

Group I

Potential need for rules – [see comments](#)

SENATE BILL NO. 1 95TH GENERAL ASSEMBLY

2009

0404L.09T

AN ACT

To repeal sections 333.011, 333.091, 333.101, 333.121, 333.151, 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 forty 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, 333.091, 333.101, 333.121, 333.151, 333.221, 2 333.241, 333.251, 436.005, 436.007, 436.011, 436.015, 436.021, 436.027, 436.031, 3 436.035, 436.038, 436.041, 436.045, 436.048, 436.051, 436.053, 436.055, 436.061, 4 436.063, 436.065, 436.067, 436.069, and 436.071, RSMo, are repealed and forty 5 new sections enacted in lieu thereof, to be known as sections 333.011, 333.091, 6 333.101, 333.151, 333.221, 333.251, 333.310, 333.315, 333.320, 333.325, 333.330, 7 333.335, 333.340, 436.400, 436.405, 436.410, 436.412, 436.415, 436.420, 436.425, 8 436.430, 436.435, 436.440, 436.445, 436.450, 436.455, 436.456, 436.457, 436.458, 9 436.460, 436.465, 436.470, 436.480, 436.485, 436.490, 436.500, 436.505, 436.510, 10 436.520, and 1, to read as follows:

Comment [K1]: See comments in comment boxes and at the end of some sections. Comments were compiled from multiple sources. Comments are included to promote thought and discussion toward the implementation of SB1 by the board. Decisions regarding implementation will be made by the board. Comments not tied directly to one section are included at the end.

333.011. Definitions

1. As used in this chapter, unless the context requires otherwise,
2 the following terms have the meanings indicated:

3 (1) "Board", the state board of embalmers and funeral directors created
4 by this chapter;

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

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

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

14 (5) "Funeral merchandise", caskets, grave vaults, receptacles, and
15 other **personal property incidental to the final disposition of a dead**
16 **human body, including, grave markers, monuments, tombstones, and**
17 **urns;**

Comment [K2]: May want to define what this means – in that it includes (specific examples) but is not limited to those specific examples.

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

Comment [K3]: May want to set out somewhere in rule that a corporation must be represented by an attorney (not just officer, owner, etc.)

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

28 [(7)] (8) "Practice of funeral directing", engaging by an individual **in the**
29 **business** of preparing, otherwise than by embalming, for the burial, disposal or
30 transportation out of this state of, and the directing and supervising of the burial
31 or disposal of, dead human bodies or engaging in the general control, supervision
32 or management of the operations of a funeral establishment;

Comment [K4]: This board's rules have addressed this in the past (but don't currently). May want to define that determining factor is not whether receiving payment or not.

33 (9) "Preneed agent", **any person authorized to sell a preneed**

Comment [K5]: May want to clarify by rule that preneed agent's seller must also be licensed in Mo.

34 contract for or on behalf of a seller;

35 (10) "Provider", the person designated or obligated to provide the
36 final disposition, funeral, or burial services or facilities, or funeral
37 merchandise described in a preneed contract;

Comment [K6]: Set out whether every licensed funeral director is a "provider"? (and must pay the fee?)

Comment [K7]: Could define any or all of these terms – with some examples

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

41 2. All terms defined in sections 436.400 to 436.520, RSMo, shall be
42 deemed to have the same meaning when used in this chapter.

Comment [K8]: Seller must use agent registered in Mo

333.091. License must be displayed and recorded

Each establishment, funeral director or embalmer receiving a
2 license under this chapter shall have [the] recorded in the office of the local
3 registrar of vital statistics of the registration district in which the licensee
4 practices. [The licenses or duplicates shall be displayed in the office(s) or place(s)
5 of business.] **All licenses or registrations, or duplicates thereof, issued**
6 **pursuant to this chapter shall be displayed at each place of business.**

Comment [K9]: May want to explain in rule how must be displayed, where when, etc.
Also address here or elsewhere whether expiration date is on face of license

Comment [K10]: Related reg – 20 CSR 2120-2.030, (p. 29 in board booklet)

Do new death certificate rules change any of this?

333.101. Board may enter premises to inspect

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

Comment [K11]: May want to clarify that this includes any place where records are stored, regardless of format (including electronic). May also want to address consent to access off-site locations where files may be stored and that employees of licensee or registrant may allow access. May want to set out timeframe of some kind within which access must be granted

333.151. Board membership and appointment

1. The state board of embalmers and funeral directors shall
2 consist of ~~[six]~~ **ten** members, including one voting public member[,] appointed by
3 the governor with the advice and consent of the senate. Each member, other than
4 the public member, appointed shall possess either a license to practice embalming
5 or a license to practice funeral directing in this state or both said licenses and
6 shall have been actively engaged in the practice of embalming or funeral directing
7 for a period of five years next before his or her appointment. **Each** member shall
8 be a United States citizen, a resident of this state for a period of at least one
9 year, a qualified voter of this state and shall be of good moral character. Not
10 more than ~~[three]~~ **five** members of the board shall be of the same political party.
11 [The president of the Missouri Funeral Directors Association in office at the time
12 shall each, at least ninety days prior to the expiration of the term of a board
13 member, other than the public member, or as soon as feasible after a vacancy on
14 the board otherwise occurs, submit to the director of the division of professional
15 registration a list of five persons qualified and willing to fill the vacancy in
16 question, with the request and recommendation that the governor appoint one of
17 the five persons so listed, and with the list so submitted, the president of the
18 Missouri Funeral Directors Association shall each include in his or her letter of
19 transmittal a description of the method by which the names were chosen by that
20 association.] **The non-public members shall be appointed by the**
21 **Governor, with the advice and consent of the senate, one from each of**
22 **the state's ~~congressional~~ districts be of good moral character and**
23 **submit an audited financial statement of their funeral establishment by**
24 **an independent auditor for the previous five years. This audited**
25 **financial statement must include all at-need and preneed business.**

Comment [K12]: What proof will be required regarding citizenship, residency, voter status and moral character?

Comment [K13]: What about overlap of board members currently on the board?

26 2. Each member of the board shall serve for a term of five years. Any
27 vacancy on the board shall be filled by the governor and the person appointed to
28 fill the vacancy shall possess the qualifications required by this chapter and shall
29 serve until the end of the unexpired term of his or her predecessor, **if any**.
30 3. The public member shall be at the time of his or her appointment a
31 person who is not and never was a member of any profession licensed or regulated
32 pursuant to this chapter or the spouse of such person; and a person who does not
33 have and never has had a material, financial interest in either the providing of
34 the professional services regulated by this chapter, or an activity or organization
35 directly related to any profession licensed or regulated pursuant to this chapter.
36 All members, including public members, shall be chosen from lists submitted by
37 the director of the division of professional registration. The duties of the public
38 member shall not include the determination of the **technical requirements** to be
39 met for licensure or whether any person meets such technical requirements or of
40 the technical competence or technical judgment of a licensee or a candidate for
41 licensure.

Comment [K14]: If do rules on this section, may consider addressing:
-define audited financial statement,
- set out timeframes
- alternatives if any deemed to be financial statement
- explain how one per district will work
- define "technical requirements"

333.221. Board compensation and employees

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

5 2. The board may employ such board personnel, as defined in subdivision
6 (4) of subsection [10] **11** of section 324.001, RSMo, **including legal counsel**, as
7 is necessary for the administration of this chapter.

Comment [K15]: May not need to do any rules, but might consider:
-define qualifications for legal counsel and/or terms of employment (Mo license, good standing, at will, etc.)

Related regs:
20 SCR 2120-1.020, (p. 22, board booklet)
20 CSR 2120-1.010, (p. 21, board booklet)

333.251. Retail exception

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

Comment [K16]: May want to spell out that casket stores are ok and define them.
May also need to spell out that a preneed license is needed to do preneed.
These are covered in statute but would it be useful for industry to have explicit in rule? Or would that confuse things?

333.310. Cemetery exception

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

Comment [K17]: This exempts cemeteries to the extent they fall under endowed care in chp. 214. Need to look at current 214 (as proposed changes to 214 last legislative session did not pass into law) and see if any rules needed. May consider setting out in rule that to the extent not exempt under this section, then you fall within chps 333/436. Goal toward defining when exempt and when not.

Comment [K18]: How does cemetery statute impact the board?

333.315. Provider license requirements

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

7 2. An applicant for a preneed provider license shall:

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

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

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

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

18 (5) File with the state board, a written consent authorizing the
19 state board to inspect or order an investigation, examination, or audit
20 of the provider's books and records which contain information
21 concerning preneed contracts sold for or on behalf of a seller or in
22 which the applicant is named as a provider; and

23 (6) If the applicant is a corporation, each officer, director,
24 manager, or controlling shareholder shall be eligible for licensure if
25 they were applying for licensure as an individual.

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

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

33 (2) Pay a renewal fee in an amount established by the board by

Comment [K19]: To be designated as provider, must be licensed. Need to address time period between 08/28/09 and when permanent rules are in place addressing procedure, forms, etc.

One way to do this could be:
For those currently registered:
-Given automatic temporary permit to operate that would be valid until some date, e.g., 10/31/09
-This could follow receipt of a notice of intent to obtain license
-Permit could be an actual paper permit issued or simply a declaration in the rule
-Have to apply for a license by a set date, e.g., 10/31/09
-Have to file annual report (according to requirements of old law) – for this year's reporting requirement only
-If license application timely received, temporary permit would continue to be valid until board acts on license application

For those not currently registered:
-Need to apply/send letter/contact board as directed by rule
-Would be given temporary permit to operate similar to the above
-Would need to submit a complete application for initial licensure by a certain date, e.g., 10/31/09
-Could be required to provide a type of annual report as part of application process
-If application timely received, temporary permit would continue as valid until board acted on license application

There are many ways to set out this process

Comment [K20]: Need a form

Comment [K21]: Need to set a fee

Comment [K22]: Need to address filing process and language for written consent. Maybe develop a form.

Comment [K23]: May want to clarify what this means/includes?

Comment [K24]: Need to address time period of 08/28/09 to 10/31/09 (and then annually thereafter). If anyone gets a license prior to 10/31/09, should address whether has to renew by 10/31/09. May not have to worry about registrations expiring under this section as it says "license".

Comment [K25]: Need rule for renewal process and need to develop a form

Comment [K26]: Need rule establishing renewal fee

34 rule, **however** no renewal fee shall be required for any funeral
35 establishment whose Missouri license is current and active;

Comment [K27]: May want to clarify what this means?

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

38 (4) **File an annual report** with the state board which shall
39 contain:

Comment [K28]: May want to set out requirements for annual report in rule – when due, explaining items required by statute, etc. Will want a renewal form.

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

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

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

49 (d) Any information required by any other applicable statute or
50 regulation enacted pursuant to state or federal law.

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

Comment [K29]: Need to set fee, create form to notify, develop process regarding delinquent fees, address what happens if doesn't renew and their license becomes void and whether then have to start application process over

Comment [K30]: Additional things to consider:
-What if provider under contract is no longer licensed at time of need?
-Can we do a joint provider-funeral director-embalmer renewal?
-Duty to update board of any changes within 30 days
-New license with changes of owner – mirror funeral director-embalmer rule?
-On (6), limit to immediate contact if a large corp? (i.e., issues re: background checks, etc.)
-Funeral director is responsible for provider compliance?
-Set fees
-Address that establishment license is exempt from provider fee but not from application and meeting requirements?
-Need to modify establishment application?
-Need to have separate provider application?
-As setting out process, need to consider promo/computer licensing system capabilities

333.320. Seller license requirements

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

Comment [K31]: Same as for provider above.

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

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

Comment [K32]: Need a form

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

Comment [K33]: What type of proof will be required to show age

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

16 (4) Meet all requirements for licensure;

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

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

23 (7) Have established, as grantor, a preneed trust or an agreement
24 to utilize a preneed trust with terms consistent with sections 436.400 to
25 436.520, RSMo. A trust shall not be required if the applicant certifies
26 to the board that the seller will only sell insurance funded or joint
27 account funded preneed contracts;

Comment [K34]: What will this certification be? Draft language or a form?

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

31 (9) File with the board, a written consent authorizing the state
32 board to inspect or order an investigation, examination, or audit of the

Comment [K35]: May want to set forth acceptable wording to be included within any such consent or just develop a written consent form to be used.

33 seller's books and records which contain information concerning
34 preneed contracts sold by or on behalf of the seller.

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

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

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

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

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

Comment [K36]: Same as for provider above. Are renewals required each year or does "a date established by the division" provide authority to require biennial renewals (once / 2 years)? Should the date be changed? If so, how to do this through the division?

Comment [K37]: Need a form. Will likely need a rule for renewal process.

Comment [K38]: Need to set fee.

Comment [K39]: Additional consideration:
-What if seller is not licensed at time of need?
-Consider subcategories of sellers (e.g., 3rd party only, joint account only, insurance company, etc.)
-Limit to those involved if a large corp.?
-Require new license if change of owner (no transfer of license)?
-Set out that seller is the one responsible for the money?
-Comments regarding provider licensure may apply here too
-If fail to renew and 2 years pass and becomes void, have to reinitiate application process?

333.325. Agent registration

1. No person shall sell, negotiate, or solicit the sale of
2 preneed contracts for, or on behalf of, a seller unless registered with
3 the board as a preneed agent except for individuals who are licensed
4 as funeral directors under this chapter. The board shall maintain a
5 registry of all preneed agents registered with the board. The registry
6 shall be deemed an open record and made available on the board's web
7 site.

Comment [K40]: As defined includes corporation

Comment [K41]: Same as for provider and seller above, except is registration (instead of licensure).

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

Comment [K42]: Note that applicant here is an individual and not a "person" where "person" under these sections includes a corporation

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

Comment [K43]: Need an application form.
Require notification of any change in info to board within 30 days of change?

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

Comment [K44]: Need to set fee

Comment [K45]: What proof of age required to be provided?

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

16 (4) Have successfully passed the Missouri law examination as
17 designated by the board;

18 (5) Provide the name and address of each seller for whom the
19 applicant is authorized to sell, negotiate, or solicit the sale of preneed
20 contracts for, or on behalf of.

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

Comment [K46]: Set out that can only sell if for a licensed seller?

Comment [K47]: Coordinate to be at same time as funeral director/embalmer renewals?

Comment [K48]: Set out whether a licensed funeral director has to also be a registered preneed agent to sell? And if so, whether same timeframes for funeral directors registering as preneed agents as for others?

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

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

Comment [K49]: Need a form. Will likely need a rule setting out renewal application process

Comment [K50]: Need to set fee

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

Comment [K51]: Set out that all providers named must be licensed providers?
-Licensed as of date of preneed contract and date of contract between agent and seller
-Develop a form?

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

Comment [K52]: Does funeral director application need to be modified to include the seller relationship information? Same with regard to preneed agent, funeral director? Do funeral directors selling preneed out of their funeral homes have the same reporting requirements as preneed agents?

41 5. Any registration which has not been renewed as provided by
42 this section shall expire and the registrant shall be immediately
43 removed from the preneed agent registry by the board. A registrant
44 who fails to apply for renewal may apply for reinstatement within two
45 years of the renewal date by satisfying the requirements of subsection
46 3 of this section and paying a delinquent fee as established by the
47 board.

Comment [K53]: Need to set fee

48

Comment [K54]: Will need rules to address agent registrations temporarily also (like sellers and providers above) – from 08/28/09 until license application can be granted/denied by the board. Will also need to consider requirement to take Mo law exam in timeframes.

333.330. Authority to deny/discipline

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

Comment [K55]: May not need any emergency rules for this, or any rules at all. Could consider rules regarding notice

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

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

Comment [K56]: Set out that a DWI qualifies for discipline under this section?

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

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

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

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

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation

37 adopted pursuant thereto;

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

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

46 (9) A person is finally adjudged mentally incompetent by a court
47 of competent jurisdiction;

48 (10) Misappropriation or theft of preneed funds;

49 (11) Assisting or enabling any person to practice or offer to
50 practice any profession licensed or regulated by this chapter regulating
51 preneed who is not licensed or registered and currently eligible to
52 practice thereunder;

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

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

Comment [K57]: Set out requirements for display (under respective sections of SB1)

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

58 (15) Making or filing any report required by sections 436.400 to
59 436.520, RSMo, regulating preneed which the licensee knows to be false
60 or knowingly failing to make or file a report required by such sections;

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

64 (17) Willfully and through undue influence selling a funeral;

65 (18) Willfully and through undue influence selling a preneed
66 contract;

67 (19) Violation of any of the provisions of chapter 193, 194, 407, or
68 436, RSMo;

69 (20) Presigning a death certificate or signing a death certificate
70 on a body not yet embalmed by, or under the personal supervision of,
71 the licensee;

Comment [K58]: Need rules regarding doing this electronically?

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

74 (22) Failure to refuse to properly guard against contagious,
75 infectious, or communicable diseases or the spread thereof;

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

Comment [K59]: Set out that this includes cremains?

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

Comment [K60]: Set out that a corporation or other such legal entity must be represented by an attorney?

89 4. In addition to all other powers and authority granted by the
90 board, the board may seek an injunction, restraining order or other
91 order from the Circuit Court of Cole County to enjoin any seller from
92 engaging in preneed sales upon a showing by the board that the seller
93 has failed to make deposits into the preneed trust, has obtained funds
94 out of the trust to which the seller is not entitled or has exercised
95 influence or control over the trustee or has engaged in any other act
96 that has resulted in a shortage in any preneed trust or joint account
97 which exceeds twenty percent of the total amount required to be held
98 or deposited into the trust or joint account under the provisions of
99 sections 436.400 to 436.520, RSMo. In addition to the power to enjoin
100 for this conduct, the Circuit Court of Cole County shall also be entitled
101 to suspend or revoke the preneed seller's license and any other license
102 issued pursuant to chapter 333 RSMo, held by the seller.

Comment [K61]: Set out what constitutes "control" over trustee?

Comment [K62]: Address market fluctuations? Maybe under other areas of SB1

103 5. An individual whose certificate of registration or authority,
104 permit, or license has been revoked shall wait three years from the date
105 of revocation to apply for any certificate of registration or authority,
106 permit, or license under this chapter, either as an individual or as a
107 manager, director, shareholder, or partner of any business entity. Any
108 certificate of registration or authority, permit, or license shall be

109 issued at the discretion of the board after compliance with all the
110 requirements of this chapter relative to the licensing or registration of
111 the applicant for the first time.

112 6. Use of the procedures set out in this section shall not preclude
113 the application of the provisions of subsection 2 of section 333.335.

||

Comment [K63]: Additional considerations:
-Set out that seller is responsible for its agents' actions?
-Set out what constitutes "control" over trust?
-Maybe address these under other areas of SB1

333.335. Injunctive authority

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

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

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

Comment [K64]: Set out whether this includes financial welfare(\$)?

**16 (3) Engaging in any practice or business that presents a
17 substantial probability of serious danger to the solvency of any seller.
18 2. Any such action shall be commenced in the county in which
19 such conduct occurred or in the county in which the defendant resides
20 or, in the case of a firm or corporation, where the firm or corporation
21 maintains its principal office or in Cole County.**

**22 3. Any action brought under this section shall be in addition to
23 and not in lieu of any authority provided by this chapter, and may be
24 brought concurrently with other actions to enforce this chapter or
25 sections 436.400 to 436.520, RSMo.**

333.340. Rulemaking authority

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

Comment [K65]: Need a rule, maybe an emergency one re: "standards of service and practice."

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

Comment [K66]: Need a rule, and an emergency rule until permanent rules can be implemented.

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

Comment [K67]: Need a rule, maybe an emergency one regarding "standards of service and practice." Regarding transaction of the board's business, that may overlap with other requirements to promulgate rules.

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

Comment [K68]: The National Funeral Directors' Association has a Code of Professional Conduct.

Additional comments:

- A. Projections of revenue produced from applications, renewals, etc., will be needed
 - a.** What about revenue for this year?
 - b.** Use to set fees
- B. Design an optional preneed contract to use?
- C. Set out in rule that insurance type companies that sell preneed are sellers under this legislation?
- D. Create an overview of all the time related requirements (e.g., 10, 15, 20 and 30 day requirements) throughout the chapters?
- E. Create an overview relating to pre and post 08/28/09 for requirements in chapters 333 and 436?