

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 1
95TH GENERAL ASSEMBLY

0404L.09C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 333.011, 333.101, 333.121, 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 thirty-eight 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, 333.101, 333.121, 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436.045, 436.048, 436.051, 436.053, 436.055, 436.061, 436.063, 436.065, 436.067, 436.069, and 436.071, RSMo, are repealed and thirty-eight new sections enacted in lieu thereof, to be known as sections 333.011, 333.101, 333.221, 333.251, 333.310, 333.315, 333.320, 333.325, 333.330,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 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;

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.

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

11 (5) **"Funeral merchandise", caskets, grave vaults, receptacles, and other personal**
12 **property incidental to the final disposition of a dead human body, including grave lots,**
13 **grave spaces, grave markers, monuments, tombstones, crypts, niches, mausoleums, and**
14 **urns;**

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

17 [(6)] (7) "Practice of embalming", the work of preserving, disinfecting and preparing by
18 arterial embalming, including the chemical preparation of a dead human body for disposition.
19 Practice of embalming includes all activities leading up to and including arterial and cavity
20 embalming, including but not limited to raising of vessels and suturing of incisions of dead
21 human bodies for funeral services, transportation, burial or cremation, or the holding of oneself
22 out as being engaged in such work;

23 [(7)] (8) "Practice of funeral directing", engaging by an individual in the business of
24 preparing, otherwise than by embalming, for the burial, disposal or transportation out of this state
25 of, and the directing and supervising of the burial or disposal of, dead human bodies or engaging
26 in the general control, supervision or management of the operations of a funeral establishment;

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

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

32 (11) **"Seller", the person who executes a preneed contract with a purchaser and**
33 **who is obligated under such preneed contract to remit payment to the provider.**

34 **2. All terms defined in sections 436.010 to 436.520, RSMo, shall be deemed to have**
35 **the same meaning when used in this chapter.**

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

7 **registrant** and the manner and scope of training given by the licensee **or registrant** to the
8 **[intern] apprentice** operating therein.

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

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

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

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

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

6 **2. An applicant for a preneed provider license shall:**

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

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

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

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

15 **(5) File with the state board, a written consent authorizing the state board to
16 inspect or order an investigation, examination, or audit of the provider's books and records**

17 which contain information concerning preneed contracts sold for or on behalf of a seller
18 or in which the applicant is named as a provider; and

19 (6) If the applicant is a corporation, each officer, director, manager, or controlling
20 shareholder shall be of good moral character and eligible for licensure if they were
21 applying for licensure as an individual.

22 3. Each preneed provider shall apply to renew his or her license on or before
23 October thirty-first of each year or a date established by the division of professional
24 registration pursuant to section 324.001, RSMo. A license 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 board by rule;

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

28 (3) Be authorized and registered with the Missouri secretary of state to conduct
29 business in Missouri;

30 (4) File an annual report with the state board which shall contain:

31 (a) The name and address of a custodian of records responsible for maintaining the
32 books and records of the provider relating to preneed contracts;

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

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

38 (d) Any information required by the board by rule.

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

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

6 2. An applicant for a preneed seller license shall:

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

9 (2) Be an individual resident of Missouri who is eighteen years of age or older, or
10 a business entity registered with the Missouri secretary of state to transact business in
11 Missouri;

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

15 (4) Meet all requirements for licensure;

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

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

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

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

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

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

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

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

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

37 4. Any license which has not been renewed as provided by this section shall expire.
38 A licensee who fails to apply for renewal within two years of the renewal date may apply
39 for reinstatement by satisfying the requirements of subsection 3 of this section and paying
40 a delinquent fee as established by the board by rule.

333.325. 1. No person shall sell, negotiate, or solicit the sale of preneed contracts
2 for, or on behalf of, a seller unless registered with the board as a preneed agent except for
3 individuals who are licensed as funeral directors under this chapter. The board shall

4 maintain a registry of all preneed agents registered with the board. The registry shall be
5 deemed an open record and made available on the board's web site.

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

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

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

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

13 (4) Provide the name and address of each seller for whom the applicant is
14 authorized to sell, negotiate, or solicit the sale of preneed contracts for, or on behalf of.

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

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

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

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

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

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

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

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

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

14 **(2) The person has been finally adjudicated and found guilty, or entered a plea of**
15 **guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the**
16 **United States, for any offense reasonably related to the qualifications, functions, or duties**
17 **of any profession licensed or regulated under this chapter, for any offense involving a**
18 **controlled substance, or for any offense an essential element of which is fraud, dishonesty,**
19 **or an act of violence;**

20 **(3) Use of fraud, deception, misrepresentation, or bribery in securing any certificate**
21 **of registration or authority, permit, or license issued under this chapter or in obtaining**
22 **permission to take any examination given or required under this chapter;**

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

25 **(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation, or**
26 **dishonesty in the performance of the functions or duties of any profession licensed or**
27 **regulated by this chapter;**

28 **(6) Violation of, or assisting or enabling any person to violate, any provision of this**
29 **chapter, or of any lawful rule or regulation adopted pursuant thereto;**

30 **(7) Impersonation of any person holding a certificate of registration or authority,**
31 **permit, or license or allowing any person to use his or her certificate of registration or**
32 **authority, permit, license, or diploma from any school;**

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

36 **(9) A person is finally adjudged mentally incompetent by a court of competent**
37 **jurisdiction;**

38 **(10) Misappropriation or theft of preneed funds;**

39 **(11) Assisting or enabling any person to practice or offer to practice any profession**
40 **licensed or regulated by this chapter regulating preneed who is not licensed or registered**
41 **and currently eligible to practice thereunder;**

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

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

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

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

50 (16) Use of any advertisement or solicitation which is false, misleading, or deceptive
51 to the general public or persons to whom the advertisement or solicitation is primarily
52 directed; or

53 (17) Willfully and through undue influence selling a preneed contract;

54 (18) Violation of any of the provisions of chapter 193, 194, 407, or 436, RSMo;

55 (19) Presigning a death certificate or signing a death certificate on a body not yet
56 embalmed by, or under the personal supervision of, the licensee;

57 (20) Failure to execute and sign the death certificate on a body embalmed by, or
58 under the personal supervision of, a licensee;

59 (21) Failure to refuse to properly guard against contagious, infectious, or
60 communicable diseases or the spread thereof;

61 (22) Refusing to surrender a dead human body upon request by the next of kin,
62 legal representative, or other person entitled to the custody and control of the body.

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

71 4. Notwithstanding any other provision of this section to the contrary, the board
72 may immediately suspend a preneed seller license if the board finds, after an inspection,
73 examination, investigation, or audit, a shortage in any preneed trust or joint account which
74 exceeds twenty percent of the total amount required to be held or deposited in the trust or
75 account under the provisions of sections 436.400 to 436.520, RSMo. In addition, the board
76 may seek an injunction, restraining order or other order from the Circuit Court of Cole

77 County to enjoin any seller from engaging in preneed sales if the board would be entitled
78 to suspend the seller's license under this section.

79 5. Any person whose license is suspended under subsection 4 of this section may
80 appeal such suspension to the administrative hearing commission. Notice of such appeal
81 shall be received by the administrative hearing commission within ninety days of mailing,
82 by certified mail, the notice of suspension. Failure of a person whose license was suspended
83 to notify the administrative hearing commission of his or her intent to appeal waives all
84 rights to appeal the suspension. Upon notice of such person's intent to appeal, a hearing
85 shall be held before the administrative hearing commission under chapter 621, RSMo. The
86 burden shall be on the board to prove adequate grounds for suspension.

87 6. An individual whose certificate of registration or authority, permit, or license has
88 been revoked shall wait three years from the date of revocation to apply for any certificate
89 of registration or authority, permit, or license under this chapter, either as an individual
90 or as a manager, director, shareholder, or partner of any business entity. Any certificate
91 of registration or authority, permit, or license shall be issued at the discretion of the board
92 after compliance with all the requirements of this chapter relative to the licensing or
93 registration of the applicant for the first time.

94 7. Use of the procedures set out in this section shall not preclude the application of
95 the provisions of subsection 2 of section 333.061.

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

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

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

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

15 2. Any such action shall be commenced either in the county in which such conduct
16 occurred or in the county in which the defendant resides or, in the case of a firm or
17 corporation, where the firm or corporation maintains its principal office or in Cole County.

18 **3. Any action brought under this section shall be in addition to and not in lieu of**
19 **any penalty provided by this chapter, and may be brought concurrently with other actions**
20 **to enforce this chapter or sections 436.400 to 436.520, RSMo.**

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

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

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

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

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

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

3 **(1) "Beneficiary", the individual who is to be the subject of the disposition or who**
4 **will receive funeral services, facilities, or merchandise described in a preneed contract;**

5 **(2) "Guaranteed contract", a preneed contract in which the seller promises,**
6 **assures, or guarantees to the purchaser that all or any portion of the costs for the**
7 **disposition, services, facilities, or merchandise identified in a preneed contract will be no**

8 greater than the price designated in the contract upon the preneed beneficiary's death or
9 that such costs will be otherwise limited or restricted;

10 (3) "Insurance-funded preneed contract", a preneed contract which is designated
11 to be funded by payments or proceeds from an insurance policy or annuity contract;

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

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

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

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

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

25 (6) "Nonguaranteed contract", a preneed contract in which the seller does not
26 promise, assure, or guarantee that all or any portion of the costs for the disposition,
27 facilities, service, or merchandise identified in a preneed contract will be limited to the
28 price designated in the contract upon the preneed beneficiary's death or that such costs will
29 be otherwise limited or restricted;

30 (7) "Preneed contract", any contract or other arrangement which provides for the
31 final disposition in Missouri of a dead human body, funeral or burial services or facilities,
32 or funeral merchandise, where such disposition, services, facilities, or merchandise are not
33 immediately required. Such contracts include, but are not limited to, agreements
34 providing for a membership fee or any other fee for the purpose of furnishing final
35 disposition, funeral or burial services or facilities, or funeral merchandise at a discount or
36 at a future date;

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

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

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

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

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

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

436.412. Each preneed contract made before August 28, 2009, and all payments and
2 **disbursements under such contract shall continue to be governed by this chapter as the**
3 **chapter existed at the time the contract was made. Any licensee or registrant of the board**
4 **may be disciplined for violation of any provision of sections 436.005 to 436.071 within the**
5 **applicable statute of limitations.**

436.415. 1. Except as otherwise provided in sections 436.400 to 436.520, the
2 **provider designated in a preneed contract shall be obligated to provide final disposition,**
3 **funeral or burial services and facilities, and funeral merchandise as described in the**
4 **preneed contract.**

2. The seller designated in a preneed contract shall be obligated to collect and
6 **properly deposit and disburse all payments made by, or on behalf of, a purchaser of a**
7 **preneed contract and ensure the preneed contract is managed and fulfilled, and payments**
8 **remitted, in compliance with sections 436.400 to 436.520 and as provided by the contract.**

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

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

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

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

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

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

17 **4. A provider who has knowledge that a seller has designated himself or herself as**
18 **a provider under a preneed contract without authorization, shall notify the seller, the**
19 **purchaser, and the board in writing within thirty days of obtaining such knowledge and**
20 **indicate whether the provider agrees to serve as provider on the contract.**

21 **5. Failure to comply with the provisions of this section shall be cause for discipline**
22 **of a person licensed or registered by the board under chapter 333, RSMo.**

23 **6. Upon request of the board, a seller, provider, or preneed agent shall provide a**
24 **copy of any preneed contract or any contract or agreement with a seller or provider to the**
25 **board.**

436.425. 1. All preneed contracts shall be sequentially numbered and in writing
2 **and shall clearly and conspicuously:**

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

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

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

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

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

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

17 **(7) Include notice that the purchaser has the right to transfer the provider**
18 **designation to another provider;**

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

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

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

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

26 (12) Include the name and signature of the purchaser, the provider or its
27 authorized representative, the preneed agent responsible for the sale of the contract, and
28 the seller or its authorized representative;

29 (13) Prominently identify whether the contract is a guaranteed or nonguaranteed
30 contract in a recognizable font;

31 (14) Include any applicable consumer disclosures required by the board by rule;
32 and

33 (15) Include one of the following disclosures, as applicable, or one substantially
34 similar to it:

35 (a) If the preneed contract is funded with a trust and the beneficiary dies before all
36 trust installments have been paid, the purchaser, or purchaser's family, next of kin, or
37 other authorized representative will owe the funeral home an extra amount for the funeral
38 services. The extra amount will be equal to the total charges set forth in the preneed
39 funeral contract, less the amount payable out of the trust; or

40 (b) If the preneed contract is funded with an annuity that requires more than one
41 consideration and the beneficiary dies before all premiums have been paid, the purchaser,
42 or purchaser's family, next of kin, or other authorized representative will owe the funeral
43 home an extra amount for the funeral services. The extra amount will be equal to the total
44 charges set forth in the preneed funeral contract, less the amount payable under the
45 annuity contract; and

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

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

56 3. A beneficiary who seeks to become eligible to receive public assistance under
57 chapter 208, RSMo, or any other applicable state or federal law may irrevocably waive
58 their rights to receive any refund or payment of any monies from the funds or insurance
59 used to fund their preneed contract. Such irrevocable waiver shall be in writing, signed

60 and dated by the beneficiary and shall be delivered to the seller and any applicable trustee,
61 financial institution or insurance company;

62 4. All purchasers shall have the right as provided in this chapter to cancel or
63 rescind a revocable preneed contract and transfer any preneed contract with or without
64 cause.

65 5. A preneed contract, shall not be changed from a trust-funded, insurance-funded,
66 or joint account-funded preneed contract without the written consent of the purchaser.

2 436.430. 1. A trust-funded preneed contract shall comply with sections 436.400 to
3 436.520 and the specific requirements of this section.

4 2. A seller must deposit at least ninety-five percent of the total amount of any
5 preneed contract into the designated preneed trust. The total contract amount from which
6 the ninety-five percent trust deposit is calculated shall include the origination fee, if any.
7 All payments received on a preneed contract, except for any amounts retained by the seller
8 as an origination fee, must be deposited into the designated preneed trust. All payments
9 on a preneed contract, except any amount retained as an origination fee, must be deposited
10 into the designated preneed trust within sixty days of receipt of the funds by the seller, the
11 preneed sales agent or designee. A seller may not require the consumer to pay any fees or
12 other charges except as authorized by the provisions of chapter 333, RSMo, and this
13 chapter or other state or federal law.

14 3. A seller may retain up to the first five percent of the total amount of any preneed
15 contract as an origination fee.

16 4. At any time after the seller has deposited preneed payments into the trust, the
17 seller may request, and the trustee may disburse to the seller up to ten percent of the total
18 of payments received into trust on any preneed contract.

19 5. In a trust-funded preneed contract, a seller shall deposit one hundred percent
20 of the payments received on a trust-funded preneed contract into a trust designated by this
21 section within sixty days of receipt of such funds by the seller or its designee.

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

26 7. The financial institution referenced herein may neither control, be controlled by,
27 nor be under common control with the seller or preneed agent. The terms "control",
28 "controlled by" and "under common control with" means, the direct or indirect possession
29 of the power to direct or cause the direction of the management and policies of a person,
whether through the ownership of voting securities, by contract other than a commercial

30 contract for goods or nonmanagement services, or otherwise, unless the power is the result
31 of an official position with or corporate office held by the person. Control shall be
32 presumed to exist if any person, directly or indirectly, owns, controls, holds with the power
33 to vote, or holds proxies representing ten percent or more of the voting securities issued by
34 any other person. This presumption may be rebutted by a showing to the board that
35 control does not in fact exist.

36 8. Payments regarding two or more preneed contracts may be deposited into and
37 commingled in the same preneed trust, so long as the trustee maintains adequate records
38 that individually and separately identify the payments, earnings, and distributions for each
39 preneed contract.

40 9. Within a reasonable time after accepting a trusteeship or receiving trust assets,
41 a trustee shall review the trust assets and make and implement decisions concerning the
42 retention and disposition of assets in order to bring the trust portfolio into compliance with
43 the purposes, terms, distribution requirements, other circumstances of the trust, and all
44 other requirements of sections 436.400 to 436.520.

45 10. All expenses of establishing and administering a preneed trust, including
46 trustee's fees, legal and accounting fees, investment expenses, and taxes may be paid from
47 income generated from the investment of the trust assets. If the income is insufficient to
48 pay such fees, the seller is obligated to pay the fees.

49 11. The seller and provider of a trust funded preneed contract shall be entitled to
50 all income, including, but not limited to, interest, dividends, capital gains, and losses
51 generated by the investment of preneed trust property regarding such contract as
52 stipulated in the contract between the seller and provider. Income of the trust, excluding
53 expenses allowed under subsection 7 of this section, shall accrue through the life of the
54 trust, except in instances when a contract is cancelled. The trustee of the trust may
55 distribute market value of all income, net of losses, to the seller upon, but not before, the
56 final disposition of the beneficiary and provision of the funeral and burial services and
57 facilities, and merchandise to, or for, the benefit of the beneficiary. This subsection shall
58 apply to trusts established on or after August 28, 2009.

59 12. Providers shall request payment by submitting a certificate of performance to
60 the seller certifying that the provider has rendered services under the contract or as
61 requested. The certificate shall be signed by both the provider and the person authorized
62 to make arrangements on behalf of the beneficiary. If there is no written contract between
63 the seller and provider, the provider shall be entitled to the market value of all trusts assets
64 allocable to the preneed contract. Sellers shall remit payment to the provider within sixty
65 days of receiving the certificate of performance.

66 **13. If a seller fails to make timely payment of an amount due a provider under**
67 **sections 436.005 to 436.071, the provider shall have the right, in addition to other rights**
68 **and remedies against such seller, to make demand upon the trustee of the preneed trust for**
69 **the contract to distribute to the provider from the trust all amounts to which the seller**
70 **would be entitled to receive for the preneed contract.**

71 **14. The trustee of a preneed trust, including trusts established before August 28,**
72 **2009, shall maintain adequate books and records of all transactions administered over the**
73 **life of the trust and pertaining to the trust generally. The trustee shall assist the seller who**
74 **established the trust or its successor in interest in the preparation of the annual report**
75 **described in section 436.460. The seller shall furnish to each contract purchaser, within**
76 **thirty days after receipt of the purchaser's written request, a written statement of all**
77 **deposits made to such trust regarding such purchaser's contract including the principal**
78 **and interest paid to date, and the principal and interest to be paid over the life of the trust.**

79 **15. A preneed trust, including trusts established before August 28, 2009, shall**
80 **terminate when the trust principal no longer includes any payments made under any**
81 **preneed contract, and upon such termination the trustee shall distribute all trust property,**
82 **including principal and undistributed income, to the seller which established the trust.**

436.435. 1. The provisions of this section shall apply to all preneed trusts, including
2 **trusts established before August 28, 2009. All preneed trusts in existence on August 28,**
3 **2009, shall be in compliance with this section no later than July 1, 2010.**

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

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

15 **4. A trustee shall diversify the investments of the trust unless the trustee reasonably**
16 **determines that, because of special circumstances, the purpose of the trust is better served**
17 **without diversification.**

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

- 20 (1) General economic conditions;
21 (2) The possible effect of inflation or deflation;
22 (3) The expected tax consequences of investment decisions or strategies;
23 (4) The role that each investment or course of action plays within the overall trust
24 portfolio;
25 (5) The expected total return from income and the appreciation of capital;
26 (6) Needs for liquidity, regularity of income, and preservation or appreciation of
27 capital;

28 6. Any seller, provider, or preneed agent shall not procure or accept a loan against
29 any investment or asset of or belonging to a preneed trust. As of August 29, 2009, no
30 preneed seller, provider, or agent shall use any existing preneed contract as collateral or
31 security pledged for a loan or take preneed funds of any existing preneed contract as a loan
32 or for any purpose other than as authorized by this chapter.

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

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

- 6 (1) Selecting an agent;
7 (2) Establishing the scope and terms of the agency, consistent with the purposes and
8 terms of the trust; and
9 (3) Periodically reviewing the agent's actions in order to monitor the agent's
10 performance and compliance with the terms of the agency.

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

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

15 5. Delegation of duties and powers to an agent shall not relieve the trustee of any
16 duty or responsibility imposed on the trustee by sections 436.400 to 436.520 or the trust
17 agreement.

 436.445. A trustee of any preneed trust, including trusts established before August
2 28, 2009, shall not sell, invest, or authorize any transaction involving the investment or
3 management of trust property with:

- 4 (1) The spouse of the trustee;
5 (2) The descendants, siblings, parents, or spouses of a seller or an officer, manager,
6 director or employee of a seller, provider, or preneed agent;

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

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

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

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

13 **3. Payments collected by or on behalf of a seller for an insurance-funded preneed
14 contract shall be promptly remitted to the insurer or the insurer's designee as required by
15 the insurer; provided that payments shall not be retained or held by the seller or preneed
16 agent for more than thirty days from the date of receipt.**

17 **4. A term life insurance policy shall not be used to fund a preneed contract, unless
18 a purchaser has a preexisting insurance policy and must assign benefits to qualify for
19 services under chapter 208, RSMo.**

20 **5. It is unlawful for a seller, provider, or preneed agent to procure or accept a loan
21 against any insurance contract used to fund a preneed contract.**

22 **6. Laws regulating insurance shall not apply to preneed contracts, but shall apply
23 to any insurance or annuity sold with a preneed contract; provided, however, the
24 provisions of this act shall not apply to annuities or insurance policies regulated by chapters
25 374, 375, and 376, RSMo, used to fund preneed funeral agreements, contracts, or
26 programs.**

27 **7. This section shall apply to all preneed contracts including those entered into
28 before August 28, 2009.**

29 **8. For any insurance-funded preneed contract sold after August 28, 2009, the
30 following shall apply:**

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

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

36 9. If the proceeds of the life insurance policy exceed the actual cost of the goods and
37 services provided pursuant to the preneed contract, any overage shall be paid to the estate
38 of the beneficiary, or, if the beneficiary received public assistance, to the state of Missouri.

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

3 2. In lieu of a trust-funded or insurance-funded preneed contract, the seller and the
4 purchaser may agree in writing that all funds paid by the purchaser for the preneed
5 contract shall be deposited with a financial institution chartered and regulated by the
6 federal or state government authorized to do business in Missouri in an account in the joint
7 names and under the joint control of the seller and purchaser. There shall be a separate
8 joint account established for each preneed contract sold or arranged under this section.
9 Funds shall only be withdrawn or paid from the account upon the signatures of both the
10 seller and the purchaser or under a pay-on-death designation.

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

14 4. The financial institution shall hold, invest, and reinvest funds deposited under
15 this section in other accounts offered to depositors by the financial institutions as provided
16 in the written agreement of the purchaser and the seller, provided the financial institution
17 shall not invest or reinvest any funds deposited under this section in term life insurance or
18 any investment that does not reasonably have the potential to gain income or increase in
19 value.

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

24 6. Within fifteen days after a provider and a witness certifies to the financial
25 institution in writing that the provider has furnished the final disposition, funeral, and
26 burial services and facilities, and merchandise as required by the preneed contract, or has
27 provided alternative funeral benefits for the beneficiary under special arrangements made
28 with the purchaser, the financial institution shall distribute the deposited funds to the seller
29 if the certification has been approved by the purchaser. The seller shall pay the provider
30 within ten days of receipt of funds.

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

436.456. At any time before final disposition, or before the funeral or burial
2 **services, facilities, or merchandise described in a preneed contract are furnished, the**
3 **purchaser may cancel the contract, if designated as revocable, without cause. In order to**
4 **cancel the contract the purchaser shall:**

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

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

15 **(3) In the case of a trust-funded preneed contract, deliver written notice of the**
16 **cancellation to the seller and trustee. Within fifteen days of receipt of notice of the**
17 **cancellation, the trustee shall distribute one hundred percent of the trust property**
18 **including any percentage of the total payments received on the trust-funded contract that**
19 **have been withdrawn from the account under section 436.430 but excluding interest, to the**
20 **purchaser of the contract.**

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

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

8 **3. If the purchaser fails to remit the payments due within thirty days of the**
9 **postmarked date of the notice, then the seller, at its option, may either cancel the contract**
10 **or may continue the contract as not guaranteed contract where the purchaser will receive**

11 full credit for all payments the purchaser has made into the trust towards the cost of the
12 beneficiary funeral service or merchandise from the provider.

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

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

6 2. The seller shall pay the newly designated provider all payments owed to the
7 original provider under the contract. The newly designated provider shall assume all
8 rights, duties, obligations, and liabilities as the original provider under the contract.

9 3. In the case of a trust-funded contract and upon written notice to the seller of the
10 purchaser's intent to select an alternative provider under subsection 1 of this section, the
11 seller shall either continue the trust with the new provider in place of, and to receive all
12 payments owed to, the original provider under the original agreement, or transfer the
13 funds allocable to that preneed contract to another preneed trust as designated by the new
14 provider.

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

3 (1) The name, addresses, and the contract number, if any, and whether it is funded
4 by a trust, insurance or joint account of all purchasers as reflected in any preneed contract
5 sold since the filing of the last report;

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

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

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

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

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

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

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

19 **(9) Written consent authorizing the board to order an examination and, if**
20 **necessary, an audit of any joint or trust account established under sections 436.400 to**
21 **436.520, designated by depository or account number;**

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

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

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

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

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

33 **(3) The current trust fund balance;**

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

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

37 **(6) A statement of all assets and investments of the trust showing current market**
38 **value of each asset and investment;**

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

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

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

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

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

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

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

- 53 (5) Total earnings since the previous report;
54 (6) Total distributions to the seller from each joint account since the previous
55 report;
56 (7) Total expenses deducted from the joint account, excluding distributions to the
57 seller, since the previous report; and
58 (8) Certification under oath that the information required by subdivisions (1) to (7)
59 of this subsection is complete and correct and attested to by an authorized representative
60 of the financial institution. The affiant shall be subject to the penalty of making a false
61 affidavit or declaration.
- 62 4. A seller that sells or who has sold any insurance-funded preneed contracts shall
63 also include in the annual report required by subsection 1 of this section:
- 64 (1) The name and address of each insurance company issuing insurance to fund a
65 preneed contract sold by the seller during the preceding year;
66 (2) The status, total face value, and total cash surrender value of each policy;
67 (3) The amount of funds the seller directly received on each contract and the date
68 the amount was forwarded to any insurance company; and
69 (4) Certification under oath that the information required by subsections 1 to 5 of
70 this section is complete and correct attested to by an authorized representative of the
71 insurer. The affiant shall be subject to the penalty of making a false affidavit or
72 declaration.
- 73 5. Each seller shall remit an annual reporting fee in an amount established by the
74 board by rule for each preneed contract sold in the year since the date the seller filed its
75 last annual report with the board. This reporting fee shall be paid annually and may be
76 collected from the purchaser of the preneed contract as an additional charge or remitted
77 to the board from the funds of the seller. The reporting fee shall be in addition to any
78 other fees authorized under sections 436.400 to 436.520.
- 79 6. All reports required by this section shall be filed by the thirty-first day of
80 October of each year or by the date established by the board by rule. Annual reports filed
81 after the date provided herein shall be subject to a late fee in an amount established by rule
82 of the board.
- 83 7. If a seller fails to file the annual report on or before its due date, his or her
84 preneed seller license shall automatically be suspended until such time as the annual report
85 is filed and all applicable fees have been paid.
- 86 8. This section shall apply to contracts entered into before August 28, 2009.
436.465. A seller shall maintain:

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

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

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

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

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

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

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

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

30 being conducted for the purpose of conducting the inspection, investigation, examination,
31 or audit.

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

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

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

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

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

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

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

- 65 (10) Determine trustee liability and grant any available remedy for a breach of
66 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;
70 or
71 (14) Utilize any other power or authority vested in the attorney general by law.

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

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

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

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

2. The report required by this section shall include:

- 7 (1) The name, phone number, and address of the purchasers of any outstanding
8 preneed contract for which the licensee is the designated provider;
9 (2) The name and license numbers of all sellers authorized to designate the licensee
10 as a provider in a preneed contract;

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

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

16 (5) A final annual report containing the information required by section 436.460;

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

19 (7) Any other information required by the board by rule.

20 3. Within three days after the provider sells or disposes of its assets or stock or
21 ceases doing business, the former provider shall notify each seller in writing that the
22 former provider has sold or 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 or a majority of
2 its business assets or its stock shall notify the board at least sixty days prior to selling or
3 otherwise disposing of its assets or stock, or ceasing to do business as a seller, and shall file
4 a notification report on a form established by the board.

5 2. The report required by this section shall include:

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

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

13 (3) Any other information required by the board by rule.

14 3. Within thirty days after assuming the obligations of a seller under this section,
15 the assuming seller shall:

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

18 (2) Provide written notification to the purchasers of each preneed contract assumed
19 by the seller indicating that the former seller has transferred ownership or has ceased
20 doing business.

21 4. Nothing in this section shall be construed to require the board to audit, inspect,
22 investigate, examine, or edit the books and records of a seller subject to the provisions of
23 this section nor shall this section be construed to amend, rescind, or supersede any duty
24 imposed on, or due diligence required of, an entity assuming the obligations of the seller.

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

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

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

436.520. 1. The board shall promulgate and enforce rules for administration and
2 **enforcement of sections 436.400 to 436.520 including the establishment of the amount of**
3 **any fees authorized thereunder for the transaction of its business and for standards of**
4 **service and practice to be followed for the licensing and registration of providers, sellers,**
5 **and preneed agents deemed necessary for the public good and consistent with the laws of**
6 **this state. Such fees shall be set at a level to produce revenue which does not substantially**
7 **exceed the cost and expense of administering this chapter.**

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

Section 1. The board shall maintain as a closed and confidential record, not subject
2 **to discovery unless the person provides written consent for disclosure, all personal**
3 **information about any individual preneed purchaser or beneficiary, including but not**
4 **limited to name, address, Social Security number, financial institution account numbers,**
5 **and any health information disclosed in the preneed contract or any document prepared**

6 in conjunction with the preneed contract; provided, however, that the board may disclose
7 such confidential information without the consent of the person involved in the course of
8 voluntary interstate exchange of information; or in the course of any litigation concerning
9 that person or the provider, seller, or sales agent involved with the preneed contract; or
10 pursuant to a lawful request or to other administrative or law enforcement agencies acting
11 within the scope of their statutory authority. In any such litigation, the board and its
12 attorneys shall take reasonable precautions to ensure the protection of such information
13 from disclosure to the public.

2 [333.121. 1. The board may refuse to issue any certificate of registration
3 or authority, permit or license required pursuant to this chapter for one or any
4 combination of causes stated in subsection 2 of this section. The board shall
5 notify the applicant in writing of the reasons for the refusal and shall advise the
6 applicant of his right to file a complaint with the administrative hearing
7 commission as provided by chapter 621, RSMo.

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

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

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

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

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

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

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

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

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

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

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

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

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

(13) Violation of any professional trust or confidence;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) "Beneficiary", the individual who is to be the subject of the disposition and who will receive funeral services, facilities or merchandise described in a preneed contract;

(2) "Division", the division of professional registration;

(3) "Funeral merchandise", caskets, grave vaults, or receptacles, and other personal property incidental to a funeral or burial service, and such term 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

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

(4) "Person", any individual, partnership, corporation, cooperative, association, or other entity;

(5) "Preneed contract", any contract or other arrangement which requires the current payment of money or other property in consideration for the final disposition of a dead human body, or for funeral or burial services or facilities, or for funeral merchandise, where such disposition, services, facilities or merchandise are not immediately required, including, but not limited to, an agreement providing for a membership fee or any other fee having as its purpose

the furnishing of burial or funeral services or merchandise at a discount, except for contracts of insurance, including payment of proceeds from contracts of insurance, unless the preneed seller or provider is named as the owner or beneficiary in the contract of insurance;

(6) "Preneed trust", a trust established by a seller, as grantor, to receive deposits of, administer, and disburse payments received under preneed contracts by such seller, together with income thereon;

(7) "Provider", the person obligated to provide the disposition and funeral services, facilities, or merchandise described in a preneed contract;

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

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

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

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

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

(1) It is in writing;

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

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

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

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

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

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

3. Each preneed contract made before August 13, 1982, and all payments and disbursements under such contract shall continue to be governed by sections 436.010 to 436.080, as those sections existed at the time the contract was made; but, the provisions of subsection 2 of section 436.035 may be applied to all preneed contracts which are executory on August 13, 1982.

25 4. Subject to the provisions of subdivision (5) of section 436.005, the
26 provisions of sections 436.005 to 436.071 shall apply to the assignment of
27 proceeds of any contract of insurance for the purpose of funding a preneed
28 contract or written in conjunction with a preneed contract. Laws regulating
29 insurance shall not apply to preneed contracts, but shall apply to any insurance
30 sold with a preneed contract.

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

35 6. The seller and the provider of a preneed contract may be the same
36 person.]
37

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

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

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

2 [436.015. 1. No person shall perform or agree to perform the obligations
3 of, or be designated as, the provider under a preneed contract unless, at the time
4 of such performance, agreement or designation:

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

11 (2) Such person is registered with the state board and files with the state
12 board a written consent authorizing the state board to order an examination and
13 if necessary an audit by the staff of the division of professional registration who
are not connected with the board of its books and records which contain

information concerning preneed contracts sold for, in behalf of, or in which he is named as provider of the described funeral merchandise or services.

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

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

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

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

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

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

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

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

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

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

5. With respect to a provider or seller licensed under the provisions of chapter 333, RSMo, any violation of the provisions of sections 436.005 to

57 436.071 shall constitute a violation of subdivision (3) of section 333.121,
58 RSMo.]
59

[436.021. 1. No person, including without limitation a person who is a
2 provider under one or more preneed contracts, shall sell, perform or agree to
3 perform the seller's obligations under, or be designated as the seller of, any
4 preneed contract unless, at the time of that sale, performance, agreement, or
5 designation, that person shall:

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

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

10 (3) Have registered with the state board.

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

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

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

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

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

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

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

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

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

30 (f) A consent authorizing the state board to order an examination and if
31 necessary an audit by staff of the division of professional registration who are not
32 connected with the board of the trust account, designated by depository and
33 account number. The staff of the division of professional registration in
34 conducting the audit shall not release a detailed accounting of the trust account
35 to the board unless there exist circumstances indicating that the account does not
36 comply with the requirements of sections 436.005 to 436.071, but shall provide
37 the board with a summary of the examination or audit showing general
38 compliance with the provisions of sections 436.005 to 436.071;

39 (4) File with the state board a consent authorizing the state board to order
40 an examination and if necessary an audit by staff of the division of professional

registration who are not connected with the board of its books and records relating to the sale of preneed contracts and the name and address of the person designated by the seller as custodian of these books and records. The staff of the division of professional registration in conducting the audit shall not release a detailed accounting of the trust account to the board unless there exist circumstances indicating that the account does not comply with the requirements of sections 436.005 to 436.071, but shall provide the board with a summary of the examination or audit showing general compliance with the provisions of sections 436.005 to 436.071;

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

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

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

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

[436.031. 1. The trustee of a preneed trust shall be a state or federally chartered financial institution authorized to exercise trust powers in Missouri. The trustee shall accept all deposits made to it by the seller of a preneed contract

4 and shall hold, administer, and distribute such deposits, in trust, as trust principal,
5 pursuant to the provisions of sections 436.005 to 436.071. Payments regarding
6 two or more preneed contracts may be deposited into and commingled in the
7 same preneed trust, so long as the trust's grantor is the seller of all such preneed
8 contracts and the trustee maintains adequate records of all payments received.

9 2. All property held in a preneed trust, including principal and
10 undistributed income, shall be invested and reinvested by the trustee thereof. The
11 trustee shall exercise such judgment and care under circumstances then prevailing
12 which men of ordinary prudence, discretion, and intelligence exercise in the
13 management of their own affairs, not in regard to speculation but in regard to the
14 permanent disposition of their funds, considering the probable income therefrom
15 as well as the probable safety of their capital. A preneed trust agreement may
16 provide that when the principal and interest in a preneed trust exceeds two
17 hundred fifty thousand dollars, investment decisions regarding the principal and
18 undistributed income may be made by a federally registered or
19 Missouri-registered independent qualified investment advisor designated by the
20 seller who established the trust; provided, that title to all investment assets shall
21 remain with the trustee and be kept by the trustee to be liquidated upon request
22 of the advisor of the seller. In no case shall control of said assets be divested
23 from the trustee nor shall said assets be placed in any investment which would
24 be beyond the authority of a reasonably prudent trustee to invest in. The trustee
25 shall be relieved of all liability regarding investment decisions made by such
26 qualified investment advisor.

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

37 4. All expenses of establishing and administering a preneed trust,
38 including, without limitation, trustee's fees, legal and accounting fees, investment
39 expenses, and taxes, shall be paid or reimbursed directly by the seller of the
40 preneed contracts administered through such trust and shall not be paid from the
41 principal of a preneed trust.

42 5. The trustee of a preneed trust shall maintain adequate books of account
43 of all transactions administered through the trust and pertaining to the trust
44 generally. The trustee shall assist seller who established the trust or its successor
45 in interest in the preparation of the annual report described in subdivision (3) of
46 subsection 2 of section 436.021. The seller shall furnish to each contract

47 purchaser, within fifteen days after receipt of the purchaser's written request, a
48 written statement of all deposits made to such trust regarding such purchaser's
49 contract.

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

52 7. A preneed trust shall terminate when trust principal no longer includes
53 any payments made under any preneed contract, and upon such termination the
54 trustee shall distribute all trust property, including principal and undistributed
55 income, to the seller which established the trust.]
56

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

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

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

2 [436.038. If the death of the beneficiary occurs outside the general area
3 served by the provider designated in a preneed contract, then the seller shall
4 either provide for the furnishing of comparable funeral services and merchandise
5 by a licensed 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 obligations
7 under the contract, an amount equal to all sums actually paid in cash by the
8 purchaser under the preneed contract together with interest to be provided for in
the contract. Upon seller's full performance under the provisions of this section,

9 the trustee of the preneed trust for the contract shall distribute to the seller from
10 the trust an amount equal to all deposits made into the trust for the contract.]
11

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

2 [436.045. Within thirty days after a provider and a witness shall certify
3 in writing to the seller that the provider has provided the final disposition of the
4 dead body, and funeral services, facilities, and merchandise described in the
5 contract, or has provided alternative funeral benefits for the beneficiary pursuant
6 to special arrangements made with the purchaser, the seller shall pay to the
7 provider a net amount equal to all payments required to be made pursuant to the
8 written agreement between the seller and the provider or all payments made
9 under the contract. Upon delivery to the trustee of the provider's receipt for such
10 payment, the trustee shall distribute to the seller from the trust an amount equal
11 to all deposits made into the trust for the contract.]

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

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

2 [436.053. 1. Notwithstanding the provisions of sections 436.021 to
3 436.048, the provider and the purchaser may agree that all funds paid the
4 provider by the purchaser shall be deposited with financial institutions chartered
5 and regulated by the federal or state government authorized to do business in
6 Missouri in an account in the joint names and under the joint control of the
7 provider and purchaser. If the purchaser has irrevocably waived and renounced
his right to cancel the agreement between the provider and the purchaser pursuant

8 to subdivision (5) of this subsection, such agreement may provide that all funds
9 held in the account at the beneficiary's death shall be applied toward the purchase
10 of funeral or burial services or facilities, or funeral merchandise, selected by the
11 purchaser or the responsible party after the beneficiary's death, in lieu of the
12 detailed identification of such items required by subdivision (3) of subsection 1
13 of section 436.007. The agreement between the provider and purchaser shall
14 provide that:

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

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

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

24 (4) At any time before the final disposition, or before funeral services,
25 facilities, and merchandise described in a preneed contract are furnished, the
26 purchaser may cancel the contract without cause by delivering written notice
27 thereof to the provider and the financial institution, and within fifteen days after
28 its receipt of the notice, the financial institution shall distribute the deposited
29 funds to the purchaser;

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

36 (6) If the death of the beneficiary occurs outside the general area served
37 by the provider, then the provider shall either provide for the furnishing of
38 comparable funeral services and merchandise by a licensed mortuary selected by
39 the purchaser or, at the provider's option, shall pay over to the purchaser in
40 fulfillment of the obligation of the preneed contract, an amount equal to the sums
41 actually paid in cash by such purchaser under such preneed contract together with
42 interest to be provided for in the contract, in which event the financial institution
43 shall distribute the deposited funds to the provider;

44 (7) Within fifteen days after a provider and a witness certifies in writing
45 to the financial institution that he has furnished the final disposition, or funeral
46 services, facilities, and merchandise described in a contract, or has provided
47 alternative funeral benefits for the beneficiary pursuant to special arrangements
48 made with the purchaser, if the certification has been approved by the purchaser,
49 then the financial institution shall distribute the deposited funds to the provider.

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

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

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

2. The division shall investigate each complaint forwarded from the state board using staff who are not connected with the state board and shall forward the results of such investigation to the subject registrant and to the attorney general for evaluation. If the attorney general, after independent inquiry using staff of the attorney general's office who have not represented the board, determines that there is no probable cause to conclude that the registrant has violated sections 436.005 to 436.071, the registrant and the state board shall be so notified and the complaint shall be dismissed; but, if the attorney general determines that there is such probable cause the registrant shall be so notified and the results of such evaluation shall be transmitted to the state board for further action as provided in sections 436.061 and 436.063.]

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

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

[436.063. Whenever the state board determines that a registered seller or provider has violated or is about to violate any provision of sections 436.005 to

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

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

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

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

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

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

11

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

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