of both the seller and the purchaser or under a pay-on-death designation or as required to pay reasonable expenses of administering the account.

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

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

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

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

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

436.456. At any time before final disposition, or before the funeral or burial services, facilities, or merchandise described in a preneed contract are furnished, the purchaser may cancel the contract,

Summary of Comments on SB 0001 (0404.05) Establishes licensing and contract requirements for preneed funeral contract sellers, providers, and seller agents.

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if designated as revocable, without cause. In order to cancel the contract the purchaser shall:

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

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

(3) In the case of a trust-funded preneed contract, deliver written notice of the cancellation to the seller and trustee. Within fifteen days of receipt of notice of the cancellation, the trustee shall distribute one hundred percent of the trust property including any percentage of the total payments received on the trust-funded contract that have been withdrawn from the account under section 436.430.4 but excluding the income, to the purchaser of the contract;

(4) In the case of a guaranteed installment payment contract where the beneficiary dies before all installments have been paid, the purchaser shall pay the seller the amount remaining due under the contract in order to receive the goods and services set out in the contract, otherwise the purchaser or their estate will receive full credit for all payments the purchaser has made towards the cost of the beneficiary's funeral at the provider current prices.

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

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

3. If the purchaser fails to remit the payments due within thirty

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For consistency with trust funded contract refunds, the seller may include contract provisions allowing it to regain accrued interest. In the absence of such language, a regulation may be needed to govern the parties' rights to interest.

Number: 2 Author: Bill Subject: Highlight Date: 8/12/2009 1:49:44 PM

Number: 3 Author: Bill Subject: Highlight Date: 8/12/2009 1:50:07 PM

Number: 4 Author: Bill Subject: Note Date: 8/12/2009 1:55:53 PM

The reference to "100% of the trust property" is confusing. Who must bear the risk of the account value? I would think the intent would be a refund of payments less the origination fee.

days of the postmarked date of the notice, then the seller, at its option, may either cancel the contract or may continue the contract as a nonguaranteed contract where the purchaser will receive full credit for all payments the purchaser has made into the trust towards the cost of the beneficiary's funeral service or merchandise from the provider.

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

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

2. The seller shall pay the newly designated provider all payments owed to the original provider under the contract. The newly designated provider shall assume all rights, duties, obligations, and liabilities as the original provider under the contract. Interest shall continue to be allocated to the seller as provided under the contract.

3. In the case of a trust funded contract and upon written notice to the seller of the purchaser's intent to select an alternative provider under subsection 1 of this section, the seller shall either continue the trust with the new provider in place of, and to receive all payment owed to, the original provider under the original agreement, or pay to the new trust all of the trust property, including principal and income.

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

(1) The contract number of each preened contract sold since the filing of the last report with an indication of, and whether it is funded by a trust, insurance or joint account;

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

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

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

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If the alternative provider elects to transfer the trust, it should receive the trust value (as opposed to payments plus income). These transfers could take time to effect.

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

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

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

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

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

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

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

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

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

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

(3) The current face value of the trust fund;

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

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

(6) Authorization of the board to request from the trustee a copy of any trust statement, as part of an investigation, examination or audit of the preneed seller;

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I think the intent would be the aggregate payment balance of the trust.

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The aggregate market value as of the report date.

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

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

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

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

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

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

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

(5) Total earnings since the previous report;

(6) Total distributions to the seller from each joint account since the previous report;

(7) Total expenses deducted from the joint account, excluding distributions to the seller, since the previous report; and

(8) Certification under oath that the information required by subdivisions (1) to (7) of this subsection is complete and correct and attested to by an authorized representative of the financial institution. The affiant shall be subject to the penalty of making a false affidavit or declaration.

4. A seller that sells or who has sold any insurance-funded preneed contracts shall also include in the annual report required by subsection 1 of this section:

(1) The name and address of each insurance company issuing insurance to fund a preneed contract sold by the seller during the preceding year;

(2) The status and total face value of each policy;

(3) The amount of funds the seller directly received on each contract and the date the amount was forwarded to any insurance company; and

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When (how) do sellers have to report individual contract data?

Number: 2 Author: Bill Subject: Note Date: 8/12/2009 2:40:45 PM
The Board may want to give thought to a spreadsheet format for reporting joint accounts.

(4) Certification under oath that the information required by subsections 1 to 3 of this section is complete and correct attested to by an authorized representative of the insurer. The affiant shall be subject to the penalty of making a false affidavit or declaration.

5. Each seller shall remit an annual reporting fee in an amount established by the board by rule for each preneed contract sold in the year since the date the seller filed its last annual report with the board. This reporting fee shall be paid annually and may be collected from the purchaser of the preneed contract as an additional charge or remitted to the board from the funds of the seller. The reporting fee shall be in addition to any other fees authorized under sections 436.400 to 436.520.

6. All reports required by this section shall be filed by the thirty-first day of October of each year or by the date established by the board by rule. Annual reports filed after the date provided herein shall be subject to a late fee in an amount established by rule of the board.

7. If a seller fails to file the annual report on or before its due date, his or her preneed seller license shall automatically be suspended until such time as the annual report is filed and all applicable fees have been paid.

8. This section shall apply to contracts entered into before August 28, 2009.

436.465. A seller shall maintain:

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

(2) Records of preneed contracts, including financial institution statements and death certificates, shall be maintained by the seller for the duration of the contract and for 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 an alleged violation of this chapter. The board shall investigate each such complaint.

2. The board shall have authority to conduct inspections and investigations of providers, sellers, and preneed agents and conduct financial examinations of the books and records of providers, sellers,

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"Automatic" suspensions without notice could cause problems for both the licensee and the Board. The validity of any contracts written during the suspension would be in doubt.

Number: 2 Author: Bill Subject: Note Date: 8/12/2009 2:45:26 PM

Adequate records for trust funded contracts should include line item breakdown of individual contracts with balances, value and income/expenses.

Number: 3 Author: Bill Subject: Note Date: 8/12/2009 2:50:43 PM

The five year period is intended to cover the 'open' audit period. To the extent the trust is audited with passing colors, the seller could be free to begin disposing of records less than 5 years after performance.

and preneed agents and any trust or joint account to determine compliance with sections 436.400 to 436.520, or to determine whether grounds exist for disciplining a person licensed or registered under sections 333.310 to 333.340, RSMo, at the discretion of the board and with or without cause. The board shall conduct a financial examination of the books and records of each seller as authorized by this section at least once every five years, subject to available funding.

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

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

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

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

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

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The term 'financial examination' provides the Board flexibility in structuring a review process of sellers.

to 436.520.

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

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

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

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

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

(1) Declare rights;

(2) Approve a nonjudicial settlement;

(3) Interpret or construe the terms of the trust;

(4) Determine the validity of a trust or of any of its terms;

(5) Compel a trustee to report or account;

(6) Enjoin a seller, provider, or preneed agent from performing a particular act;

(7) Enjoin a trustee from performing a particular act or grant to a trustee any necessary or desirable power;

(8) Review the actions of a trustee, including the exercise of a discretionary power;

(9) Appoint or remove a trustee;

(10) Determine trustee liability and grant any available remedy for a breach of trust;

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(11) Approve employment and compensation of preneed agents;

(12) Determine the propriety of investments;

(13) Determine the timing and quantity of distributions and dispositions of assets; or

(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 granted to the purchaser under sections 436.400 to 436.520 shall be enforceable by and accrue to the benefit of the purchaser's legal representative or his or her estate, and all payments otherwise payable to the purchaser shall be paid to that person.

436.485. 1. Any person, including the officers, directors, partners, agents, or employees of such person, who shall knowingly and willfully violate or assist or enable any person to violate any provision of sections 436.400 to 436.520 by incompetence, misconduct, gross negligence, fraud, misrepresentation, or dishonesty is guilty of a class C felony. Each violation of any provision of sections 436.400 to 436.520 constitutes a separate offense and may be prosecuted individually. The attorney general shall have concurrent jurisdiction 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 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 436.400 to 436.520, the court may order all relief and penalties authorized under chapter 407, RSMo, and, in addition to imposing the penalties provided for in sections 436.400 to 436.520, order the revocation or suspension of the license or registration of a defendant seller, provider, or preneed agent.

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

2. The report required by this section shall include:

(1) The name, phone number, and address of the purchasers of any outstanding preneed contract for which the licensee is the

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This section needs to be consistent with any enforceable right of sepulcher designation.

designated provider;

(2) The name and license numbers of all sellers authorized to designate the licensee as a provider in a preneed contract;

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

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

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

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

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

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

2. The report required by this section shall include:

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

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

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

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Number: 2 Author: Bill Subject: Note Date: 8/12/2009 4:50:33 PM
Will the Board use its audit powers to provide some assurance to buyers?

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

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

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

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

5. The office of the attorney general shall have the authority to initiate legal action 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 maintain credit life insurance on the life of the purchaser. Such insurance shall provide for the payment of death benefits to the seller in an amount equal to the total of all contract payments unpaid as of the date of such purchaser's death, and shall be used solely to make those unpaid payments. Any such credit life insurance shall be provided by a duly authorized insurance company and the preneed contract shall clearly identify the name of the insurer and the amount of payment allocated to the premium payment for the credit 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 or a provider under the provisions of sections 436.400 to 436.520, the purchaser or provider, as appropriate, shall have the right, in addition to other rights and remedies against such seller, to make demand upon the trustee of the preneed trust for the contract to distribute to the purchaser or provider from the trust, as damages, an amount equal to all deposits made into the trust for the contract.

436.520. 1. The board shall promulgate and enforce rules for administration and enforcement of sections 436.400 to 436.520 including the establishment of the amount of any fees authorized thereunder for

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Number: 2 Author: Bill Subject: Note Date: 8/12/2009 4:52:02 PM
Need a regulation settting out conditions (timing and release) for trustee to be protected.

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. Such fees shall be set at a level to produce revenue which does not substantially 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, 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 under 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.

Section 1. The board shall maintain as a closed and confidential record, not subject to discovery unless the person provides written consent for disclosure, all personal information about any individual preneed purchaser or beneficiary, including but not limited to name, address, Social Security number, financial institution account numbers, and any health information disclosed in the preneed contract or any document prepared in conjunction with the preneed contract; provided, however, that the board may disclose such confidential information without the consent of the person involved in the course of voluntary interstate exchange of information; or in the course of any litigation concerning that person or the provider, seller, or sales agent involved with the preneed contract; or pursuant to a lawful request or to other administrative or law enforcement agencies acting within the scope of their statutory authority. In any such litigation, the board and its attorneys shall take reasonable precautions to ensure the protection of such information from disclosure to the public.

[333.121. 1. The board may refuse to issue any certificate of registration or authority, permit or license required pursuant to 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

This page contains no comments