SB1 implementation – Group III

436.456. Purchaser cancellation

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, 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the trust property including any percentage of the total payments received on the trust-funded contract that have been withdrawn from the account under section 436.430.4 but excluding the income, to the purchaser of the contract;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.

Comment [K1]: Could set out what written notice or notify shall entail. Notarization required?

Comment [K2]: Is there a minimum amount that purchaser must receive? Need a rule?

Comment [K3]: 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.

Comment [K4]: May purchaser assign policy to new party instead of cancelling? Need a rule?

Comment [K5]: 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.

436.457. <u>Seller cancellation</u>

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 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.

Comment [K6]: Seller gets maximum of 15% of payments plus income if any, right? Need a rule?

436.458. <u>Purchaser change of provider</u>

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.

Comment [K7]: Once a customer selects a different provider, the seller has the option to either establish a trust where the new provider receives credit for all principal or pay principal and income to the new provider?

Comment [K8]: Can 15% be retained by the original provider based on 436.430?

Comment [K9]: Could define what counts as notice to the seller from the purchaser, but wouldn't have to. Notarized?

Comment [K10]: 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.

436.460. Seller annual reports

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

Comment [K11]: May want to require by rule that a board form be used. I would not promulgate the form itself as a rule, as then any change to that form would require a new rule.

(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;

Comment [K12]: May want to define the highlighted items, but wouldn't have to

(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;

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

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Comment [K13]: The aggregate market value as of the report date.

(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;

Comment [O14]: What is "the list"

(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;

Comment [K15]: May want to require by rule that a board form be used for written consents.

Comment [K16]: May want to define the terms investigation, examination and audit by rule.

(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.

Comment [K17]: Should be a part of the report form required by rule.

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;

Comment [K18]: Require name of trust officer by rule?

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

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

Comment [K19]: Could try to define highlighted terms by rule

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

Comment [K20]: Grand total or individual amounts? Every individual contribution, regardless of amount, right?

(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;

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

Comment [K21]: When (how) do sellers have to report individual contract data?

(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.

Comment [K22]: Should be part of report form required by rule.

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;

Comment [K23]: Could define highlighted terms by rule.

(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.

Comment [K24]: Should be part of board form required by rule.

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Comment [K25]: The Board may want to give thought to a spreadsheet format for reporting joint accounts.

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;

Comment [K26]: Could define highlighted terms by rule. Status as relevant to the board?

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

(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.

Comment [K27]: Should be part of board form required by rule.

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.

Comment [K28]: Need rule – setting amounts, deadlines, how and where to remit, etc.

Comment [K29]: Will need to address by rule how to do this in transition – how those who haven't filed an annual report before have to do this.

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

Comment [K30]: If want different that 10/31/09, need to establish by rule. Also should address Oct. 2009 by rule if first transition year will be different than subsequent years.
Coordinate transition timeframes with other transition dates.

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.

Comment [K31]: Need rule
Can there be a waiver of late fee?

Comment [K32]: May need a rule. Need to specify that automatic suspension takes effect on Nov. 1 (immediately after reporting deadline)?

Comment [K33]: "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.

Comment [K34]: Clarify – does this mean applies to contracts before 08/28/09 only or also?

436.465. Record retention

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.

Comment [K35]: Could define highlighted terms by rule.
Look to requirements as a fiduciary?

Comment [K36]: Adequate records for trust funded contracts should include line item breakdown of individual contracts with balances, value and income/expenses.

Comment [K37]: Maintained within the state of Missouri in format that is accessible and will not degrade over required preservation time, can be copied or printed, may be outside of Mo for good cause with prior approval of board?

Comment [K38]: 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.

436.470. Complaints/Board inspections/Subpoenas/AG

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, 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.

Comment [K39]: May want to develop by rule.

Comment [K40]: The term 'financial examination' provides the Board flexibility in structuring a review process of sellers.

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.

Comment [K41]: Could define by rule and/or develop a form
Is notice to licensee required?

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.

Comment [K42]: Could define these terms by rule

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

Comment [K43]: Could clarify that no prior notice required and that applies during normal business hours and/or 8-5 Monday through Fri?

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 to 436.520.

Comment [K44]: Clarify that board includes their agents, investigators and inspectors?

Comment [K45]: How far ahead of time?

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.

Comment [K46]: Could develop a form.
May want to set out in rule process for board to issue subpoena

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.

Comment [K47]: Consider developing a Memorandum of Understanding?

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:

Comment [K48]: May initiate independently, right?

(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;

(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. Purchaser’s death/incapacity

Comment [K49]: This section needs to be consistent with any enforceable right of sepulcher designation.

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. <u>Criminal penalties/Ch. 407 violation</u>

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. <u>Provider cease business</u>

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.

> **Comment [K50]:** Need a form and a rule.

2. The report required by this section shall include:

> **Comment [K51]:** Set out suggested format (e.g., Excel spreadsheet)?

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

> **Comment [O52]:** Will provider have to notify each purchaser?

(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;

> **Comment [K53]:** Does this refer to "if any" preneed contracts? There must be a provider to each preneed contract, right?

(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.

> **Comment [K54]:** Could do rule to require other information

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.

> **Comment [K55]:** Could develop by rule what is required in written notice

436.500. Seller cease business

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.

Comment [K56]: Need a form and a rule

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;

Comment [K57]: Will the Board use its audit powers to provide some assurance to buyers?

(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

Comment [K58]: Could develop by rule
Set out requirements and leave format to seller?

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

Comment [K59]: Could develop by rule.
Maybe trust statement or bank/insurance statement showing balances?

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

Comment [K60]: Could define by rule

(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.

Comment [K61]: Could define by rule.
Notify each purchaser individually, right (not all by one publication)?

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. Credit life

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. Provider may demand payment from trustee

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.

Comment [K62]: Need a regulation setting out conditions (timing and release) for trustee to be protected.

436.520. Rulemaking authority

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 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.

Comment [K63]:

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. Closed records

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.