral directors shall consist of six members, including ~~one~~ **three** voting public ~~member~~ **members** appointed by the governor with the advice and consent of the senate. Each member, other than the public ~~member~~ **members**, appointed shall possess either a license to practice embalming or a license to practice funeral directing in this state or both said licenses and shall have been actively engaged in the practice of embalming or funeral directing for a period of five years next before his or her appointment. Each member shall be a United States citizen, a resident of this state for a period of at least one year, a qualified voter of this state and shall be of good moral character. Not more than three members of the board shall be of the same political party. The nonpublic members shall be appointed by the governor, with the advice and consent of the senate. A majority of the members shall constitute a quorum. Members shall be appointed to represent diversity in gender, race, ethnicity, and the various geographic regions of the state.

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

3. The public ~~member~~ **members** shall be at the time of his or her appointment a person who is not and never was a member of any profession licensed or regulated pursuant to this

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

19 chapter or the spouse of such person; and a person who does not have and never has had a
20 material, financial interest in either the providing of the professional services regulated by this
21 chapter, or an activity or organization directly related to any profession licensed or regulated
22 pursuant to this chapter. All members, including public members, shall be chosen from lists
23 submitted by the director of the division of professional registration. The duties of the public
24 ~~[member]~~ **members** shall not include the determination of the technical requirements to be met
25 for licensure or whether any person meets such technical requirements or of the technical
26 competence or technical judgment of a licensee or a candidate for licensure.

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

3 2. The ~~[board]~~ **division of finance** shall have authority to conduct inspections and
4 investigations of providers, sellers, and preneed agents and conduct financial examinations of
5 the books and records of providers, sellers, and preneed agents and any trust or joint account to
6 determine **if sufficient funds exist to meet the sellers' and providers' obligations under the**
7 **preneed contracts or this chapter** ~~[compliance with sections 436.400 to 436.520, or to~~
8 ~~determine whether grounds exist for disciplining a person licensed or registered under sections~~
9 ~~333.310 to 333.340, at the discretion of the board and with or without cause].~~ The ~~[board]~~
10 **division of finance** shall conduct a financial examination of the books and records of each seller
11 as authorized by this section at least once every five years, subject to available funding **from any**
12 **per contract fee authorized by the board.**

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

18 4. The ~~[board]~~ **division of finance** shall not appoint or authorize any person to conduct
19 an inspection, investigation, examination, or audit under this section if the individual has a
20 conflict of interest or is affiliated with the management of, or owns a pecuniary interest in, any
21 person subject to inspection, investigation, examination, or audit under chapter 333 or sections
22 436.400 to 436.520.

23 5. The ~~[board]~~ **division of finance** may request that the director of the division of
24 professional registration, the director of the department of insurance, financial institutions and
25 professional registration, or the office of the attorney general designate one or more investigators
26 or financial examiners to assist in any investigation, examination, or audit, and such assistance
27 shall not be unreasonably withheld.

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

33 7. Upon request by the ~~[board]~~ **division of finance**, a licensee or registrant shall make
34 the books and records of the licensee or registrant available to the board for inspection and
35 copying at any reasonable time, including, any insurance, trust, joint account, or financial
36 institution records deemed necessary by the board to determine compliance with sections
37 436.400 to 436.520.

38 8. The ~~[board]~~ **division of finance** shall have the power to issue subpoenas to compel
39 the production of records and papers by any licensee, trustee or registrant of the board.
40 Subpoenas issued under this section shall be served in the same manner as subpoenas in a
41 criminal case.

42 9. All sellers, providers, preneed agents, and trustees shall cooperate with the ~~[board]~~
43 **division of finance** or its designee, the division of finance, the department of insurance, financial
44 institutions and professional registration, and the office of the attorney general in any inspection,
45 investigation, examination, or audit brought under this section.

46 10. This section shall not be construed to limit the board's authority to **investigate**
47 **licensees under chapter 333 and to** file a complaint with the administrative hearing
48 commission charging a licensee or registrant with any actionable conduct or violation, regardless
49 of whether such complaint exceeds the scope of acts charged in a preliminary public complaint
50 filed with the board and whether any public complaint has been filed with the board.

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

54 12. If an inspection, investigation, examination, or audit reveals a violation of sections
55 436.400 to 436.520, the office of the attorney general may initiate a judicial proceeding to:

- 56 (1) Declare rights;
- 57 (2) Approve a nonjudicial settlement;
- 58 (3) Interpret or construe the terms of the trust;
- 59 (4) Determine the validity of a trust or of any of its terms;
- 60 (5) Compel a trustee to report or account;
- 61 (6) Enjoin a seller, provider, or preneed agent from performing a particular act;
- 62 (7) Enjoin a trustee from performing a particular act or grant to a trustee any necessary
63 or desirable power;

- 64 (8) Review the actions of a trustee, including the exercise of a discretionary power;
- 65 (9) Appoint or remove a trustee;
- 66 (10) Determine trustee liability and grant any available remedy for a breach of trust;
- 67 (11) Approve employment and compensation of preneed agents;
- 68 (12) Determine the propriety of investments;
- 69 (13) Determine the timing and quantity of distributions and dispositions of assets; or
- 70 (14) Utilize any other power or authority vested in the attorney general by law.

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