

## **Meeting Notice**

### **State Board of Embalmers and Funeral Directors**

**March 30, 2020**

**4:30 p.m.**

#### **Conference Call**

Division of Professional Registration  
3605 MO Blvd  
Jefferson City, Missouri 65109

Notification of special needs as addressed by the American with Disabilities Act should be forwarded to the State Board of Embalmers and Funeral Directors, P.O. Box 423, 3605 Missouri Boulevard, Jefferson City, Missouri 65102 or by calling (573) 751-0813 to ensure available accommodations. The text telephone for the hearing impaired is (800) 735-2966.

Except to the extent disclosure is otherwise required by law, the State Board of Embalmers and Funeral Directors is authorized to close meetings, records and votes, to the extent they relate to the following: Sections 610.021(1), (3), (5), (7), (13) and (14), RSMo, and Sections 324.001.8 and 324.001.9 RSMo.

The agenda is attached.

**State Board of Embalmers and Funeral Directors**

**March 30, 2020**

**MEETING WILL BE HELD BY CONFERENCE CALL ONLY**

Division of Professional Registration  
3605 MO Blvd  
Jefferson City, Missouri 65109

**Call in Number 855-351-5422**  
**Access Code 805 145 789**

**OPEN AGENDA**

**March 30 2020 – 4:30 p.m.**

1. Call to Order
2. Roll Call
3. Review and Approval of Agenda
4. Proposed Rule 20 CSR 2120-3.560- Public Comment received
5. Executive Director Report
6. CLOSED
7. Adjourn

**Title 20-DEPARTMENT OF COMMERCE AND INSURANCE  
Division 2120-State Board of Embalmers and Funeral Directors  
Chapter 2 – General Rules**

**PROPOSED RULE**

**20 CSR 2120-3.560 Cemetery Exemption**

*PURPOSE: The purpose of the rule is to provide clarification regarding what preneed falls within Chapter 436, RSMo and Chapter 214, RSMo.*

- (1) Pursuant to section 333.310, RSMo, a cemetery is exempt from the licensure requirements of sections 333.315 and 333.320, RSMo, when all of the following conditions are satisfied:
- (A) The cemetery has a current and valid license issued pursuant to section 214.275, RSMo;
  - (B) All sales of merchandise made by the cemetery that would otherwise be defined as a preneed contract for funeral merchandise are made pursuant to a contract whereby such merchandise is either:
    - 1. Purchased in conjunction with an interment right or grave space subject to section 214.320, RSMo; or
    - 2. Made to be delivered to an interment right or grave subject to section 214.320, RSMo, that is owned by the purchaser and identified in the contract.
  - (C) The cemetery has not been found to be in non-compliance with sections 214.385 or 214.387, RSMo, by the Office of Endowed Care Cemeteries pursuant to a completed examination, audit, decision of the Administrative Hearing Commission, or order of any court; and
  - (D) The cemetery does not offer funeral services that may only be provided by a Missouri licensed funeral director or embalmer.

*AUTHORITY: sections 333.111 and 333.310, RSMo 2016. Original rule filed ---*

*PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.*

*PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the State Board of Embalmers and Funeral Directors, Lori Hayes, Executive Director, 3605 Missouri Boulevard, PO Box 423, Jefferson City, MO 65102-0423, by facsimile at (573) 751-1155 or via email to [embalm@pr.mo.gov](mailto: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.*

**Davis Biggs, Jr. Attorney  
947 N. Clay Avenue  
St. Louis, Missouri 63122**

Phone & Fax (314) 821-0688  
Email [davis.dbiggs.biggs@gmail.com](mailto:davis.dbiggs.biggs@gmail.com)

March 18, 2020

**By Facsimile Transmission: (573) 751-1155**

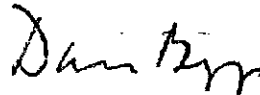
State Board of Embalmers and Funeral Directors  
Lori Hayes, Executive Director  
3605 Missouri Boulevard  
P.O. Box 423  
Jefferson City, MO 65102-0423

Re: Proposed Rule 20 CSR 2120-3.560 Cemetery Exemption

Dear Ms. Hayes:

I sent you these comments earlier, but without a proper heading for your file.  
Attached are the same comments with an appropriate heading. Sorry for any confusion.

Very truly yours,



Davis Biggs, Jr.

DBJr/dbj

encl.

**Statement of Associated Cemeteries of Missouri  
In Opposition to  
Proposed Rule 20 CSR 2120-3.560**

Proposed rule 20 CSR 2120-3.560 is made pursuant to section 333.310 RSMo, which reads as follows:

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

Section 333.310 describes a limit to the applicability of sections 333.310 - .340 clearly. The limit to the application of the law is to transactions by cemetery operators in which payments are required to be placed in an endowed care fund, or for which a deposit into a segregated account is required.

Cemetery Operator is a defined term under 214.270 RSMo. While cemetery operators (other than family, religious etc.) are required to be licensed under section 214.275, the limit in chapter 333 above is not phrased in terms of whether or not a license is held. It describes and defines a field of activity and transactions to which this law shall not apply, in which a cemetery operator is involved and in which certain things are required. Section 333.310 says nothing about licensure.

These transactions by law and the nature of the case are not and will not be transactions for which a license under sections .310-340 will be held when they are entered into. What sort of thinking in law or policy is present in the notion that they should retroactively be pulled under chapter 333 and the State Board's jurisdiction, after a violation of chapter 214 has occurred?

With respect to the proposed rule's requirement that a license be held under 214, a cemetery operator may be late in renewing his license or filing the required annual report, and his license may be suspended or revoked, but he is still a cemetery operator within the meaning of the law, and the requirements for deposits in the transactions described in 333.310 still hold. Must he apply for a provider or seller's license under 333 because his 214 license has lapsed, or because it has been suspended or revoked? What sort of idea is that? If his 214 license is reinstated, does he still need a 333 license?

If the cemetery operator fails to make the required deposits, there are all sorts of remedies and sanctions that apply, including criminal sanctions and prohibition of distributions from the endowed care trust, along with the full range of civil remedies for any aggrieved party. What purpose is served by retroactively pulling him under the Board's authority under these sections in order to deal with him there? Is the application process to be used as some kind of punishment or ordeal? Would not an application be moot? Retroactive reclassification may also raise constitutional issues as well as violating basic sense; a license will be required for a transaction *ex post*, i.e. for a transaction for which it was not required when the transaction was entered into.

Litigation aside, is trying to administer and enforce a rule like this a good use of the Board's time and resources?

Another triggering event in the proposed rule to extend the applicability of the law is violation of 214.385. Transactions under this section are not even preneed transactions properly speaking. Delivery of the warehouse receipt constitutes delivery of a present interest in the good. It is irrelevant if the purchaser does not use the item immediately. He has paid for it, he owns it, and it has been delivered. If the cemetery operator does not honor the warehouse receipt, all sorts of remedies are available, but the transaction does not, on that account, become a preneed contract subject to chapter 333 in any legal or practical sense.

Would it be a good idea for the Office of Endowed Care Cemeteries to adopt a rule saying that whenever a license granted under chapter 333 is suspended, or a violation of the provisions of chapter 333 occurs, the offending party shall be deemed by the Office to be a cemetery operator for

**purposes of complying with the licensing requirements and other provisions of chapter 214, and subject to punitive sanctions under 214 for noncompliance?**

**This proposed rule, by its express terms, seeks to extend the State Board's authority and jurisdiction into matters expressly governed by chapter 214, in clear violation of 333.310 RSMo. Any attempt to apply or enforce it will produce confusion and chaos.**

**Davis Biggs, Jr. Attorney**  
**947 N. Clay Avenue**  
**St. Louis, Missouri 63122**

Phone & Fax (314) 821-0688  
Email davis.dbiggs.biggs@gmail.com

March 26, 2020

**By Facsimile Transmission: (573) 751-1155**

State Board of Embalmers and Funeral Directors  
Lori Hayes, Executive Director  
3605 Missouri Boulevard  
P.O. Box 423  
Jefferson City, MO 65102-0423

Re: Proposed Rule 20 CSR 2120-3.560 Cemetery Exemption

Dear Ms. Hayes:

After further discussion and review, we have additional comments on the above-referenced proposed rule.

The second requirement in proposed cemetery exemption also violates another statute. In requiring a cemetery operator to make a contribution to an endowed care trust under section 214.320, the rule effectively disqualifies licensed non endowed care cemeteries from the exemption, making it necessary for them to seek licensure under sections 333.315 and .320. However, licensure under these sections either directly or indirectly makes the license holder subject to the provisions of chapter 436, with respect to the trusting of monies. Section 214.320(5) goes on to say:

“5. A cemetery operator shall be exempt from the provisions of chapter 436 for the sale of cemetery services or for grave lots, grave spaces, markers, monuments, memorials, tombstones, crypts, niches or mausoleums, outer burial containers or other receptacle. A cemetery operator shall be prohibited from adjusting or establishing the sales price of items with the intent of evading the trusting or escrow provisions of this chapter.”

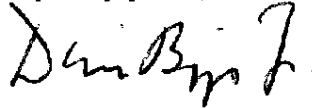
We would respectfully suggest that the cemetery exemption from the requirement to be licensed under sections 333.315 or .320 be redrafted to read as follows:



"Pursuant to sections 333.310 and 214.320 RSMo, a cemetery operator is exempt from the licensure requirements of sections 333.315 and 333.320 for any transactions for which it is exempt from the provisions of chapter 436, or transactions in which it sells contracts or arrangements for services for which payments received by, or on behalf of, the purchaser are required to be placed in an endowed care fund or for which a deposit into a segregated account is required under chapter 214.

A cemetery operator shall not be exempt from compliance with sections 333.310 to 333.340 if the contract or arrangement sold by the operator includes services that may only be provided by a licensed funeral director or embalmer."

Very truly yours,



Davis Biggs, Jr.

DBJr/dbj

**Davis Biggs, Jr. Attorney**  
**947 N. Clay Avenue**  
**St. Louis, Missouri 63122**

Phone & Fax (314) 821-0688  
Email [davis.dbiggs.biggs@gmail.com](mailto:davis.dbiggs.biggs@gmail.com)

March 26, 2020

**By Facsimile Transmission: (573) 751-1155**

State Board of Embalmers and Funeral Directors  
Lori Hayes, Executive Director  
3605 Missouri Boulevard  
P.O. Box 423  
Jefferson City, MO 65102-0423

Re: Proposed Rule 20 CSR 2120-3.560 Cemetery Exemption

Dear Ms. Hayes:

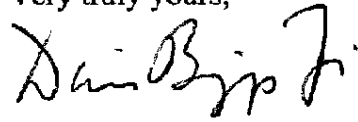
Make our suggested rule read as follows:

“Pursuant to sections 333.310 and 214.320 RSMo, a cemetery operator is exempt from the licensure requirements of sections 333.315 and 333.320 for any transactions for which it is exempt from the provisions of chapter 436, or transactions in which it sells contracts or arrangements for services for which payments received **from**, or on behalf of, the purchaser are required to be placed in an endowed care fund or for which a deposit into a segregated account is required under chapter 214.

A cemetery operator shall not be exempt from compliance with sections 333.310 to 333.340 if the contract or arrangement sold by the operator includes services that may only be provided by a licensed funeral director or embalmer.”

It appears that the statutory language in 333.310 contains a mistake, which the board rule may correct. I don't think it was intended that the language read “payments received **by**, or on behalf of the purchaser . . .” I think payments received **from** the purchaser was intended.

Very truly yours,

A handwritten signature in black ink that reads "Davis Biggs, Jr." in a cursive style.

Davis Biggs, Jr.

DBJr/dbj