

**OPEN MEETING MINUTES**  
**Missouri State Board of Embalmers**  
**and Funeral Directors**  
**Conference Call**

**April 10, 2008 – 3:30 p.m.**  
**Division of Professional Registration**  
**3605 Missouri Blvd.**  
**Jefferson City, Missouri**

The meeting of the Missouri State Board of Embalmers and Funeral Directors was called to order via conference call by James Reinhard, Chairman, at 3:45 p.m. on Thursday, April 10, 2008, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri.

**Board Members Present**

James Reinhard, Chairman – (in person at meeting)  
Martin Vernon, Vice-Chairman – via conference call  
Gary Fraker, Secretary – via conference call  
Daniel (Todd) Mahn, Member – via conference call  
Joy Gerstein, Public Member – via conference call

**Staff Present**

Becky Dunn, Executive Director  
Pamela Schnieders, Administrative Assistant  
Kimberly Grinston, Board's Legal Counsel

**Public Present**

David Broeker, Division Director (in person at meeting)  
Douglas M. Ommen, Department Director (in person at meeting)  
Connie Clarkston, Director of Budget & Legislation (in person at meeting)  
Sandy Sebastain, Director of Personnel/Chapter 436 for the Division (in person at meeting)  
Chris Follis  
Don Otto  
John McCulloch  
Bill Stalter  
Bill Bennett  
DJ Gross  
Barbara Newman with State Representative Timothy Meadows office  
Bob Hedgpeth  
Charles Pasentino  
Randy Sinder  
Robert Baker  
Steve Pierce  
Richard Dowden  
Kaylee Summerville  
Kenneth McGhee (in person at meeting)  
Richard Dowden

## Approval of Agenda

Motion was made by Todd Mahn and seconded by Gary Fraker to approve the open agenda. Motion carried with Martin Vernon, Gary Fraker, Todd Mahn and Joy Gerstein voting in favor with no votes in opposition.

## Legislation

The board discussed the Chapter 436 Preneed Proposals presented at the April 9, 2008 meeting. The board was provided a copy of Preneed Proposal 4-10-08. All public members on the call will be provided a copy as well, if they have not received it as of the meeting time. Discussion will not be summarized in the minutes. A copy of the open meeting transcription will be maintained as a part of the meeting minutes. Members of the public are asked to submit comments either by facsimile or by email to Connie Clarkston, Director of Budget & Legislation. The board will take all public suggestions and proposals under review and consideration.

### Preneed Proposal 4-10-08

This proposal is a conglomerate bill that merges several portions of Kuessner's bill, several portions of Representative Meadows' bill, some recommendations that were given to the board, as well as some language that the board members themselves reviewed and suggested, as well at the Department of Insurance. The board will go through the bill page by page for concerns on the proposed language.

436.005. As used in sections 436.005 to [436.071] 436.072 , unless the context otherwise requires, the following terms shall mean:

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

(2) "Division", the division of professional registration of the department of [economic development] insurance, financial institutions and professional registration;

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

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

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

(4) "Person", any individual, partnership, corporation, cooperative, association, or other entity **as registered with the Secretary of States Office;**

(5) "Preneed contract", any contract or other arrangement which requires the current payment of money or other property in consideration for the final disposition of a dead human body, or for funeral or burial services or facilities, or for funeral merchandise, where such disposition, services, facilities or merchandise are not immediately required, including, but not limited to, an agreement providing for a membership fee or any other fee having as its purpose the furnishing of burial or funeral services or merchandise at a discount, except for contracts of insurance, including payment of proceeds from contracts of insurance, unless the preneed seller or provider is named as the owner or beneficiary in the contract of insurance A preneed contract may be funded by any mechanism authorized by this chapter including cash payment or whole or credit life insurance;

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

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

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

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

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

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

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

(1) It is in writing;

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

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

(4) It identifies the preneed trust *the insurance company that will be used to fund any preneed contracts or financial institution where the joint account is held into which contract payments shall be deposited, including the name and address of the trustee* into which contract payments shall be deposited, including the name and address of the trustee *insurance company or financial institution* thereof;

(5) The terms of such trust and related agreements among two or more of the contract seller, the contract provider, and the trustee of such trust are in compliance with the provisions of sections 436.005 to ~~[436.071]~~ 436.072;

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

2. If a preneed contract does not comply with the provisions of sections 436.005 to ~~[436.071]~~ 436.072, all payments made under such contract shall be recoverable by the purchaser, ~~[his]~~ the beneficiary or the beneficiary's heirs, or legal representative, from the contract seller or other payee thereof, together with interest at the rate of ten percent per annum and all reasonable costs of collection, including attorneys' fees.

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

4. Subject to the provisions of subdivision (5) of section 436.005, the provisions of sections 436.005 to ~~[436.071]~~ 436.072 shall apply to the assignment of proceeds of any contract of insurance for the purpose of funding a preneed contract or written in conjunction with a preneed contract. Laws regulating insurance shall not apply to preneed contracts, but shall apply to any insurance sold with a preneed contract.

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

6. The seller and the provider of a preneed contract may be the same person.

436.011. 1. Any seller who designates a person as a provider in a preneed contract and any provider who designates a person as a seller without a contractual relationship with such person is in violation of the provisions of sections 436.005 to ~~[436.071]~~ 436.072.

2. Any person who knowingly permits a seller to sell a preneed contract designating him as the provider or as one of two or more providers who will furnish the funeral merchandise and services described in the preneed contract shall provide the funeral merchandise and services described in the preneed contract for the beneficiary. Any person who knowingly permits a provider to sell a preneed contract designating such person as the seller who is obligated to collect and administer all payments made under such preneed contract shall be obligated for all such payments made by the purchaser under such preneed contract. Failure of any such person to do so shall be a violation of the provisions of sections 436.005 to ~~[436.071]~~ 436.072 and shall be cause for suspension or revocation of that person's license under the provisions of section 333.061, RSMo. ~~Any seller who fails to notify the board, division, or attorney general's office of a known or probable failure of compliance with a provider acting as an agent of the seller is violating sections 436.005 to 436.072.~~

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

provider from so designating such seller as the seller, the seller shall be deemed to have consented to such designation.

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

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

(2) Such person is registered with the state board and files with the state board a written consent authorizing the state board ~~and/or attorney general's office~~ to order an examination and if necessary an audit by the staff of the *division of professional registration* and/or the attorney general's office who are not connected with the board of its books and records which contain information concerning preneed contracts sold for, in behalf of, or in which he or she is named as provider of the described funeral merchandise or services. The state board and attorney general's office may also order an investigation to determine compliance with this chapter.

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

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

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

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

(b) The name and address of each seller with whom it has entered into a written agreement since last filing a report and a detailed list including the name and contract number, and amount of each preneed contract written, and the total payments collected for each preneed provider with for each seller since the last filing report;

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

(3) Cooperate with the state board, the office of the attorney general of Missouri, and the division in any investigation, examination or audit brought under the provisions of sections 436.005 to ~~[436.071]~~ 436.072;

(4) At least thirty days prior to selling or otherwise disposing of its business assets, or its stock if a corporation, or ceasing to do business, give written notification to the state board and to all sellers with whom it has one or more preneed contracts of its intent to engage in such sale or to cease doing business. In the case of a sale of assets or stock, the written notice shall also contain the name and address of the purchaser. Upon receipt of such written notification, the state board ~~[may]~~ shall take reasonable and necessary action to determine that any preneed contracts which the provider is obligated to service will be satisfied at the time of need *including but not limited to an examination of books and records or an audit which cost may be assessed to the seller at the discretion of the board.* The state board may waive the requirements of this subsection, or may shorten the period of notification whenever in its discretion it determines that compliance with its provisions are not necessary. *[Failure of the state board to take action regarding such sale or termination of business within thirty days shall constitute such a waiver]* Written notice shall be provided by the provider to the board and to all purchasers within thirty days of the establishment selling or otherwise disposing of its business assets, or its stock if a corporation, or ceasing to do business and indicating what establishment will be assuming responsibility for the preneed contracts. An examination of books and records or audit shall be conducted to insure compliance and shall be submitted to the board with the written notice.

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

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

5. With respect to a provider or seller licensed under the provisions of chapter 333, RSMo, any violation of the provisions of sections 436.005 to 436.071 shall constitute a violation of subdivision (3) of section 333.121, RSMo.

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

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

(2) Have established, as grantor, a preneed trust or trusts with terms consistent with sections 436.005 to ~~436.071~~ **436.072; except for contracts of insurance and contracts with moneys held in joint accounts or certify to the board that all preneed contracts are to be funded solely by insurance or joint accounts;**

(3) Have registered with the state board **and is licensed by the state board as a funeral preneed seller under this chapter.**

2. ~~If the establishment of a preneed trust, as required by this section, would cause undue hardship, the applicant for registration may petition the board for exemption from this requirement. In the petition for exemption, the applicant shall provide the board with a plan to ensure preneed moneys are safeguarded and shall execute any personal guarantees, agreements to fund preneed contracts solely by life insurance, or bonds or any other agreement the board may require-~~ **certify to the board that all preneed contracts are to be funded solely by insurance or that preneed funds will be placed in a joint as provided in section 436.053. Whether undue hardship exists and whether this exemption is granted shall be within the sole discretion of the board.**

3. Each seller under one or more preneed contracts shall:

(1) Maintain adequate records of all such contracts and related agreements with providers and the trustee of preneed trusts **or financial institution holding moneys of joint accounts** regarding such contracts, including copies of all such agreements. **The seller shall maintain adequate records of all such moneys paid in by purchasers and shall be obligated to collect and administer all payments made under such contracts or agreements or insurance policies under section 436.005;**

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

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

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

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

(c) The total number of preneed contracts sold in Missouri since the filing of the last report **and a detailed list including the name and contract number and amount of each preneed contract written with each seller since the last filing report;**

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

(e) The name and address of ~~the~~ **each insurance company's** financial institution in Missouri in which it maintains the trust accounts **insurance policies, or joint accounts** required **or authorized** under the provisions of sections 436.005 to ~~436.071~~ **436.072** and the account numbers of such trust accounts **insurance policies or joint accounts;**

**(f) The name and address of each insurance company that the seller uses to issue insurance contracts for the funding of the preneed contract;**

(f) A consent authorizing the state board to order an examination and if necessary an audit ~~by staff of the division of professional registration who are not connected with the board of the trust account, insurance policies or joint accounts,~~ designated by depository and account number. ~~The state board or attorney general's office may also order an investigation to determine compliance with this chapter.~~ **[The staff of the division of professional registration in conducting the audit shall not release a detailed accounting of the trust account, to the board unless there exist circumstances indicating that the account does not comply with the requirements of sections 436.005 to 436.071, but shall provide the board with a summary of the examination or audit showing general compliance with the provisions of sections 436.005 to 436.071;]**

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

(5) Cooperate with the state board, the office of the attorney general, and the division in any investigation, examination or audit brought under the provisions of sections 436.005 to ~~[436.071]~~ **436.072**.

**(6) Only allow or authorize the sale of preneed contracts by a funeral director or apprentice funeral director.**

~~[3.]~~ **4.** Prior to selling or otherwise disposing of a majority of its business assets, or a majority of its stock if a corporation, or ceasing to do business as a seller, the seller shall provide written notification to the state board of its intent to engage in such sale at least sixty days prior to the date set for the closing of the sale, or of its intent to cease doing business at least sixty days prior to the date set for termination of its business. The written notice shall be sent, at the same time as it is provided to the state board, to all providers who are then obligated to provide funeral services or merchandise under preneed contracts sold by the seller. Upon receipt of the written notification, the state board may take reasonable and necessary action to determine that the seller has made proper plans to assure that the trust assets or joint accounts of the seller will be set aside and used to service outstanding preneed contracts sold by the seller. The state board may waive the requirements of this subsection or may shorten the period of notification whenever in its discretion it determines that compliance with its provisions are not necessary. *[Failure of the state board to take action regarding such sale or termination of business within sixty days shall constitute such a waiver]* Written notice shall be provided by the provider to the board and to all purchasers within thirty days of the establishment selling or otherwise disposing of its business assets, or its stock if a corporation, or ceasing to do business and indicating what establishment will be assuming responsibility for the preneed contracts. An examination of books and records or audit shall be conducted to insure compliance and shall be submitted to the board with the written notice.

~~[4.]~~ **5.** It is a violation of the provisions of sections 436.005 to ~~[436.071]~~ **436.072** for any person to sell, transfer or otherwise dispose of the assets of a seller without first complying with the provisions of subsection 3 of this section.

~~436.027~~ **For each preneed contract sold after August 28, 2007, all funds received by the seller on a preneed contract shall be deposited in the seller's trust account or shall be used to purchase insurance to fund the contract as authorized by sections 436.005-436.072 or shall be placed in a joint account pursuant 436.053. Funds received by the seller shall be deposited or used as provided herein within 45 days of received. [may retain as his own money, for the purpose of covering his selling expenses, servicing costs, and general overhead, the initial funds so collected or paid until he has received for his use and benefit an amount not to exceed twenty percent of the total amount agreed to be paid by the purchaser of such prepaid funeral benefits as such total amount is reflected in the contract.]**

**2. All funds the seller is not entitled to retain that are received as payment on a preneed contract shall be deposited in the seller's trust account within ~~three~~ forty five business days of receipt.**

~~3. After the seller has received its twenty percent, all subsequent payments made by the consumer shall be made payable directly to the trust and not to the seller.~~

~~4. If the seller receives a lump sum payment from the purchaser, the seller shall deposit the entire amount into the trust account and be entitled to receive back from the trust an amount not to exceed twenty percent of the total amount due on the preneed contract.~~

436.031. 1. The trustee of a preneed trust shall be a state or federally chartered financial institution authorized to exercise trust powers in Missouri *which financial institution may neither control nor be controlled by or under common control with the seller. The term "control" including terms, "controlled by" and "under common*

control" with, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contact other than the power is the result of an official position with or corporate office held otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent or more of the voting securities of any other person. This presumption may be rebutted by a showing to the board and within its sole discretion that control does not in fact exist. The trustee shall accept all deposits made to it by the seller of a preneed contract and shall hold, administer, and distribute such deposits, in trust, as trust principal, pursuant to the provisions of sections 436.005 to [436.071] **436.072**. Payments regarding two or more preneed contracts may be deposited into and commingled in the same preneed trust, so long as the trust's grantor is the seller of all such preneed contracts and the trustee maintains adequate records of all payments received.

2. All property held in a preneed trust, including principal and undistributed income, shall be invested and reinvested by the trustee thereof. The trustee shall exercise such judgment and care under circumstances then prevailing which men of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their ~~[funds]~~ **moneys**, considering the probable income therefrom as well as the probable safety of their capital. [A preneed trust agreement may provide that when the principal and interest in a preneed trust exceeds two hundred fifty thousand dollars, investment decisions regarding the principal and undistributed income may be made by a federally registered or Missouri-registered independent qualified investment advisor designated by the seller who established the trust; provided, that title to all investment assets shall remain with the trustee and be kept by the trustee to be liquidated upon request of the advisor of the seller] In no case shall control of said assets be divested from the trustee nor shall said assets be placed in any investment which would be beyond the authority of a reasonably prudent trustee to invest in. [The trustee shall be relieved of all liability regarding investment decisions made by such qualified investment advisor.] ~~The trustee shall have the authority to remove and replace the financial advisor if the trustee determines that the financial advisor has violated or is about to violate any provision of this chapter. The trustee shall provide a written notice to the attorney general's office and to the state board of the removal, the name and address of the new trustee, and the reason for the removal.~~ All funds received for each individual contract sold after August 28, 2008 shall be placed and held in trust in an amount equal to at least 100% of the total amount paid by the purchase of the prepaid funeral benefits as such total is reflected in the contract.

3. Any investment of preneed funds shall be made in investments designed to increase the value of the preneed funds. No investments shall be made in any manner that does not have the potential to increase the value of the preneed funds. No trustee shall invest preneed funds in term life insurance policies or any similar insurance vehicle which does not have the potential to increase the value of the funds. No loans against any life insurance policy purchased with preneed money shall be allowed.

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

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

[5.] 6. The trustee of a preneed trust shall maintain adequate books of account of all transactions administered through the trust and pertaining to the trust generally. The trustee shall assist seller who established the trust or its successor in interest in the preparation of the annual report described in subdivision (3) of subsection [2] 3 of section 436.021. The seller shall furnish to each contract purchaser, within fifteen days after receipt of the purchaser's written

request, a written statement of all deposits made to such trust regarding such purchaser's contract. 7. All payments made by the purchaser of a preneed contract shall be paid to the seller and moneys deposited into the trust account or joint account within ~~sixty~~ forty five days of receiving it under the provisions set forth in section 436.027. The seller shall notify the provider of all payments within thirty days of receipt of such payments made by the purchaser. Purchasers who choose to make payments with cash and/or pay to the seller's agent shall sign a statement showing receipt of moneys paid to the seller's agent. The seller's agent shall provide a copy of receipt to the purchaser and a copy shall be submitted to the seller with the payment of moneys.

~~[6.] 7 8.~~ The trustee of a preneed trust shall, from time to time, distribute trust principal as provided by sections 436.005 to ~~[436.071]~~ **436.072.**

~~[7.] 9 10.~~ A preneed trust shall terminate when trust principal no longer includes any payments made under any preneed contract, and upon such termination the trustee shall distribute all trust property, including principal and undistributed income, to the seller which established the trust.

436.035. 1. At any time before the final disposition of the ~~[dead body]~~ beneficiary, or before funeral services, facilities, or merchandise described in a preneed contract are provided by the provider designated in the preneed contract, the purchaser may cancel the contract without cause by delivering written notice thereof to the seller and the provider. Within fifteen days after its receipt of such notice, the seller shall pay to the purchaser a net amount equal to all payments made into trust under the contract. Upon delivery of the purchaser's receipt for such payment to the trustee, the trustee shall distribute to the seller from the trust an amount equal to all deposits made into the trust for the contract. At the same time the seller makes payment to the purchaser, the seller shall notify the provider in writing of the payment made to the purchaser, including the date and the amount of the payment made. For each preneed contract made on or after August 28, 2008, cancelled by the purchaser, the seller shall pay to the purchaser an amount equal to all payments made by the purchaser ~~and interest less actual expenses to establish and administer such contract.~~

2. Notwithstanding the provisions of subsection 1 of this section, if a purchaser or beneficiary is eligible, becomes eligible, or desires to become eligible, to receive public assistance under chapter 208, RSMo, or any other applicable state or federal law, the purchaser may irrevocably waive and renounce his right to cancel the contract pursuant to the provisions of subsection 1 of this section, which waiver and renunciation shall be made in writing and delivered to the contract seller; but the purchaser may designate and redesignate the provider in the irrevocable agreement or plan [where applicable by the terms of the contract]. If a purchaser or beneficiary is eligible, becomes eligible, or desires to become eligible to receive public assistance under chapter 208, RSMo, or any other applicable state or federal law, a copy of the preneed funeral contract shall be provided to the appropriate qualifying state or federal agency. Notwithstanding, at any time before the final disposition of the beneficiary or before the funeral services, facilities, or merchandise described in the preneed contract are provided by the provider designated in the preneed contract, the purchaser may designate and redesignate the provider without cause by delivering written notice thereof to the provider and the seller. Within fifteen days after its receipt of such notice, the seller shall notify the newly designated provider of the purchaser's request. Written consent from the newly designated provider shall be attached to the preneed contract to reflect such change. The seller shall notify the purchaser and the previous provider of the redesignated provider's consent of obligation being named the new provider.

3. Notwithstanding the provisions of subsection 1 of this section, any purchaser, within thirty days of receipt of the executed contract, may cancel the contract without cause by delivering written notice thereof to the seller and the provider, and receive a full refund of all payments made on the contract. Notwithstanding, at any time before the final disposition of the beneficiary or before the funeral services, facilities, or merchandise described in the preneed contract are provided by the provider designated in the preneed contract, the purchaser may designate and redesignate the provider without cause by delivering written notice thereof to the provider and the seller. Within fifteen days after its receipt of such notice, the seller shall notify the newly designated provider of the purchaser's request. Written consent from the newly designated provider shall

be attached to the preneed contract to reflect such change. The seller shall notify the purchaser and the previous provider of the redesignated provider's consent of obligation being named the new provider. Notice of this provision and the appropriate addresses for notice of cancellation shall be so designated on the face of the contract.

436.038. If the death of the beneficiary occurs outside the general area served by the provider designated in a preneed contract, then the seller shall either provide for the furnishing of comparable funeral services and merchandise by a licensed mortuary selected by the next of kin of the purchaser or, at the seller's option, shall pay over to the purchaser in fulfillment of all obligations under the contract, an amount equal to all sums actually paid in cash by the purchaser under the preneed contract together with interest *[to be provided for in the contract]*. Upon seller's full performance under the provisions of this section, the trustee of the preneed trust for the contract shall distribute to the seller from the trust an amount equal to all deposits made into the trust for the contract.

436.041. The seller shall be obligated for the collection, administering, and oversight of all payments made under such contract. If the payments payable under a preneed contract shall be more than three months in arrears, the seller may cancel the contract by delivering written notice thereof within thirty days to the purchaser and the provider *shall be delivered sixty days before cancellation and include a written notice to the purchaser and provider shall allow the indicating the purchaser to have thirty has sixty days to pay into trust those the payments in arrears. If such payments are not received by the seller within thirty sixty days of notice, the seller may cancel the contract by delivering final written notice to the purchaser and the provider,* and by making payment to the purchaser of a net amount equal to all payments made *[into trust under the contract]* by the purchaser under section 436.027. Upon delivery of the purchaser's receipt of such payment to the trustee, the trustee shall distribute to the seller from the trust an amount equal to all deposits made into the trust for the contract.

436.045. Within thirty days after a provider and a witness shall certify in writing to the seller that the provider has provided the final disposition of the the *[dead body]* beneficiary, and funeral *[services, facilities, and]* merchandise described in the contract, or has provided alternative funeral arrangements or benefits for the beneficiary pursuant to special arrangements made with the purchaser as detailed in the written statement of charges under section 333.145, RSMo, and provide to the seller a certified copy of the death certificate, the seller shall pay to the provider a net amount equal to all payments required to be made pursuant to the written agreement between the seller and the provider or all payments *[made under the contract]* by the purchaser under section 436.027. Upon delivery to the trustee of the provider's receipt for such payment, the trustee shall distribute to the seller from the trust an amount equal to all deposits made into the trust for the contract.

436.048. If a seller shall fail to make timely payment of an amount due a purchaser or a provider pursuant to the provisions of sections 436.005 to *[436.071]* 436.072, 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 for its breach, an amount equal to all deposits made into the trust for the contract.

436.051. Upon the death or legal incapacity of a purchaser, all rights and remedies granted to the purchaser pursuant to the provisions of sections 436.005 to *[436.071]* 436.072 shall be enforceable by and accrue to the benefit of the purchaser's legal representative or *[his]* the purchaser's successor designated in such contract, and all payments otherwise payable to the purchaser shall be paid to that person.

436.053. 1. Notwithstanding the provisions of sections 436.021 to 436.048, the provider and the purchaser may agree that one hundred percent of all [funds] moneys paid the provider by the purchaser shall be deposited with financial institutions chartered and regulated by the federal or state government authorized to do business in Missouri in an account in the joint names and under the joint control of the provider and purchaser. *[If the purchaser has irrevocably waived and renounced his right to cancel the agreement between the provider and the purchaser pursuant to subdivision (5) of this subsection, such agreement may provide that all funds held in the account at the beneficiary's death shall be applied toward the purchase of funeral or burial services or facilities, or funeral merchandise, selected by the purchaser or the responsible party after the beneficiary's death, in lieu of the detailed identification of such items required by subdivision (3) of subsection 1 of section 436.007. The*

agreement between] The contract between the seller, provider and purchaser shall include all applicable information outlined in section 436.027 and shall provide that:

(1) The total consideration to be paid by the purchaser under the contract shall be made in one or more payments into the joint account, including the name and address of the financial institution which holds such moneys and the account numbers of such moneys, at the time the agreement is executed or, thereafter within five days of receipt, respectively;

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

(3) *[The income generated by the deposited funds shall be used to pay the reasonable expenses of administering the agreement, and the balance of the income shall be distributed or reinvested as provided in the agreement]* All preneed funeral contracts with moneys held in joint accounts written on or after August 28, 2008, shall provide that the income generated by the deposited moneys shall be used to pay the actual expenses of administering the agreement, and the balance of the income shall be reinvested in such preneed account;

(4) At any time before the final disposition, or before funeral services, facilities, and merchandise described in a preneed contract are furnished, the purchaser may cancel the contract without cause by delivering written notice thereof to the provider and the financial institution, and within fifteen days after its receipt of the notice and with certification of consent notice to the from the funeral provider and purchaser, the financial institution shall distribute the deposited *[funds]* moneys to the purchaser and shall provide written notification to the provider of the amount of moneys and the date moneys were distributed to the purchaser;

(5) Notwithstanding the provisions of subdivision (4) of this subsection, if a purchaser is eligible, becomes eligible, or desires to become eligible to receive public assistance under chapter 208, RSMo, or any other applicable state or federal law, the purchaser may irrevocably waive and renounce his or her right to cancel such *[agreement]* contract. The waiver and renunciation must be in writing and must be delivered to the provider and the financial institution and a copy of the preneed contract shall be provided to the appropriate qualifying state or federal agency;

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

(7) Within fifteen days after a provider and a witness certifies in writing to the financial institution that he or she has furnished the final disposition, or funeral services, facilities, and merchandise described in a contract, or has provided alternative funeral arrangements or benefits for the beneficiary pursuant to special arrangements made with the purchaser as detailed in the written statement of charges under section 333.145, RSMo, if the certification has been approved by the purchaser, then the financial institution shall distribute the deposited *[funds]* moneys to the provider.

2. There shall be a separate joint account as described in subsection 1 of this section for each preneed contract sold or arranged under this section. The seller shall, within fifteen days after receipt of the purchaser's written request, furnish to each contract purchaser a written statement of all deposits made to such joint account regarding such purchaser's contract.

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

436.054. 1. In lieu of holding preneed funds in trust, a preneed contract may be funded by a whole life insurance policy subject to the seller making the following requirements and written disclosures to the purchaser prior to accepting a purchaser's initial payment:-The seller shall comply with all provisions of Chapter 374, 375, and 376 and its rules and regulations.

(1) The purchaser shall be fully aware and receive written notice that the preneed contract funds are for the purchase of life insurance and that the funds will not be held in trust;

(2) If the insurance funding the preneed contract is sold by an insurance agent who is also an employee of the preneed seller, the agent of a preneed seller, or an employee of a licensed funeral establishment, the purchaser shall receive written notice of such relationship. and be advised that he or she may fund the preneed contract by the purchase of a life insurance policy from any life insurance agent or company authorized to do business in Missouri; Insurance agents shall comply with applicable provisions of law governing the sale the insurance policy.

(3) Written disclosure of the name, address, telephone number, and contact information for both the life insurance company and the agent of the life insurance company selling the policy;

(4) Written disclosure of the relationship of the life insurance policy to the funding of the preneed funeral contract and the nature and existence of any guarantees relating to such contract;

(5) Written disclosure of the impact on the preneed funeral contract of any:

(a) Changes in the life insurance policy, including, but not limited to, changes in the assignment, beneficiary designation, or use of the proceeds;

(b) Penalties to be incurred by the policyholder as a result of failure to make premium payments; and

(c) Penalties to be incurred or moneys to be received as a result of cancellation or surrender of the life insurance policy;

(6) Written disclosure containing all relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the proceeds of the life insurance policy and the amount actually needed to fund the preneed funeral contract.

2. Excluding sales when the purchase or beneficiary is eligible, becomes eligible or desires to be come eligible to receive public assistance under Chapter 208, RSMo or any other applicable state or federal law, the purchaser shall be the owner and the only person allowed to make changes to the life insurance policy. In no event shall the owner of the policy be the preneed seller.

3. In no event shall the seller, or its agent, collect from the purchaser any amount in excess of what is required to pay the premiums on the life insurance policy used to fund the preneed contract.

4. If, after the death of the beneficiary of a preneed contract, the proceeds from the life insurance policy are in excess of the actual cost of the funeral merchandise and services provided, any such excess proceeds, if the proceeds are not required to be paid to the state for reimbursement of medical benefits, shall be refunded to the person taking financial responsibility for the payment of the funeral merchandise and services, or if none, to the estate of the decedent.

436.055. 1. All complaints received by the state board shall be made in writing and shall fully identify the complainant by name and address. Complaints may be made on forms which are provided by the board and available upon request. Oral or telephone communications shall not be considered or processed as complaints, but the person making such communications shall be provided with a complaint form and requested to complete and return it to the board in written form. Any member of the administrative staff of the board may make and file a complaint based upon information and belief in reliance on oral, telephone or written communications received by the board, unless such communications are believed by such staff member to be false. Such complaints which allege a registrant's noncompliance with the provisions of sections 436.005 to [436.071] 436.072 or allege that a registrant has committed any act that would make him or her ineligible for registration under section 436.059 may be investigated by the board. [shall be forwarded to the division of professional registration for investigation, except minor complaints which the state board can mediate or otherwise dispose of by contacting the parties involved.] A copy of each such complaint shall be forwarded to the subject registrant, except the board shall not be required to forward [that each] complaints in which the complainant alleges [under oath] that a registrant has misappropriated preneed contract payments [may be forwarded to the division of professional registration

*without notice to the subject registrant.] This section shall not be construed to limit the board's authority to file a complaint with the administrative hearing commission charging a licensee of the board 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. The board shall interpret such requirement to exist for the benefit of those members of the public who submit complaints to the board and for those persons or entities within the legislative and executive branches of government having supervisory or other responsibilities or control over the professional licensing boards. This section shall not be construed to protect or ensure to the benefit of those licensees, permit holders, registrants, or other persons against whom the board has instituted or may institute administrative or judicial proceeding concerning possible violations of sections 436.005 to 436.072.*

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

*3. The board may inspect or conduct a random audit the records or targeted examination or audit of any seller or preneed trust as often as the board deems appropriate. Upon determining that an inspection or audit should be conducted, the division shall issue a warrant authorizing one or more employees or independent contractors to perform such inspection or audit and instructing such employees or independent contractors as to the scope of such inspection or audit. The board shall not appoint any employee or contract if such employee or contractor either directly or indirectly has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to inspection or audit under section 436.005-436-072. The board shall treat the results of an inspection or audit in the same manner as the results of an investigation under subsection 2 of section 436.055. The board may assess the cost of any related investigation, examination of books and records or audit to the licensee. ~~of any seller, provider, or preneed trust at any time to ensure a registrant's compliance with the provisions of sections 436.005 to 436.071. The board shall conduct random inspections or audits of sellers and providers. After each inspection or audit, the division shall forward the results of such investigation to the subject registrant and to the attorney general. The attorney general shall have the authority to act upon the results of any such inspection or audit as if it were a complaint filed with the board.~~*

*4. Auto-suspension language.*

*436.059. 1. The board shall not register any applicant for registration as either a preneed seller or provider if the applicant, or if any business entity, in which each owner, partner, officer, member, or controlling ownership interest, is a:*

*(1) Person who has had any license, permit, or registration revoked by any insurance regulatory agency or professional licensing board of any state; or*

*(2) Person who has been adjudicated and found guilty, or entered a plea of guilty or nolo contendere, whether or not a sentence is imposed, in a criminal prosecution under the laws of any state or of the United States for any:*

*(a) Felony; or*

*(b) Offense where the essential element of which is fraud, dishonesty, deception, or an act of violence; or*

*(c) Misappropriated funds; or*

(c d) Offense involving a controlled substance; or  
(d- e) Offense implicating the licensee's competence to practice, including violations of any statute or regulation related to the funeral industry or to consumer protection.

The board may issue a registration to an applicant ineligible for registration under this subsection if the applicant demonstrates to the satisfaction of the board and within the discretion of the board that the applicant is sufficiently rehabilitated to be fit for licensure.

2. Each person seeking registration under this chapter shall provide evidence to the board sufficient for the board to determine that each applicant, or if a business entity, in which each owner, partner, officer, member, or controlling ownership interest of the entity, is a person of good moral character.

436.061. 1. Each 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 436.005 to [436.071, and any officer, director, partner, agent, or employee of such person involved in such violation] 436.072 by incompetence, misconduct, gross negligence, fraud, misrepresentation, or dishonesty is guilty of a class D felony. Each violation of any provision of sections 436.005 to [436.071] 436.072 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 [436.071] 436.072 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 [436.071] 436.072, the court may, in addition to imposing the penalties provided for in sections [436.071] 436.072, order the revocation or suspension of the registration of a defendant seller or provider.

3. The attorney general board may file a complaint with the administrative hearing commission, as provided in chapter 621, RSMo, against any seller or provider or any person who has failed to renew or has surrendered his or her seller or provider registration for any violation of any provision of this section or if the registrant has committed any act that would make him or her ineligible for registration under section 436.059.

4. Upon a finding by the administrative hearing commission that a registrant has violated any provisions of sections 436.005 to [436.071] 436.072, the board may take one or more of the following actions:

(1) Censure; or

(2) Place the registrant on probation on such terms and conditions as the board deems appropriate for a period not to exceed five years; or

(3) Suspend the registration for a period not to exceed three years; or

(4) Revoke the registration issued under sections 436.005 to [436.071] 436.072; or

436.063. Whenever the state board determines that a registered seller or provider has violated or is about to violate any provision of sections 436.005 to [436.071] 436.072 following a meeting at which the registrant is given a reasonable opportunity to respond to charges of violations or prospective violations, it may request the attorney general to apply for the revocation or suspension of the seller's or provider's registration or the imposition of probation upon terms and conditions deemed appropriate by the state board in accordance with the procedure set forth in sections 621.100 to 621.205, RSMo. Use of the procedures set out in this section shall not preclude the application of the provisions of subsection 2 of section 436.061.

436.067. *[No information given to the board, the division or the attorney general pursuant to the provisions of sections 436.005 to [436.071] 436.072 shall, unless ordered by a court for good cause shown, be produced for inspection or copying by, nor shall the contents thereof be disclosed to, any person other than the seller, or the provider who is the subject thereof, the authorized employee of the board, the attorney general or the division, without the consent of the person who produced such material. However, under such reasonable conditions and terms as the board, the division or the attorney general shall prescribe, such material shall be*

available for inspection and copying by the person who produced such material or any duly authorized representative of such person. The state board, the division or the attorney general, or his duly authorized assistant, may use such documentary material or copies thereof in the enforcement of the provisions of sections 436.005 to [436.071] 436.072 by presentation before any court or the administrative hearing commission, but any such material which contains trade secrets shall not be presented except with the approval of the court, or the administrative hearing commission, in which the action is pending after adequate notice to the person furnishing such material. No documentary material provided the board, the division or the attorney general pursuant to the provisions of sections 436.005 to [436.071] 436.072 shall be disclosed to any person for use in any criminal proceeding.] All complaints, investigation materials, annual registration, reports, and information pertaining to the registrant shall be closed and may be disclosed only as authorized by statute or order of the court.

436.068. 1. The board may promulgate rules to implement the provisions of sections 436.005 to 436.071 and rules governing standards of service and practice to be followed by registered providers and sellers as deemed necessary for the public good and consistent with the laws of this state. The board may prescribe a standard of proficiency as to the qualifications and fitness of those engaging in the practice of the preneed industry.

2. The Board shall establish the amount of the fees authorized in this chapter and required by rules promulgated thereunder. Such fees shall be set at a level to produce revenue which does not substantially exceed the cost and expense of administering this chapter.

3. 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, 2008, shall be invalid and void.

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, 2008, shall be invalid and void.

436.069. 1. ~~After [July 16, 1985] August 28, 2008,~~ each seller shall remit an annual reporting fee in an amount of ~~two~~ five dollars ~~or an amount to be determined by board rule~~ for each preneed contract sold in the year since the date the seller filed its last annual report with the state 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 state board from the ~~[funds] moneys~~ of the seller.

2. ~~After [July 16, 1985] August 28, 2008,~~ each provider shall remit an annual reporting fee of ~~two~~ forty dollars ~~or an amount to be determined by board rule~~

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

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

436.072. The board or a designated member thereof or any agent authorized by the board or attorney general's office may enter the office, premises, establishment, or place of business of any preneed seller or provider of funeral service contracts licensed in this state, or any office, premises, establishment, or place where the practice of selling and/or providing preneed funerals is carried on, or where such practice is advertised as being carried on for the purpose of inspecting such office, premises, establishment, or place and for the purpose of inspecting the license and registration of any licensee or inspection of preneed contracts.

*[436.063. Whenever the state board determines that a registered seller or provider has violated or is about to violate any provision of sections 436.005 to 436.071 following a meeting at which the registrant is given a reasonable opportunity to respond to charges of violations or prospective violations, it may request the attorney general to apply for the revocation or suspension of the seller's or provider's registration or the imposition of probation upon terms and conditions deemed appropriate by the state board in accordance with the procedure set forth in sections 621.100 to 621.205, RSMo. Use of the procedures set out in this section shall not preclude the application of the provisions of subsection 2 of section 436.061.]*

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The board revisited the allocation of funds matter. The board included language requiring that 100 percent of all funds collected on a preneed contract must either be placed in trust, in a joint account, or used to buy or purchase an insurance contract. After public comments and board member concerns, a motion was made by Gary Fraker and seconded by Martin Vernon to amend the percentage to 90/10. Motion carried with Martin Vernon, Gary Fraker, Todd Mahn and Joy Gerstein voting in favor with no votes in opposition.

-----  
The board revisited Section 436.035.1.

A motion was made by Todd Mahn and seconded by Joy Gerstein to amend the language to say that a copy must be provided "if requested" . Motion carried with Martin Vernon, Gary Fraker, Todd Mahn and Joy Gerstein voting in favor with no votes in opposition.

A motion was made by Martin Vernon and seconded by Gary Fraker to remove the word "net" from the Section 436.035.1 also. Motion carried with Martin Vernon, Gary Fraker, Todd Mahn and Joy Gerstein voting in favor with no votes in opposition.

-----  
The board revisited Section 436.053(5)

A motion was made by Martin Vernon and seconded by Joy Gerstein to amend the language to say that a copy must be provided "if requested" . Motion carried with Martin Vernon, Gary Fraker, Todd Mahn and Joy Gerstein voting in favor with no votes in opposition.

-----  
The public members were reminded to send their comments and recommendations. The board will finalize and have all recommendation and comments reviewed by the board and adjust in this language. The board will make an attempt to have an open meeting at 9:00 a.m. on Monday, April 14, 2008. The division has been in contact with a couple members of the General Assembly and they are waiting on this final draft and are very much interested in filing the substitute.

### **Closed Meeting**

Motion was made by Martin Vernon and seconded by Todd Mahn to move into closed session and that all records and votes, to the extent permitted by law, pertaining to and/or

resulting from the closed meeting be closed pursuant to Section 610.021 Subsection (14) and 620.010.14 Subsection (7) RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure; Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney. Motion carried with Martin Vernon, Gary Fraker, Todd Mahn and Joy Gerstein voting in favor with no votes in opposition.

#### Adjournment

A motion was made by Gary Fraker and seconded by Joy Gerstein to adjourn. Motion carried with Martin Vernon, Gary Fraker, Todd Mahn and Joy Gerstein voting in favor with no votes in opposition. The meeting adjourned at 6:15 p.m. on Thursday, April 10, 2008.

Executive Director: Betsy Owen

Approved by the Board on: March 30- April 1, 2009



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**BOARD OF EMBALMERS & FUNERAL DIRECTORS  
STATE OF MISSOURI**

**BOARD MEETING**

**APRIL 10, 2008**

**ORIGINAL**

**RECEIVED**

**APR 29 2008**

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1 BOARD OF EMBALMERS AND FUNERAL DIRECTORS  
STATE OF MISSOURI

2  
3 BOARD MEETING

4  
5 April 10, 2008  
Missouri Professional Registration  
3605 Missouri Boulevard  
6 Jefferson City, MO 65102

7  
8 BEFORE: James Reinhard, Chairman  
Martin Vernon, Vice-Chairman  
9 Gary Fraker, Secretary  
Todd Mahn  
Joy Gerstein

10  
11 PRESENT: Becky Dunn, Executive Director  
Pamela Schnieders, Admin. Assistant  
12 Kimberly Grinston, Legal Counsel  
Connie Clarkston, Director of Budget  
Sandy Sebastian, Director of Personnel  
13 Douglas Ommen, Board of Insurance  
David Broeker, Division Director

14  
15 PUBLIC: Kenneth McGhee  
Chris Follis  
16 Jen Jernigan  
Don Otto  
John McCulloch  
17 Bill Stalter  
DJ Gross  
18 Barbara Newman w/State Rep. Meadows  
Bob Hedgpeth  
19 Charles Pasentino  
Randy Singer  
20 Robert Baker  
Steve Pierce  
21 Richard Dowden  
Kalene Summerville

22  
23 REPORTED BY:  
MINDY VISLAY, CCR  
24 MIDWEST LITIGATION SERVICES  
3432 West Truman Blvd.  
Suite 207  
25 Jefferson City, MO 65109

1 P R O C E E D I N G S

2 CHAIRMAN REINHARD: Gentleman and ladies,  
3 we do have a court reporter here, and they are going  
4 to record the minutes.

5 I'm going to call the meeting to order. I'm going  
6 to call the roll of the board. Martin Vernon?

7 MR. VERNON: Here.

8 CHAIRMAN REINHARD: Gary Fraker?

9 MR. FRAKER: Here.

10 CHAIRMAN REINHARD: Todd Mahn?

11 MR. MAHN: Here.

12 CHAIRMAN REINHARD: Joy Gerstein?

13 MS. GERSTEIN: Here.

14 CHAIRMAN REINHARD: Okay.

15 MS. DUNN: Present in the room with us  
16 today is Becky Dunn, Executive Director; Pam  
17 Schnieders, Administrative Assistant; Lori Hayes,  
18 Inspector; Kimberly Grinston, board's legal counsel;  
19 Sandy Sebastian, Director of Personnel and also  
20 Director of 436 for the Division. We also have Doug  
21 Ommen, Director of the Department of Insurance.

22 And at this time I'm not sure if anyone else is  
23 joining us in the office here -- I understand that  
24 Kenneth McGhee may be joining us as well.

25 CHAIRMAN REINHARD: We need approval of the

1 agenda, and we need a board motion for this.

2 MR. MAHN: I'll make a motion.

3 CHAIRMAN REINHARD: Todd Mahn made the  
4 motion. Who seconds?

5 MR. FRAKER: I'll second.

6 CHAIRMAN REINHARD: Gary Fraker seconded  
7 the motion. I'm going to call the role. Martin  
8 Vernon?

9 MR. VERNON: Yes.

10 CHAIRMAN REINHARD: Joy Gerstein?

11 MS. GERSTEIN: Yes.

12 CHAIRMAN REINHARD: Now, everybody on this  
13 conference call, you have to identify yourself by name  
14 so the court reporter can take it in the minutes. So  
15 when you speak just, you know, say, "Bob Hedgpeth" and  
16 then say what you want to say. Okay?

17 MS. DUNN: Now this is Becky Dunn talking.  
18 We apologize to everyone on the phone today that  
19 joined us. Because we had been at a three-day board  
20 meeting, and so we didn't have the opportunity to get  
21 the comments on the Chapter 436 revised in the time  
22 frame that we could get this faxed out to all the  
23 attendees today.

24 So, what we will do is briefly discuss some of the  
25 chapter changes that we have suggested. We will get

1 everyone a copy of what we are discussing after the  
2 meeting today.

3 And the process that we're suggesting is, if you  
4 have comments to what the board is suggesting, if you  
5 would fax your comments to area code 573-751-0878,  
6 that's Connie Clarkston's fax number, she's the  
7 Director of Budget and Legislation.

8 And also, Connie has something to add to that.

9 MS. CLARKSTON: You can also e-mail.

10 MS. DUNN: Did everyone get Connie's e-mail  
11 earlier? If you prefer, you can e-mail your comments  
12 to Connie.

13 And then, also, they can contact the sponsor. Is  
14 that correct or not?

15 MS. CLARKSTON: Not yet, because we haven't  
16 found a sponsor for this portion of it. Once that's  
17 identified we'll let them know.

18 MS. DUNN: So, you can either fax or e-mail  
19 Connie with your comments.

20 MS. CLARKSTON: I am the Director of Budget  
21 and Legislation for the Division of Professional  
22 Registration.

23 MS. DUNN: Kenneth McGhee has joined the  
24 meeting now.

25 Board Members; Martin, Gary, Todd and Joy, do you

1 have a copy of the legislation in front of you today?

2 MS. GERSTEIN: Yes.

3 MR. FRAKER: Yes.

4 MR. VERNON: Yes.

5 MR. MAHN: I only got 20 of the 30 pages.

6 Send the last ten.

7 CHAIRMAN REINHARD: Kim Grinston is our  
8 attorney, and we're going to go through the bill.

9 MS. GRINSTON: Good morning, Board. What  
10 you have before you is a conglomerate bill that I  
11 think merges several portions of Kuessner's bill,  
12 several portions of Representative Meadows' bill, some  
13 recommendations that were given to the board, as well  
14 as some language that the board members themselves  
15 reviewed and suggested -- and the Department of  
16 Insurance.

17 What we can do is go through the bill by page to  
18 see if there's any concerns that the board members may  
19 have with the proposed language.

20 And for the benefit of the public that may be  
21 sitting in, I will do a general description of what  
22 the change is. Is that okay?

23 MS. DUNN: Can everyone hear okay?

24 MS. GRINSTON: The first change that I  
25 think we looked at was the definition of the word

1 "person."

2 In the main definition section of 436.005, that  
3 was changed to acquire or to define a person as any  
4 individual or, essentially, an entity registered with  
5 the Secretary of State's office.

6 Subsection 5; Preneed contract. That definition  
7 was amended to specifically provide that a contract  
8 may be funded by any mechanism authorized by this  
9 chapter including cash payment or whole or credit life  
10 insurance.

11 I think those are all the changes on Page 1.  
12 Board members, do you have any questions or concerns?

13 MR. FRAKER: No.

14 MS. GRINSTON: Hearing none, I'll move on  
15 to Page 2.

16 And I do need to apologize to members of the  
17 public.

18 To members of the public, during this conference  
19 call we will need to go into closed for a certain  
20 portion of time, and we'll tell you when that is, and  
21 then a time when you can rejoin the board on an open  
22 conference call. But we'll tell you when that happens  
23 or when that may occur.

24 On Page 2, looking at Section 436.007, Subsection  
25 .1, Subsection 4, was amended to provide that a

1 preneed contract must identify either the preneed  
2 trust that will hold funds, the insurance company that  
3 will be used to fund any preneed contracts, or the  
4 joint account where the funds will be held.

5 I believe it was the board's intention here to  
6 make sure you include all of the different mechanisms  
7 for handling 436 contracts.

8 If there are no questions from the board?

9 436.072; I believe a lot of this language was  
10 cleanup language and probably clarification language  
11 that really doesn't substantially change what we have  
12 right now.

13 436.011; the changes in this provision -- and I'll  
14 do this generally. Currently, we require a  
15 contractual relationship between a seller and a  
16 provider and that those obligations are not  
17 reciprocated on providers.

18 So I believe that the changes to 436.011 will  
19 require two things; that any seller who designates a  
20 provider in a contract must have a contractual  
21 relationship, and vice versa.

22 The second paragraph does the same thing. It  
23 basically imposes the obligation -- that is currently  
24 on sellers -- on providers. It adds language that  
25 says if the provider allows themselves to be

1 designated in a preneed contract they will be  
2 obligated for providing -- I'm sorry. Phone call.

3 (Phone interruption.)

4 If a person allows themselves to be named as a  
5 seller, they will be obligated for any payments made  
6 under the contract.

7 I think that's the last provision on Page 3.

8 Board members, do you have any questions?

9 MS. GERSTEIN: No.

10 MR. VERNON: No.

11 MR. FRAKER: No.

12 MS. GRINSTON: On Page 4, I think that the  
13 language you see in red is language that may have been  
14 included, I believe, in Representative Meadows' bill.

15 The last sentence that has the strike-through in  
16 it, I believe was language that was in Representative  
17 Meadows' bill that I believe the board did not want  
18 included in this version of the bill if possible.

19 Subsection 3, on Page 4, does the exact same thing  
20 that we talked about earlier. If a seller allows a  
21 provider to name them as a seller, and fails to take  
22 action to stop that designation, the seller is going  
23 to be deemed to have consented to the designation.

24 Now, this is the same obligation that is currently on  
25 providers.

1           436.015.1, Sub 1, this language is from, I  
2 believe, Representative Meadows' bill. Right now, to  
3 be a provider, you have to be licensed as a funeral  
4 establishment unless you are essentially a cemetery  
5 and your sales are limited to grave vaults.

6           The proposal was to add language that would also  
7 exempt a person if they were only engaged in the  
8 retail sale of funeral merchandise. Therefore, people  
9 that were engaged in funeral retail sales would still  
10 be required to register as providers; however, they  
11 wouldn't need a full funeral establishment license.

12           Subsection 2, on Page 4 -- and before I turn over,  
13 board members, are there any questions on Page 4?

14           MS. GERSTEIN: No.

15           MR. VERNON: I'm trying to figure it out.  
16 I may have missed it.

17           Because I went through and marked up my copy that  
18 I had kind of worked on trying to look at some stuff,  
19 when we had just looked at a lot of the different  
20 ones. I'm trying to figure out where that is and what  
21 section it's in.

22           MS. GRINSTON: The retail sale of funeral  
23 merchandise section?

24           MR. VERNON: One second, you know how all  
25 these numbers go to running together.

1 MS. DUNN: Just give us the section number  
2 first, Martin. Like, 436 point --

3 MR. VERNON: Actually, I'm going to jump  
4 back for just a second. Under 436.007, I guess it is,  
5 in point four of that. And I guess I need to look at  
6 the new one to make sure that's the same place as that  
7 is.

8 MS. DUNN: Can you read the beginning of  
9 that section that you are referring to?

10 MR. VERNON: I can tell you -- while I'm  
11 looking to make sure -- I can tell you what the --  
12 good grief. Okay. It's going to be on Page 3. It's  
13 Section 4 on that.

14 MS. DUNN: Read the first word.

15 MR. VERNON: On Page 3, point four, from  
16 the top coming down, under that section it says:  
17 Subject to the provisions of Subdivision 5 of Section  
18 436.005, the provisions of -- all those numbers --  
19 shall apply to the assignment of proceeds of any  
20 contract of insurance for the purpose of funding a  
21 preneed contract or written in conjunction with a  
22 preneed contract.

23 My question goes back to is this section -- I just  
24 need some definition, I guess, here.

25 Is this section referred to when an individual

1 just comes in with a life insurance policy, where it's  
2 maybe a small amount or whatever, and all it's doing  
3 is just changing the assignment of the policy to where  
4 you might not be actually issuing a preneed contract  
5 with the specification of guaranteeing merchandise?  
6 Is that point four affecting that, or is it not?

7 Because I'm just catching the words "assignment of  
8 proceeds of any contract of insurance." Key word  
9 "any."

10 MS. GRINSTON: I'm looking at it, Martin.

11 Well, this is current language, and it refers back  
12 to the definition of what a preneed contract is. And  
13 so, to the extent that there's an assignment that  
14 doesn't necessarily fall under the definition of  
15 preneed contract -- "specifically requiring the  
16 current payment of money or other property in  
17 consideration for the final disposition" -- it may not  
18 apply to those assignments.

19 MR. VERNON: The key word of this  
20 assignment is payment of money?

21 MS. GRINSTON: I believe so, as required  
22 under 436.005, Subdivision 5.

23 MR. HEDGPETH: May I make a suggestion?  
24 This is Bob Hedgpeth with the public.

25 When you are referring to this -- I got this 436

1 off the internet, and I don't know about the page  
2 numbers, but I can follow if you mention the section  
3 numbers and all that. Could you please do that?

4 MS. GRINSTON: Sure. I definitely can for  
5 you.

6 Martin, does that answer your question?

7 MR. VERNON: The key of where I was missing  
8 it was the payment of money.

9 MS. GRINSTON: Okay. We are going to be  
10 looking now at 436.015.1, Subparagraph 2, Subsection  
11 2.

12 And I believe in one of the proposals that's been  
13 filed there was a proposal that the Attorney General's  
14 Office be given coexistive regulatory authority, I  
15 guess, with the board in matters of 436.

16 The recommendation that is before the board now  
17 would leave the regulatory authority in the hands of  
18 the state board and would not extend that to the  
19 Attorney General's Office. Are there any questions on  
20 that?

21 Let's go to 436.015.2, same section. I think the  
22 changes are in Subparagraph 1(b) which requires in the  
23 report the name and address of each seller with whom  
24 it entered into a written agreement.

25 The recommendation; the changes would require that

1 the provider also include in their annual report the  
2 name, contract number and amount of each preneed  
3 contract written, along with all payments that were  
4 collected by the preneed provider for the seller, that  
5 that would be included in the annual report.

6 I believe those are all the changes on Page 5.  
7 Any questions or concerns?

8 Moving onto our Page 6, but what will be  
9 436.015.2, Subparagraph 4. It begins by reading: At  
10 least 30 days prior to selling or otherwise disposing  
11 of its business assets --

12 Board members, on your Page 6, there was language  
13 there that would require the board to take reasonable  
14 and necessary action to basically make sure  
15 obligations were going to be met.

16 The board amended that language from "shall" to  
17 "may" and also added language that said that the  
18 actions could include an examination of books and  
19 records or an audit with costs that could be assessed  
20 against the seller or to the seller at the discretion  
21 of the board.

22 MS. DUNN: Members, this is Becky Dunn  
23 speaking. On the page prior to this, at the bottom,  
24 which was parenthesis 3, we're removing reference that  
25 would include the Attorney General in this process.

1           Because, as Kim mentioned earlier, it said: State  
2 board and/or Attorney General's Office. On  
3 parenthesis 3, at the bottom of five, we missed one of  
4 those. So as the public receives a copy of the bill,  
5 there may be a change in that.

6           MS. GRINSTON: In that same section, we  
7 removed the current language that provides that  
8 failure of the state board to take action within  
9 30 days constitutes a waiver of its authority, and we  
10 added a requirement that written notice must be  
11 provided by the provider to the board and to all  
12 purchasers within 30 days of ceasing business and that  
13 notice must indicate what establishment will be  
14 assuming responsibility for the preneed contracts.

15           And again, there's language that would allow the  
16 board to conduct an examination of books and records  
17 to ensure compliance with the requirements of that  
18 section.

19           Moving on to 436.021.1, Subsection 2. And this is  
20 on Page 6 and 7 for the board members.

21           One thing that has been amended in this draft is  
22 the requirement that all sellers have a trust. It  
23 would be amended to read that you would not be  
24 required to have a trust if you certified to the board  
25 that all of your preneed contracts are funded solely

1 by insurance or are placed in joint accounts.

2 MR. OTTO: This is Don Otto. You might  
3 want to check that paragraph. It says that the  
4 preneed funds will be placed "in a joint."

5 MS. GRINSTON: Okay.

6 MR. OTTO: I don't know if that's prudent  
7 investing. It might be.

8 MS. GRINSTON: I'll do that, Don. I will.

9 Subsection 3. There Representative Kuessner, I  
10 believe, suggested that we add as a condition to being  
11 a seller you have to register with the state board and  
12 you must also be licensed by the state board as a  
13 funeral preneed seller.

14 Now, this is pretty much the way we treated  
15 registration now. But to the extent there was a  
16 confusion about a registration versus a license, that  
17 clarification was included to specifically call it a  
18 registration and a license.

19 Subparagraph 2 -- actually, we will be doing some  
20 amendments on that. And for the board members, this  
21 paragraph will read -- and I'm just going to read how  
22 it will be as amended because we have to take off the  
23 first half of that section.

24 It should read: In lieu of a trust the applicant  
25 for registration may petition the board for exemption

1 for this requirement. In the petition for exemption  
2 the applicant shall certify to the board that all  
3 preneed contracts are to be funded solely by insurance  
4 or that preneed funds are to be placed in a joint  
5 account.

6 And that's account, Don. I've got it added in  
7 there.

8 MR. OTTO: Okay.

9 MS. GRINSTON: And again, we removed the  
10 language that previously suggested that a provider  
11 would have to prove an undue hardship.

12 Under Section 3 of that section --

13 MR. VERNON: Did you say that you took out  
14 the undue hardship?

15 MS. GRINSTON: Yes.

16 MR. VERNON: Because it's printed in on 2  
17 here, right?

18 MS. GRINSTON: It is. In the beginning of  
19 2 it is printed. I think we overlooked that and meant  
20 to bring it out.

21 MR. VERNON: So, that will not be in there?

22 MS. GRINSTON: That's correct.

23 Subsection 3, Subparagraph 1, requires the seller  
24 to maintain adequate records of their contracts and  
25 trust arrangements.

1           We also thought that the section should include  
2 records of the joint accounts as well. We echoed the  
3 language in the definition section for the seller to  
4 clearly provide that the seller is obligated to  
5 collect and administer all payments made under  
6 contract or arrangement. And again, that language is  
7 in .005 already.

8           And that is Page 7. Board members, do you have  
9 any questions?

10           Moving on, we have got point three, Subdivision 3,  
11 Paragraph C. In a provider's report it would require  
12 them also to -- a seller's report -- include the name  
13 and contract number of each preneed contract written  
14 with each seller. I'm sorry I'm getting these  
15 confused. This is the provider's report.

16           They would have to report the total number of  
17 contracts, the name and contract number, and amount of  
18 each preneed contract written with each seller.

19           And I think the changes on Page 8, generally, up  
20 until Paragraph F, basically include language that we  
21 are referencing trust, moneys placed in joint  
22 accounts, and also insurance funded preneed contracts.

23           Subparagraph F, on the bottom of Page 8, talks  
24 about the consent that is currently required for a  
25 seller and a provider to allow the board to order an

1 examination.

2 I believe the board requested to remove the  
3 language that would require the detailed process of  
4 going to the Attorney General's Office two or three  
5 times and to the Division two or three times before  
6 processing a 436 complaint.

7 Instead, much like the 333 process, the board will  
8 be able to review the complaint, request an  
9 independent audit, and then make a decision on whether  
10 the complaint should be referred for disciplinary  
11 action. And so, you'll see the language relating to  
12 the Division and the Attorney General's Office removed  
13 from that page.

14 Are there any questions?

15 Page 9, Subparagraph 4, we see the same changes:  
16 File with the state board a consent authorizing the  
17 state board to order an investigation.

18 Again, the language regarding the AG's office and  
19 the Division have been removed from that portion of  
20 the bill.

21 Subparagraph 6 would be a new requirement on the  
22 bill, and it would essentially say that sellers can  
23 only allow or authorize a funeral director or an  
24 apprentice funeral director to sell a preneed  
25 contract.

1           And then, again, I think, to finish Page 9, we  
2 have some language regarding joint accounts.

3           Are there any questions on that language?

4           MR. MAHN: No.

5           MR. VERNON: I'm fine.

6           MR. FRAKER: No.

7           MS. GERSTEIN: No.

8           MS. GRINSTON: Looking at Page 10. Again,  
9 we are looking at the provisions that govern a cease  
10 of business by providers, new language that requires  
11 them to notify the board and all purchasers within  
12 30 days of what establishment will be assuming  
13 responsibility to any preneed contracts.

14           Again, the thought is that when a funeral  
15 establishment closes -- it stops doing business -- we  
16 want the purchasers to know, as well as the board,  
17 where they should go to honor the outstanding  
18 contracts.

19           Moving on to 436.027. This is the requirement  
20 that currently talks about the allocation of funds. I  
21 believe the board included language that required that  
22 100 percent of all funds collected on a preneed  
23 contract must either be placed in trust, in a joint  
24 account, or used to buy or purchase an insurance  
25 contract.

1           Again, this would be 100 percent trusting  
2 requirement, if you will.

3           CHAIRMAN REINHARD: I have a question about  
4 that. Now, that's on a joint account or all accounts?

5           MS. GRINSTON: All accounts.

6           CHAIRMAN REINHARD: What about a 95/5? I  
7 think at one time the association may have -- you  
8 might chime in on this, Don.

9           MR. OTTO: Well, several years ago our  
10 position I believe was, while in a perfect world we  
11 think 100 percent is best, that we certainly  
12 understand that some people are paid by commissions  
13 and that 5 percent might be better for many funeral  
14 homes.

15           CHAIRMAN REINHARD: Any board members or  
16 other people have a comment?

17           MR. MCGHEE: This is Ken McGhee. I'm just  
18 curious to how they figured in what we would do about  
19 administrative costs? Because that's what that  
20 20 percent was set aside for.

21           And my only concern would be, as a seller, is how  
22 are you going to recoup or cover your administrative  
23 costs in selling and transacting your preneed sales?

24           That was just a comment.

25           CHAIRMAN REINHARD: Noted.

1 MR. McCULLOCH: This is John McCulloch. If  
2 you go to 100 percent, it will put us out of business  
3 tomorrow if this passes. Obviously, I'm not for that.

4 MR. VERNON: What would you be for, John?

5 MR. McCULLOCH: I don't see anything wrong  
6 with the current 80/20.

7 MR. McGHEE: This is Ken McGhee again. I  
8 agree. I think the problem wasn't so much with the  
9 percentage as much as it was with people entrusting  
10 the money that they were supposed to trust.

11 MR. McCULLOCH: Just because you have  
12 people -- you know, you can make this 90 percent or 95  
13 or 100 percent, that's not going to stop the problems  
14 you are having.

15 MS. GROSS: This is DJ Gross. And one  
16 thing I'm at, that may help with that, whether it's  
17 100 percent or 95 percent, or the 80 percent or  
18 whatever that it stays, is it necessarily so much a  
19 problem of underfunded or that it's when a purchaser  
20 cancels and wants to go from one funeral home to  
21 another?

22 Could there be something in there on portability  
23 for that, where the funds could be transferred from  
24 one to another without the consumer being penalized  
25 for that 5 or 20 percent?

1 MS. DUNN: With all the comments that were  
2 stated just now, if you would ensure to put those in  
3 writing to Connie or the fax number that we gave you,  
4 we would certainly appreciate those.

5 MS. GRINSTON: 436.027.2 would require that  
6 funds received must be trusted within 45 days of  
7 receipt.

8 MR. MAHN: Can I say something on that?  
9 Back up just to that 80/20.

10 MS. GRINSTON: Yes.

11 MR. MAHN: I understand the circumstances  
12 that we're under, what's going on here in the state  
13 right now.

14 I think one of the reasons this percentage came up  
15 is we asked ourselves, if we were to ask the public  
16 how much they thought their trust was being funded --  
17 or their preneed was being funded -- we feel like they  
18 would say, "Well, we certainly think the whole  
19 100 percent is."

20 And under these circumstances, what's went on, I  
21 don't think, representing the public, we can ask for  
22 anything much less than that, just due to what's went  
23 on.

24 I think the public is going to be outraged. They  
25 are going to be very upset. And I think, at this

1 point, they're going to expect anybody representing  
2 them to ask for the best for them.

3 CHAIRMAN REINHARD: Thank you, Todd.

4 Kim, do you want to continue?

5 MS. GRINSTON: Yes, 436.031 would be our  
6 next section. This has some substantial revisions.

7 Number one, it would require that the trustee be a  
8 state or federally chartered financial institution --  
9 which it requires now -- but it would prevent  
10 controlled relationships, relationships where the  
11 financial institution is controlled by or under the  
12 common control of the seller. And it has some  
13 definitions to accomplish that.

14 I believe this is modeled after what is currently  
15 in the Department of Insurance's provisions. I  
16 believe that is where a lot of this language may have  
17 come from.

18 Subsection 2 is being amended to delete the  
19 possibility or the availability of using an  
20 independent financial advisor. Under the portions  
21 that are being deleted, the trustee would be  
22 responsible for the trust and also investment of the  
23 trust.

24 So, in Subsection 4, all the provisions that  
25 relate to a qualified assessment provider have been

1 deleted. And again, the 100 percent trusting  
2 requirement is included in that as well.

3 Moving on to Page 12, Subparagraph 3, this is new  
4 language.

5 And board members, I'm sorry, do you have any  
6 questions about anything that was on Page 11?

7 MS. GERSTEIN: No.

8 MR. VERNON: No.

9 MS. GRINSTON: Subparagraph 3 basically  
10 says that investments of trust money must be designed  
11 to increase the value of the preneed funds, and it  
12 would prohibit any investment that doesn't have the  
13 potential to increase the value of the funds.

14 And I believe that's our last change on Page 12.

15 MS. GROSS: May I ask a question on that to  
16 clarify?

17 CHAIRMAN REINHARD: Yes.

18 MS. GROSS: On No. 3 -- and going back to  
19 if someone brings in a policy and assigns it to the  
20 funeral home and it is with a preneed contract -- is  
21 that going to be effective? That's not talking about  
22 that private policy that they are bringing in and  
23 you're assigning?

24 MS. GRINSTON: DJ, I'm sorry, could you say  
25 that again?

1 MS. GROSS: On that section that you were  
2 just talking about, in the instances where consumers  
3 bring in, say, an Old American policy of 4,000 and  
4 assign it -- or whatever it would be -- and that's  
5 tied to a preneed contract, in exchange for an  
6 assignment or being made beneficiary, will that be  
7 affected by the language of this?

8 MS. GRINSTON: I don't believe it will.

9 Moving on to Page 13, and again, we are still in  
10 Subsection 436.031.

11 There's a new Subsection 7 which would require,  
12 again, that funds be deposited in trust or joint  
13 accounts within 45 days of receiving them, the seller  
14 would be required to notify the provider within  
15 30 days of receiving a payment, anyone who pays in  
16 cash would have to sign a receipt and must receive a  
17 copy of that receipt.

18 And I believe that language may have come from  
19 Representative Kuessner's bill.

20 The next change we have is on Section 436.035.  
21 For board members, that's Page 14.

22 Subsection 1 would be amended to provide that the  
23 seller has to notify the provider in writing of  
24 payments made to the purchaser on a cancellation.

25 It says that if it's cancelled an amount equal to

1 all payments made by the purchaser must be refunded.  
2 And so, 100 percent of what the purchaser paid would  
3 have to be refunded on the contract.

4 Subsection 2 is being amended to provide that if  
5 the preneed contract is being purchased for purposes  
6 of spend-down that a copy of the contract would have  
7 to be given to the appropriate state authority. Which  
8 would not be the board, by the way.

9 MR. MCGHEE: Would that be specified then?  
10 I just think that also creates a gray area if we don't  
11 specify what department or what state agency that  
12 should be.

13 MR. VERNON: Could we insert in that, where  
14 it says that it has to be sent, just the words "if  
15 requested," where it's not you have to just mail one  
16 to them? Because, like Ken said, where's it going?

17 MS. DUNN: And I think that Ken may have  
18 said the appropriate state agency because, the  
19 transition in state government -- or government  
20 agencies or federal agencies -- that name may change.

21 So, I guess we could state what it is now or  
22 "designee." But we try to put language that would  
23 build for the future.

24 MS. GRINSTON: And this is actually  
25 Kuessner's language, I believe, as well.

1 MR. MCGHEE: The reason I mention that is,  
2 as a lot of you know, like Martin said as well,  
3 usually if there's a department or, you know --  
4 someone from the agency usually contacts the funeral  
5 home to ensure that the person has a prearranged  
6 irrevocable plan with the funeral home or the seller.  
7 It's requested of us by them because they are doing a  
8 scenario case on that individual beneficiary.

9 So, I think, in line with what Martin was saying,  
10 it's kind of hard to say who is the appropriate person  
11 that you would have to report to, because most times  
12 they come asking you for the information.

13 However, I do feel that it would be very important  
14 for the beneficiary of the contract to be made aware  
15 that if he does sign the contract, and signs it being  
16 irrevocable, and he's not receiving any state  
17 assistance, that he or she is also aware that that  
18 would not hinder them from seeking a refund if they  
19 never qualified for that assistance.

20 Do you understand what I'm saying? Because a lot  
21 of people are under the impression that when they sign  
22 a prearranged contract, when they are 45-years-old, or  
23 whatever, and they sign it being irrevocable, but they  
24 never actually went onto any kind of public  
25 assistance, then a lot of them believe that they can't

1 get the refund of the money that they spent because  
2 they signed an irrevocable waiver although they never  
3 received any public assistance.

4 Do you follow where I'm going?

5 MS. DUNN: Ken, could you put your comments  
6 in writing?

7 MR. MCGHEE: I will.

8 MS. DUNN: Okay. We just want to make sure  
9 that we have all the comments for the record.

10 MS. GRINSTON: And Martin, would you like  
11 me to amend that language to just simply say that a  
12 copy must be provided if requested?

13 MR. VERNON: I think that's fine, because  
14 the "if requested" eliminates the whole -- the way  
15 it's written right now, the burden is on -- if  
16 somebody has a state assistance contract, we, as a  
17 funeral director, are required to send a contract to  
18 somebody; right?

19 MS. GRINSTON: That is correct.

20 MR. VERNON: Why, if the state agency isn't  
21 particularly wanting it, why are we going to put that  
22 burden on us?

23 MS. GRINSTON: Martin, we can make that  
24 change for you.

25 Chairman, do you want to take a motion and a vote

1 on that?

2 Martin is suggesting that we change the language  
3 to provide that the contract only needs to be provided  
4 if requested. And I can do that if that's a request  
5 of the board.

6 CHAIRMAN REINHARD: Let's take a motion on  
7 it, or we'll entertain a motion.

8 MR. MAHN: I'll make the motion.

9 CHAIRMAN REINHARD: And a second?

10 MS. GERSTEIN: Second.

11 CHAIRMAN REINHARD: Okay. Gary?

12 MR. FRAKER: Yes.

13 CHAIRMAN REINHARD: Martin?

14 MR. VERNON: Yes.

15 MS. GRINSTON: That's everyone then. I'll  
16 make the change.

17 Subsections 2 and 3 essentially say that the  
18 purchaser has the right to redesignate the provider,  
19 and once that designation is made the seller should  
20 notify the newly designated provider and the old  
21 provider of the request for a change. And that's Page  
22 15.

23 436.041 on Page 16 --

24 MR. OTTO: This is Don Otto. If you don't  
25 want me to mention this just tell me to keep quiet.

1           The first paragraph on Page 14, 436.035.1, the  
2 statement was made that this would require 100 percent  
3 refund to the customer?

4           MS. GRINSTON: Yes.

5           MR. OTTO: The problem with that is the  
6 word "net" in the middle of that paragraph. That  
7 means you've taken something out of the whole.

8           And the way this is worded in the current law is  
9 the seller pays to the purchaser the net amount and  
10 then turns around and the trustee pays to the seller  
11 all the amount, which indicates that the seller is  
12 getting something more out of the trust than the  
13 purchaser got.

14           MS. GRINSTON: I understand, Don. That's  
15 noted.

16           MR. OTTO: It's not an issue if it's 100  
17 percent trusting, perhaps, but if you shift that to 95  
18 or something then it gets very complicated.

19           CHAIRMAN REINHARD: Board, we need to  
20 probably delete that, the word "net." Thank you, Don,  
21 for pointing that out.

22           MR. VERNON: I will make the motion.

23           CHAIRMAN REINHARD: I need a second.

24           MR. FRAKER: Second.

25           MS. GERSTEIN: Yes.

1 MR. MAHN: Yes.

2 MS. GRINSTON: Looking at 436.041, it  
3 echoes the requirement that the seller is obligated  
4 for collecting administrative oversight of all  
5 payments and changes the provisions for cancelling a  
6 contract for nonpayment. It essentially will provide  
7 that the purchaser must be given written notice.

8 Sixty days after that written notice is delivered  
9 the seller can then cancel the contract as long as  
10 final written notice is given to the purchaser at the  
11 time of cancellation.

12 436.045 was some language that was suggested, and  
13 I think the most important thing is that for payment,  
14 under .045, it would now require a certified copy of  
15 the death certificate.

16 MR. VERNON: I have a question. In some  
17 situations currently we do have to provide a certified  
18 copy of a death certificate as a funeral director. I  
19 wish someone would tell me why that is totally  
20 important. Because I'm open to the idea of it, but at  
21 the same token, I'm wondering if that is somehow going  
22 to hinder it.

23 I do understand that it does leave the door open  
24 just a little bit for somebody just creating a death  
25 certificate. But I don't think in all situations

1 currently, now, it does require a certified copy to  
2 get money out of a trust, or whatever, as long as it  
3 would read "a copy of a death certificate." But that  
4 kind of, in a way, might be a problem, too, because of  
5 copying a death certificate.

6 I'm not sure I have a total recommendation on it,  
7 but I see a little bit of an issue that it causes. It  
8 also causes the family to have to purchase a death  
9 certificate, unless that's going to be the problem of  
10 the funeral director.

11 MS. GRINSTON: Are you moving that we  
12 strike the death certificate language?

13 MR. VERNON: I'd really like to hear some  
14 comments from someone else. Just because I raised the  
15 issue, I'm not totally confident in myself that that's  
16 what needs to be done. But I do see some problems.

17 CHAIRMAN REINHARD: Any board members or  
18 the public?

19 MR. OTTO: This is Don Otto. The Newman  
20 Funeral Home situation in Unionville, Missouri. One  
21 of the criticisms that was made back then was that 436  
22 did not require a death certificate which made it  
23 easier for him to send in false death claims. For  
24 what that's worth.

25 I would also note that there's a difference

1 between 436.045 -- dealing with certifying -- that you  
2 did a funeral under a trust arrangement and the  
3 provisions dealing with joint accounts.

4 Under joint accounts, the purchaser or their  
5 successor has to sign the statement. Under this  
6 section, any witness can sign the statement.

7 So, it's my understanding that in the Newman  
8 Funeral Home situation he was signing the certificate,  
9 and he just had anybody that was standing around sign  
10 as a witness, and so the purchaser wasn't required to  
11 sign.

12 I know that was an issue with that particular  
13 situation.

14 MS. DUNN: Don, would you provide that  
15 comment to us in writing?

16 MR. OTTO: I certainly will.

17 MS. GROSS: This is DJ Gross. And I don't  
18 know if it could be done, but with cremations, where  
19 cremations cannot occur unless a doctor is going to  
20 sign and give consent for that, could there be  
21 something in lieu of a certified death certificate? A  
22 statement from a doctor that he is going to sign on  
23 the death certificate? We fax those to our doctors  
24 and they sign them or we hand deliver them for the  
25 crematory.

1           Could that be a possibility, where you know then  
2 the death has actually occurred, the doctor will be  
3 signing, but it would save on the families having to  
4 purchase an additional death certificate or the time  
5 wait for a death certificate to get certified?

6           MR. MCGHEE: I think isn't that more of an  
7 at-need issue than a preneed issue?

8           MS. GROSS: For the doctor signing on a  
9 cremation?

10          MR. MCGHEE: Because he can't sign the  
11 cremation until the death takes place, so you're  
12 actually talking about an at-need contract as opposed  
13 to a preneed contract.

14          MS. GROSS: This would be at-need as well.

15          MR. OTTO: I think the ultimate problem is  
16 what if it takes you 90 days to get a death  
17 certificate because you can't get the doctor to sign  
18 it?

19          MR. VERNON: I know what you are saying.  
20 For 99 percent of the funeral homes, I think it would  
21 be great if we didn't have to file a death  
22 certificate.

23           And I think, under the circumstances we are under,  
24 again, what we've been put under in this state, if we  
25 redo this whole law and it doesn't require a certified

1 death certificate, and the next business comes along,  
2 and that's how they loophole through, and it ends up  
3 there being a problem, and we are addressing that  
4 problem just because we left out certify. And I know  
5 what you're saying.

6 And yeah, most of us would just file it like it  
7 is, right. And again, I think we are trying to  
8 protect the public in all directions.

9 And as far as -- I agree with Kenny McGhee -- the  
10 doctor signature for a cremation, I don't think we are  
11 going to start calling doctors to send a written  
12 notice over so we can get paid quicker. I don't think  
13 they're going to go for that.

14 CHAIRMAN REINHARD: I think that any  
15 funeral director that wants his money is going to get  
16 the death certificate signed, and especially after we  
17 have the electronic death certificate in place. It  
18 will be a lot quicker for everybody.

19 MR. MCGHEE: That was a great point, Jim.

20 And I know that when I was at the last meeting and  
21 spoke of these death certificates being filed online,  
22 perhaps maybe when they are filed online, maybe the  
23 actual trustee or the person that's responsible for  
24 releasing the money should have some kind of way to  
25 electronically go in and get confirmation through the

1 electronic filing process without having to actually  
2 request a hardcopy from the person filing the claim.

3 CHAIRMAN REINHARD: Gentleman, I think we  
4 are done on that one. Move along, Kim.

5 MS. GRINSTON: And 436.048, I think that  
6 was just amended to correct some section numbers. The  
7 same thing with 436.051.

8 On .053, this deals with joint accounts. Once  
9 again, it has a 100 percent deposit requirement for  
10 all moneys received.

11 I'm going to also add language that says that a  
12 contract written for funds that are going into  
13 adjoining accounts must comply with all the other  
14 requirements of 426.027 for all other preneed  
15 contracts.

16 Sub 1, of 436.051, is being amended to require the  
17 name and address of the financial institution where  
18 the joint account will be.

19 Going to Sub 3, there was language that was added.  
20 I think this is Representative Kuessner's language  
21 that just says that monies held in joint accounts  
22 shall provide that the income generated by the monies  
23 will be used to pay the actual expenses of  
24 administering the agreement, and the balance of the  
25 income must be reinvested in a preneed account.

1 Subparagraph 4 talks about cancellation of the  
2 contract, and it says to honor cancellation before  
3 payment is issued they should get -- there should be  
4 evidence that notice was given to the funeral provider  
5 and the purchaser.

6 Subparagraph 5 again has that language that talks  
7 about the copy of the contract on a spend-down  
8 arrangement being sent to the appropriate agency.

9 Martin, would it be your request that we add the  
10 "if requested" here as well?

11 MR. VERNON: Yes. Just amend my motion to  
12 both places.

13 MS. GRINSTON: Is there a second consent to  
14 the amendment?

15 CHAIRMAN REINHARD: We need a second.

16 MS. GERSTEIN: I'll second.

17 CHAIRMAN REINHARD: Todd?

18 MR. MAHN: Yes.

19 CHAIRMAN REINHARD: Gary?

20 MR. FRAKER: Yes.

21 CHAIRMAN REINHARD: Thank you. Continue.

22 MS. GRINSTON: On Page 19, this is  
23 Subparagraph 2 of 436.052.2, it says it would require  
24 the seller to give a written statement of all deposits  
25 made to a joint account within 15 days after the

1 purchaser makes a request.

2 434.054 basically talks about and limits  
3 investments or insurance contracts used to fund a  
4 preneed contract to a whole life insurance policy. It  
5 requires notification to the purchaser that the funds  
6 are going to be used to purchase life insurance.

7 And if the insurance portion of the contract is so  
8 sold by an agent who is an employee or an agent of the  
9 seller, that relationship would also have to be  
10 disclosed.

11 And of course, insurance agents would be --  
12 amended language -- would simply be required to comply  
13 with all insurance laws governing the sale of the  
14 policy.

15 Removed from the bill were some disclosure  
16 requirements that were in, I believe, Representative  
17 Meadows' bill.

18 Subsection 2 was a new section. It would  
19 essentially say that, except for purposes of  
20 spend-down, the purchaser of the contract must be the  
21 owner of the life insurance policy and would be the  
22 only person who would be able to make changes. In no  
23 event would the owner of the policy be allowed to be  
24 the preneed seller.

25 Moving on to Page 21, this is a new Subsection 3.

1 It says: In no event shall the seller collect from  
2 the purchaser more than what is needed to fund the  
3 insurance policy.

4 436.055 once again streamlines the current review  
5 process by the board and basically says that the board  
6 is the entity that will review the complaint, send it  
7 out for outside audit, and then make a decision on  
8 whether to refer for disciplinary action.

9 Any questions on that so far?

10 MS. GERSTEIN: No.

11 MR. VERNON: No.

12 MR. FRAKER: No.

13 MR. MAHN: No.

14 MS. GRINSTON: Subsection 3, which is a new  
15 subsection, basically allows the board to do a random  
16 or targeted examination of audit, an independent  
17 audit, and would allow the board to assess the costs  
18 of the examination, audit or investigation against the  
19 licensee in the Board's discretion.

20 436.059, that you see there, is a work in  
21 progress. What we were asked to do is draft language  
22 that will allow the board to suspend a license if we  
23 are aware of a shortage or a misappropriation from a  
24 trust account.

25 There's still some language that I need to work on

1 with .059 just to accomplish that purpose, but I think  
2 the goal of that is to have the language simply read  
3 that the board may suspend the license without going  
4 through the current AHC process if we are aware of a  
5 certain shortage of funds or a misappropriation of  
6 preneed funds.

7 MS. GERSTEIN: Do we need a motion on that?

8 MS. GRINSTON: Not right now, Joy, I don't  
9 believe so.

10 I think that will address a situation where  
11 there's an identified shortage the board right now  
12 cannot go in and suspend the licensee, it has  
13 generally no authority to do so, and it would have to  
14 go through the AHC process. This would automatically  
15 give the board the authority to reach those licenses.

16 We have a new section, 436.059.2, which would  
17 require good moral character for any preneed  
18 registration, registrant or an applicant for  
19 registration, or any officer, owner, partner of any  
20 entity that is going to be a preneed registrant.

21 I need to back up. Before that, for the mandatory  
22 suspension language that is in the bill, the board  
23 would have the authority to waive the mandatory  
24 suspension if there's evidence that a person has been  
25 rehabilitated and the board deems that the license

1 should be issued.

2 436.061 changes the criminal provisions of the  
3 bill. It now says that the criminal felony language  
4 that is currently applicable in 436 would only apply  
5 if the violation of 436 was by incompetence,  
6 misconduct, gross negligence, fraud, misrepresentation  
7 or dishonesty. And the Attorney General would have  
8 concurrent jurisdiction with any local prosecutor to  
9 prosecute under this section.

10 And then what you'll see in, I think, the next set  
11 of major changes -- and this is something that we are  
12 going to have to add back in -- the bill also had  
13 language that would allow for disciplinary action  
14 against a licensee for someone who has failed to renew  
15 or denying an applicant for many of the reasons  
16 currently in 333.

17 Of course, we removed language that would be  
18 applicable only to funeral directors, but it would  
19 standardize the language for preneed registrants so  
20 that we could discipline someone for fraud, misconduct  
21 and for things that are outside of what is  
22 specifically spelled out in 436.

23 And again, that language pretty much mirrors  
24 Chapter 333 and would require a hearing before the  
25 Administrative Hearing Commission.

1           Finally, on Page 26. The confidentiality language  
2 of 436 has been changed. Right now, under 436.067,  
3 there are very intricate provisions on what is  
4 confidential and what is not confidential. The new  
5 language would simply provide that everything is  
6 closed unless otherwise authorized by statute or an  
7 order of the court.

8           Finally, 436.068 would allow the board to have  
9 rulemaking authority under 436, and that would include  
10 establishing any fees and also establishing  
11 qualifications for the fitness of a registrant.

12           436.069, which is on Page 27. The fees in 436.069  
13 would be amended to do two things; first, that section  
14 would allow the board to set fees as determined by  
15 rule.

16           Until such time as the board establishes a fee,  
17 the annual reporting fee for sellers would be a change  
18 to \$5 for each preneed contract. And for providers,  
19 the annual reporting fee would be \$40 or an amount to  
20 be determined by the board by rule.

21           436.072 would allow the board access to any  
22 premises for the purposes of inspection of any place  
23 where preneed providers and sellers are operating.

24           Board, those are the changes.

25           CHAIRMAN REINHARD: Board, we probably need

1 to readdress one section here since we had some public  
2 comments that were concerned about the percentage.

3 Would anybody entertain the motion to, say, like,  
4 90/10?

5 MR. FRAKER: I would make that motion.

6 CHAIRMAN REINHARD: Do I have a second?

7 MR. VERNON: I'll second.

8 CHAIRMAN REINHARD: Joy?

9 MS. GERSTEIN: Yes.

10 CHAIRMAN REINHARD: Todd?

11 MR. MAHN: Yes.

12 CHAIRMAN REINHARD: Thank you. That at  
13 least corrects that so we can correct that in the  
14 bill.

15 MS. DUNN: This is Becky Dunn. I want to  
16 make sure everyone knew that our "registration" is  
17 going to be changed to "licensed." And that if you  
18 have any comments, those need to be provided to the  
19 e-mail or the phone number that we provided to you  
20 earlier by noon tomorrow.

21 The board will make every attempt to have an open  
22 meeting at nine o'clock on Monday so that we can  
23 finalize and have all your recommendations or comments  
24 reviewed by the board and adjusted in this language.

25 Also, if anyone's in Jeff City it would be very

1 helpful if you could come to the office instead of  
2 conference call.

3 And if you want to be on our conference call on  
4 Monday at 9 a.m., please e-mail that information to  
5 the state board, and you can e-mail it to me or to the  
6 general e-mail address. And we need your phone number  
7 and your name.

8 And as you can tell, we are working extensively on  
9 this, so be patient with us as we try to get out these  
10 revisions to you.

11 MR. OTTO: I just had a question. Is there  
12 some intention to try to file this this year?

13 MS. DUNN: Yes, Don.

14 MR. OTTO: I mean, the filing deadline just  
15 passed.

16 MS. CLARKSTON: That is correct, the filing  
17 deadline just passed. There are two bills out --

18 MR. OTTO: Are you thinking substitute  
19 amendment?

20 MS. CLARKSTON: Yes, I'm exactly thinking  
21 that. I have contacted a couple members of the  
22 General Assembly and they're waiting on this draft,  
23 and they are very much interested in filing that  
24 substitute.

25 CHAIRMAN REINHARD: Any questions?

1 MR. STALTER: This is Bill Stalter. Did  
2 you say you need the comments by noon tomorrow?

3 MS. DUNN: Correct.

4 MR. STALTER: One other question. You went  
5 to 100 hundred percent and now we're down to 90/10,  
6 but the section about the accrual of income or the  
7 distribution of income has stayed the same; is that  
8 correct?

9 MS. GRINSTON: Can you ask that again?

10 MR. STALTER: The section that allows the  
11 seller to withdraw income currently -- which is  
12 .031 but used to be point three, but now is point four  
13 on Page 12 -- it doesn't look to be changed except for  
14 that slight change.

15 MS. GRINSTON: That's correct.

16 MS. DUNN: Kim, the board voted when you  
17 stepped out to go 90 instead of 100. And I think what  
18 Bill is concerned about is that we would adjust any  
19 sections that reflected that. Is that correct, Bill?

20 MR. STALTER: I just wanted to clarify that  
21 the seller can still take out income currently.

22 MS. GRINSTON: No, I don't think it  
23 changes -- that this draft would change any other  
24 income allowances.

25 MR. STALTER: And one other question that

1 had to do with definitions.

2 And now we're looking at what the definition of  
3 funeral merchandise is. And it looks to be that  
4 there's a deletion that would pull grave spacers,  
5 markers and monuments into the definition where it  
6 used to be that they were only pulled in if there was  
7 a companion agreement?

8 MS. GRINSTON: I believe that is correct.  
9 I think that language may have come from  
10 Representative Kuessner's bill, if I'm not mistaken --  
11 one of the bills that's currently filed. But I do  
12 think that is correct.

13 CHAIRMAN REINHARD: Any other questions?

14 MR. OTTO: Was there going to be a  
15 definition of apprentice funeral director?

16 MS. CLARKSTON: Is that defined in 333?  
17 We'll just copy it over.

18 MS. GRINSTON: I think we can pull the  
19 definition from 333.

20 MR. OTTO: I'm not sure there's a good  
21 definition in 333.

22 MS. DUNN: Well, there isn't a definition.  
23 I believe that there's a reference of an apprentice  
24 funeral director working for a funeral director. Now,  
25 we don't have a definition, it's a reference in the

1 rule.

2 MS. GRINSTON: I don't have 333 in front of  
3 me.

4 Don, we can pull over whatever language is used in  
5 either the rules or 333 and maybe narrow that down,  
6 because it probably would be good to clarify that.

7 MR. OTTO: I don't think there is a good  
8 definition in 333, to be honest with you. There's  
9 some references to it.

10 MS. GRINSTON: We'll take a look at it,  
11 Don.

12 CHAIRMAN REINHARD: We note that, Don,  
13 thank you.

14 Any other comments? If not, we appreciate the  
15 members making comments. We need a motion to go into  
16 closed:

17 The board will move into closed section pursuant  
18 to Section 6.0021, Subsection 1, of the Revised  
19 Statutes of Missouri.

20 MR. VERNON: Somebody was asking about a  
21 point, in the background there, and I'm not sure if it  
22 was Representative Meadows' office.

23 MS. NEWMAN: I'm innocent. I was just  
24 taking notes.

25 MR. VERNON: I just heard a female voice.

1 MS. SUMMERVILLE: This is Kalene, and I  
2 have questions. There's a gentleman there that kept  
3 alluding to what is going on in the state. Would you  
4 discuss that point?

5 Kalene Summerville with the Summerville Funeral  
6 Home.

7 MS. GRINSTON: Are you asking a member of  
8 the public what they may have been referring to? I  
9 don't know who made the comment.

10 CHAIRMAN REINHARD: We didn't hear anybody  
11 mention anything.

12 MS. SUMMERVILLE: The gentleman was  
13 referring to what has been going on in the state in  
14 last few weeks. Didn't he make a comment on that?

15 MS. GRINSTON: I don't know what the  
16 gentleman that made the comment may have been  
17 referring to.

18 PUBLIC MEMBER: I heard the same comment,  
19 and I would like to hear it. I think, if I'm not  
20 mistaken, it might have been Todd. But the comment  
21 was --

22 MS. SUMMERVILLE: And it was with the  
23 100 percent funding, and he made the comment: With  
24 what we've been faced with in the state the last  
25 couple weeks we wanted to make sure that people are

1 secure.

2 And we would like to know what's going on.

3 MR. MAHN: Kim, this is Todd. Do you want  
4 to answer, or do you want me to?

5 MS. DUNN: I think that Kim will answer.

6 MS. GRINSTON: I don't know if the  
7 gentleman caller was talking about the press release  
8 issued by the board and what issue may have occurred  
9 in the last couple weeks.

10 One thing we do know is that there was a press  
11 release issued by the board in regards to NPS. A  
12 memorandum of understanding has been entered with NPS  
13 and the board to temporarily suspend all sales of  
14 preneed contracts in the State of Missouri. The board  
15 is currently reviewing some concerns with NPS, and  
16 that memorandum of understanding was entered into  
17 yesterday.

18 Now, I don't know if that's what the reference was  
19 too, but that's the only thing I can think of.

20 MR. MAHN: That's exactly what it was to,  
21 Kim.

22 MS. SUMMERVILLE: How do we know how to  
23 proceed if we have money with NPS and what is going  
24 on?

25 CHAIRMAN REINHARD: I think that would be

1 up to your funeral home and how you handle business  
2 with NPS.

3 MS. GRINSTON: And the other thing, I guess  
4 putting on my legal hat now, the purpose of the open  
5 call with the open agenda was to discuss the  
6 legislation.

7 I would suggest that if you have any questions  
8 about that would you please contact the Board's office  
9 or the press representative for the department, and  
10 we'll be able to assist in any way that we can, but I  
11 think that for right now we should probably restrict  
12 our comments to the legislation and/or the motion to  
13 close if we are still proceeding with that.

14 CHAIRMAN REINHARD: Martin, you made a  
15 motion to go into close?

16 MR. VERNON: I make that motion.

17 MR. MAHN: Second.

18 CHAIRMAN REINHARD: Joy?

19 MS. GERSTEIN: Yes.

20 CHAIRMAN REINHARD: Gary?

21 MR. FRAKER: Yes.

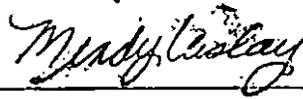
22 CHAIRMAN REINHARD: Once again, thank you,  
23 members of the public, and we'll talk to you Monday.

24 (WHEREIN, the recorded portion of the meeting was  
25 concluded.)

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CERTIFICATE OF REPORTER

I, Mindy Vislay, Certified Court Reporter with the firm of Midwest Litigation Services, and Notary Public within and for the State of Missouri, do hereby certify that I was personally present at the proceedings had in the above-entitled cause at the time and place previously described; that I then and there took down in Stenotype the proceedings had; and that the foregoing is a full, true and correct transcript of such Stenotype notes so made at such time and place.



Mindy Vislay, CCR  
Notary Public (County of Cole)  
My commission expires March 19, 2011

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STATE OF MISSOURI  
COMMISSION # 07025735

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