

FIRST REGULAR SESSION

HOUSE BILL NO. 323

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES BAKER, TAYLOR, AVERY (Co-sponsors) AND PEARCE.

Read 1st time January 29, 2003, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

1226L.011

AN ACT

To repeal section 333.011, RSMo, and to enact in lieu thereof two new sections relating to funeral merchandise, with a penalty provision.

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

Section A. Section 333.011, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 333.011 and 333.210, to read as follows:

333.011. 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 by this chapter;

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

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

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

(5) **"Funeral merchandise", caskets, grave vaults, or receptacles, and other personal property incidental to a funeral or burial service, and such terms shall also include grave lots, grave space, grave markers, monuments, tombstones, crypts, niches or mausoleums if, but only if, such items are sold:**

(a) By a companion agreement which is sold in contemplation of trade or barter for grave vaults or funeral or burial services and funeral merchandise; or

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law. Matter in boldface type in the above law is new proposed language.

17 **(b) At prices, in excess of prevailing market prices, intended to offset by reductions**
18 **in the cost of funeral or burial services or facilities which are not immediately required;**

19 **(6) "Licensed retail funeral merchandise establishment", an individual or entity**
20 **licensed by the board to sell funeral merchandise in this state;**

21 **(7) "Person" includes a corporation, partnership or other type of business organization;**
22 **[(6)] (8) "Practice of embalming", the work of preserving, disinfecting and preparing by**
23 **arterial embalming, or otherwise, of dead human bodies for funeral services, transportation,**
24 **burial or cremation, or the holding of oneself out as being engaged in such work;**

25 **[(7)] (9) "Practice of funeral directing", engaging by an individual in the business of**
26 **preparing, otherwise than by embalming, for the burial, disposal or transportation out of this state**
27 **of, and the directing and supervising of the burial or disposal of, dead human bodies or engaging**
28 **in the general control, supervision or management of the operations of a funeral establishment[.];**

29 **(10) "Retail funeral license", a license given to a person by the board to engage in**
30 **the selling of funeral merchandise.**

333.210. 1. No person shall sell funeral merchandise unless such person is licensed
2 **by the board as a retail funeral merchandise establishment.**

3 **2. If any licensed retail funeral merchandise establishment agrees to hold funeral**
4 **merchandise for a period longer than forty-five days such person shall:**

5 **(1) Be an individual resident of Missouri or a business entity duly authorized to**
6 **transact business in Missouri;**

7 **(2) Have established, as grantor, a retail funeral merchandise trust or trusts with**
8 **terms consistent with sections 436.005 to 436.071, RSMo; and**

9 **(3) Have registered with the state board.**

10 **3. If any licensed retail funeral merchandise establishment agrees to hold funeral**
11 **merchandise for a period longer than forty-five days:**

12 **(1) That person shall have a written contract with the purchaser which:**

13 **(a) Is in writing;**

14 **(b) Is executed by a licensed retail funeral merchandise establishment;**

15 **(c) Identifies the contract beneficiary and sets out in detail the merchandise to be**
16 **provided;**

17 **(d) Identifies the trust into which contract payments shall be deposited, including**
18 **the name and address of the trustee thereof; and**

19 **(e) Contains the name and address of the licensed retail funeral merchandise**
20 **establishment and the provider; and**

21 **(2) The licensed retail funeral merchandise establishment shall, not later than forty-**
22 **five days from the date of receipt, deposit into a trust established for that purpose all**

23 payments made by the purchaser of funeral merchandise except that the licensed retail
24 funeral merchandise establishment may retain as his or her own money, for the purposes
25 of covering his or her selling expenses, servicing costs, and general overhead, the initial
26 funds so collected or paid until he or she has received for his or her use and benefit an
27 amount not to exceed twenty percent of the total amount agreed to be paid by the
28 purchaser of such prepaid funeral benefits as such total amount is reflected in the contract;
29 and

30 (3) The trustee of a retail funeral merchandise trust shall be a state or federally
31 chartered financial institution authorized to exercise trust powers in Missouri. The trustee
32 shall accept all deposits made to it by the licensed retail funeral merchandise establishment
33 of a retail funeral merchandise contract and shall hold, administer, and distribute such
34 deposits, in trust, as trust principal, pursuant to the provisions of the contract with the
35 purchaser. Payments regarding two or more retail funeral merchandise contracts may be
36 deposited into and commingled in the same retail funeral merchandise trust, so long as the
37 trust's grantor is the licensed retail funeral merchandise establishment of all such retail
38 funeral merchandise contracts and the trustee maintains adequate records of all payments
39 received.

40 4. Each licensed retail funeral merchandise establishment under one or more retail
41 funeral merchandise contracts shall:

42 (1) Maintain adequate records of all such contracts and related agreements with
43 providers and the trustee of retail funeral merchandise trusts regarding such contracts,
44 including copies of all such agreements;

45 (2) File annually with the state board a signed and notarized report on forms
46 provided by the state board. Such a report shall only contain:

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

48 (b) The total face value of all retail funeral merchandise contracts sold in Missouri
49 since the filing of the last report; and

50 (c) The name and address of the financial institution in Missouri in which it
51 maintains the trust accounts required under the provisions of this section; and

52 (3) File with the state board a consent authorizing the state board to order an
53 examination and if necessary an audit by staff of the division of professional registration
54 who are not connected with the board of its books and records relating to the sale of retail
55 funeral merchandise contracts and the name and address of the person designated by the
56 licensed retail funeral merchandise establishment as custodian of these books and records.
57 The staff of the division of professional registration in conducting the audit shall not
58 release a detailed accounting of the trust account to the board unless there exist

59 circumstances indicating that the account does not comply with the requirements of this
60 section, but shall provide the board with a summary of the examination of audit showing
61 general compliance with the provisions of this section; and

62 (4) Cooperate with the state board, the office of the attorney general, and the
63 division in any investigation, examination, or audit brought under the provisions of this
64 section.

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

83 6. Any person who knowingly and willfully violates any provision of this section is
84 guilty of a class D felony and the court may order the revocation or suspension of the
85 registration of the defendant.

86 7. Each licensee, except licensed funeral director's and establishments, shall pay
87 two hundred fifty dollars biannually for a retail funeral merchandise license.

88 8. No rule or portion of a rule promulgated pursuant to the authority of this section
89 shall become effective unless it has been promulgated pursuant to chapter 536, RSMo.